

CIRCULAR

Amending and supplementing some provisions of Circular No. 01/2007/TT-BKHCHN of February 14, 2007, as amended and supplemented by Circular No. 13/2010/TT-BKHCHN of July 31, 2010 and Circular No. 01/2008/TT-BKHCHN of February 25, 2008, amended and supplemented by Circular No. 04/2009/TT-BKHCHN of March 27, 2009

Pursuant to the Government's Decree No. 28/2008/ND-CP of March 14, 2008, regulating the Functions, Tasks, Powers and Organizational Structure of the Ministry of Science and Technology;

Pursuant to the November 29, 2005 Law on Intellectual Property, amended and supplemented by Law No. 36/2009/QH12 of June 19, 2009 (hereinafter referred to as "Intellectual Property Law");

Pursuant to the Government's Resolution No. 67/NQ-CP of December, 24, 2010, on the simplification of administrative procedures under the Ministry of Science and Technology's management;

The Minister of Science and Technology amends and supplements some provisions of No. 01/2007/TT-BKHCHN of February 14, 2007 on guiding the implementation of the Government's Decree No. 103/2006/ND-CP of September 22, 2006, as amended and supplemented by Circular No. 13/2010/TT-BKHCHN (hereinafter called "Circular No. 01/2007/TT-BKHCHN amended in 2010") and Circular No. 01/2008/TT-BKHCHN on guiding the grant and withdrawal of industrial property assessor card and eligibility certificate for industrial property assessment organizations, amended and supplemented by Circular No. 04/2009/TT-BKHCHN of March 27, 2009 (hereinafter called "Circular No. 01/2008/TT-BKHCHN amended in 2009"), as follows:

Article 1. Amend and supplement some items of Circular No. 01/2007/TT-BKHCHN amended in 2010 as follows:

1. Amend, supplement Item 7.2.e as follows:

"e. The object(s) contained in the application must be accurately grouped and classified according to the regulations. If the applicant fails to group and classify by him/her or the grouping and classifying are not appropriate, the NOIP will conduct this work and the applicant must pay charges for grouping and classifying service according to the regulations."

2. Amend, supplement Item 7.3.c, as follows:

"c) Documents evidencing grounds for enjoying the priority right (certificated by the receiving office of copies of the original application(s), except PCT applications); the list of goods and services in the original mark registration; document on the transfer of the priority right if the applicant benefits that right from others".

3. Amend, supplement Item 20.3, as follows:

"20.3 Maintenance of validity of patent protection titles

a. To have the validity of his/her patent protection title maintained, a patent holder shall pay a maintenance fee within six (06) months before the expiration of the validity term. The payment of the maintenance fee may be delayed for no more than six months after the expiration

of the current validity term but the patent holder shall pay the maintenance fee plus 10% for each month of delayed payment.

b. NOIP shall consider the request for validity maintenance within ten working days as of the receiving day of the request and fee. If the request is valid, the NOIP shall record in the National Patent Register.

If the request is invalid or insufficient, NOIP shall issue a notice that gives the patent holder 01 month as from the signing date of the notice to make amendments or oppositions. Within the set time limit, if the patent holder fails to amend/ oppose or the amendment/opposition is not appropriate, NOIP shall issue the notification of refusal of validity maintenance".

4. Amending, supplementing Point 20.4.a, as follows:

"a) the validity of invention patents, utility solution patents and Certificates of layout designs shall not be extended.

The validity of industrial design patents may be extended at most twice for a period of five years each. In the case that the industrial design is granted with options, the industrial design protection title may be extended for all or some of the options, including the basic option.

The validity of a Certificate of trademark registration may be extended unlimitedly, for a period of ten years each".

5. Amend, supplement Item 33.5.e, as follows:

"e. The description of industrial designs shall meet requirements as provided for at Clause 2, Article 103, Law on Intellectual Property, and shall be described in details as follows:

(i) It fully discloses the nature of industrial designs sought to be protected, that adequately shows design features presenting the nature of the industrial design as well as new design features that are distinguishable from most similar industrial designs as defined at Item 33.5.c above and consistent with those shown in the set of photos or drawing;

(ii) Design features of the industrial design sought to be protected shall be presented one after another in the following order: Configuration and line features, correlation between configuration and/or line features, color features (if any);

(iii) For a product that has different usages (for example: a product with cover or foldable), its industrial design must be described in different status;

(iv) If an industrial design consists of many variations, distinctive characteristics of the basis variation (the first variation stated in the application) in comparison with those of remaining variations shall be clearly indicated;

(v) If an industrial design is the design of a set of products, the design of each product in the set shall be described".

6. Amend, supplement Item 33.6 as follows:

"33.6 Requirements for sets of photos or drawings of industrial designs

An applicant shall submit four sets of photos or four sets of drawings of each industrial design. Sets of photos or drawings shall fully present the design features of industrial designs sought to be protected, based on which any person having average knowledge in the art can identify that industrial design, and the follow the following guidance: "

7. Amend, supplement Item 37.4.e, as follows:

The Section "List of goods and services bearing the trademark" in the written declaration must be divided into groups in accordance with the International Classification of Goods and Services under the Nice Agreement published by NOIP in its Industrial Property Official Gazette. If

the applicant fails to divide or the dividing is not appropriate, NOIP will take charge of this and the applicant must pay fee for the dividing service according to the regulations.

8. Amend, supplement Item 37.5, as follows:

"37.5 Requirements for trademark specimens:

In addition to the trademark specimen attached to the request, the application must be enclosed with five trademark specimens satisfying the following requirements:"

9. Amend, supplement Item 47.1, as follows:

"47.1 Dossiers for registration of contracts on assignment of industrial property rights comprise one set of documents as follows:

a. Two copies of the Request for the contract registration of transfer of industrial property rights, made in accordance with the form 01-HDCN attached to the Annex D of this Circular;

b. The contract (the original contract or a notarized copy); if the contract is made in a language other than Vietnamese, it must be enclosed with its Vietnamese translation; if the contract consists of many pages, each page shall be appended with the parties' signatures or appended with a seal on their inner edges;

c. The original protection title;

d. The written agreement of co-owners to the transfer of industrial property rights, if those industrial property rights are under joint ownership;

e. the Power of attorney (if the dossier is filed through a representative)

f. A copy of fee and charge receipts (in case of payment via post or via bank transfer)".

10. Amend, supplement Item 53.2, as follows:

"53.2 Applications for certificates of industrial property representative practice

An application for the certificate of industrial property representative practice shall comprise a set of documents, as follows:

a. Two copies of the Request for granting the certificate of industrial property representative practice (the certificate of practice), made according to a form 01-CCHN attached to the Annex E of this Circular;

b. A copy of the notice on the pass of an professional examination for industrial property representative organized by NOIP;

c. Two 3 cm x 4 cm photos;

d. A copy of the identification card;

e. A copy of fee and charge receipts (if the payment via post or via bank transfer)."

11. Amend, supplement Item 59.2 as follows:

"59.2 Registration for an examination

a. Only persons who fully satisfy requirements specified at Items a through d, Clause 2, Article 155 of Intellectual Property Law are allowed to register for participation in an examination according to the provisions of this Item.

b. A dossier for registration for examination filed with NOIP shall comprise following documents:

(i) Two copies of the Request for participation in an examination, made according to a form 05-KTNV attached to the Annex E of this Circular;

(ii) A copy of the university diploma (the original diploma is required to show for comparison, unless with a public notary);

(iii) Documents proving that the participant has been trained on industrial property law or is experienced in this operation:

- Copies of graduate certificates from training courses on industrial property law recognized by the Ministry of Science and Technology (the original diploma is required to show for comparison, unless with a public notary); or

- Graduate or post-graduate dissertations on industrial property certified by establishments where he/she has made the dissertation; or

- Copies of Recruitment Decisions of employment contracts or other documents certified by organizations where that person has been working to prove that she/he personally engaged in the examination of industrial property applications at a national or international industrial property office for five or more consecutive years or in industrial property law-related activities as defined at Point d, Clause 1, Article 155 of the Intellectual Property Law (including inspection, examination, procuracy, adjudication, legal affairs, consultancy on industrial property law; scientific research with title of industrial property researchers or lecturers (the original diploma is required to show for comparison, unless with a public notary);

(iv) Two 3 cm x 4 cm photos;

(v) A copy of fee and charge receipts (in case of payment via post or via bank transfer)

12. Amend, supplement Item 59.5 as follows:

"59.5 Organization of examination

a) An examination shall be organized on every two years basis.

b) Examination papers shall be marked by the Examination Council in accordance with the approved answers and score frame.

c) Examination results shall be notified by NOIP to examinees. Examinees may request NOIP to review examination papers; accordingly, the Examination Council shall review examination papers following the regulations by NOIP's Director General.

Examination results shall be valid for five years for the granting certificates of industrial property representative practice."

13. Amend Items "Grouping", "Classifying" in the following request forms: 01-SC, 03-KDCN and 04-NH at the Appendix A of this Circular, as follows:

Supplement a note: "If the applicant fails to group, classify or the grouping, classifying are not appropriate, the NOIP will conduct this, and the applicant must pay charges for the grouping, classifying service in accordance with the regulations."

14. Amend Item "Documents specified in application" in the following Request forms: 01-SC, 02-TKBT, 03-KDCN, 04-NH, 05-CDDL at Appendix A; 01-SDD, 02-CGD, 03-YCTD at Appendix B; 01-SDVB, 02-GHVB, 03-PBVB, 04-CDHB, 05-KN, 06-DKQT, 07-DKCD, 08-SDQT at Appendix C; 01-HDCN, 02-HDSD, 03-SDHD, 04-CGBB at Appendix D; 01-CCHN, 02-CLCC, 05-KTNV at Appendix E; and 01-YCTCSC, 02-YCTCKD and 03-YCTCNH at Appendix F, as follows:

Replace the phrase "Fee and charge receipts" by "A copy of fee and charge receipts (in case of payment via post or via bank transfer)".

15. Delete Item "Time limit for renewal"; amend, supplement Item "Objects requesting for renewal" in the Request form No. 02-GHVB at Appendix C, as follows:

"- The industrial design patent – Options requested to be extended:..."

"- The certificate of the trademark registration - Groups or goods, services requested to be extended:"

16. Removing Item "Certification of People's Committee of Commune, Ward, Township for the applicant's address" of Application form No. 01-CCHN and 05-KTNV at appendix E.

Article 2. Amend, supplement some provisions of Circular No. 01/2008/TT-BKHCHN amended in 2009, as follows:

1. Amend provisions under Item II.1.b and c, as follows:

"b) The subject on industrial property law is compulsory for all assessors.

A person having at least 15 consecutive years of experience in drafting and guiding implementation of legal documents on industrial property; examining industrial property; settling disputes, appeals and inspect on industrial property on state industrial property agencies; doing researches and teaching law on industrial property in legitimate education and training organizations shall be exempted from examining the subject on industrial property law.

c) Subjects on industrial property assessment including assessment of inventions (and utility solutions) and semi-conductor integrated circuit layout designs, industrial designs, trademarks and geographical indications (and appellations of origin) and other industrial property subject matters shall be included in the test.

A person having at least 15 successive years of experience in providing explanation, guiding implementation of legal provisions, making regulations, directly involving or carrying out substantive examination of inventions (and utility solutions), industrial designs, trademarks and geographical indications (and appellations of origin) in national or international industrial property offices shall be exempted from taking the test for corresponding assessment.

A person having at least 15 successive years of experience in directly dealing with procedures of establishment and enforcement of industrial property rights with title of industrial property agent shall be exempted from taking the test for corresponding assessment with the field that is most related.

2. Amend, supplement provisions under Item II.4, as follows:

"4. Registration dossier for examination

Registration dossier for examination shall consist of following documents:

a) Two registration forms for professional examination of industrial property assessment as attached in the Annex I of this Circular;

b) A copy of the undergraduate or graduate degrees (the original certificates must be shown up for checking unless with a public notary);

c) A copy (with public notary) of recruitment decision or employment contract and other documents proving experience in this field, if he/she requests for the exemption from examination of any subjects as mentioned at Item II.1b,c of this Circular"

d) Two 3 cm x 4 cm photos;

e) Copy of fee and charge receipts (in case of payment via post or via bank transfer).

3. Amend, supplement provisions under Item II.6.c as follows:

"Within two months as of the examination date, the Chairman of the Examination Council shall inform results to examinees and grant certificates for industrial property assessment to qualified persons as mentioned in the Annex V of this Circular. The certificates shall include information of the assessment subjects corresponding to the examined subjects and indicate the five-year validity period as of grating date (to use for requesting for granting assessor cards)."

4. Amend, supplement provisions under Item II.2, as follows:

"2. A dossier applied for an assessor card shall consist of the following documents:

a) Two request forms for assessor card, made in form attached in the Annex II of this Circular;

b) A Copy of the certificate for industrial property assessment issued by the Chairman of the Examination Council as stipulated in Item II.6.c of this Circular;

c) A Copy of the Identification Card (ID);

d) Two 03 cm x 04 cm photos;

e) Copy of fee and charge receipts (in case of payment via post or via bank transfer)."

5. Amending, supplementing provisions under Item III.4.c as follows:

"c) Provisions under Item III.2 and 3 of this Circular shall be applied for re-granting assessor card, excluding documents specified at Item b, Clause 2 and the time limit for examination shall be 15 days as of the date on that the dossier received by NOIP."

6. Amend, supplement provisions under Item IV.2 as follows:

"2. Applications for certificates of assessment organizations

An application for the Certificate for assessment organization shall consist of following documents:

a) Two request forms for the Certificate for assessment organization, made in accordance with the form attached in the Annex III of this Circular;

b) A copy (with public notary) of the Certificate of Business Registration, Certificate of Registration for scientific and technological organization, Certificate of lawyer organization operation;

c) A copy (with public notary) of recruitment decision or employment contract between an industrial property assessment organization and an assessor who works for that organization;

d) Copy of fee and charge receipts (in case of payment via post or via bank transfer)"

7. Amend, supplement provisions under Item IV.4.c as follows:

"c) Provisions under Item IV.2 and 3 of this Circular shall be applied for re-granting Certificates for assessment organizations, excluding documents specified at Point b and c, Clause 2, and the time limit for examination of the dossier shall be 15 days as of the day on that applications received by NOIP or Departments of Science and Technology."

8. Replace Request forms at Appendix I, II, III by forms specified at Appendix I, II, III of this Circular.

Article 3. Validity

This Circular comes into effect 45 days after the signing date./.

MINISTER

(signed and sealed)

Nguyen Quan
