

*Hanoi, September 22, 2006*

**DECREE**

**Making detailed provisions and providing guidelines for implementation of certain Articles of the Law on Intellectual Property regarding Protection of Intellectual Property Rights**

**THE GOVERNMENT**

- ❖ Pursuant to the Law on Organization of the Government dated 25 December 2001;
- ❖ Pursuant to Law 50/2005/QH11 on Intellectual Property dated 29 November 2005;
- ❖ Upon the request of the Minister of Science and Technology, the Minister of Culture and Information and the Minister of Agriculture and Rural Development;

**DECREES**

**Chapter I**  
**GENERAL PROVISIONS**

**Article 1. Scope of application**

This Decree makes detailed provisions and provides guidelines for implementation of certain Articles of the Intellectual Property Law regarding the protection of intellectual property rights including determination of acts, nature and seriousness of intellectual property right infringements, determination of damages, request for settlement of intellectual property right infringement and dealing with such requests, settlement of intellectual property right infringements by way of administrative measures, border control of intellectual property right related imports and exports, intellectual property assessment and provisions on State management of intellectual property.

**Article 2. Applicability**

This Decree applies to Vietnamese organizations and individuals and foreign organizations and individuals that enjoy the protection of intellectual property rights and those commit acts of intellectual property right infringement in accordance with the Intellectual Property Law.

**Article 3. Interpretation**

For the purpose of this Decree, the following terms shall be understood as follows:

1. *"Act of infringement"* means an act of intellectual property right infringement;
2. *"Settlement of act of infringement"* means settlement of an act of intellectual property right infringement;
3. *"Infringer"* means an organization or an individual committing an act of intellectual property right infringement;
4. *"Element"* means a product or a process or a part/component thereof;
5. *"Infringing element"* means any element created from an act of infringement;
6. *"Examined act"* means an act that is suspected from being an act of infringement and therefore it is put under examination in order to conclude whether it is really an act of infringement.
7. *"Examined object"* means an object that is suspected and put under examination in order to find whether it is the object of infringement;
8. *"Application for settlement of infringement"* means an application for applying the appropriate measures to deal with an act of infringement.

#### **Article 4. Application of civil remedies, administrative and criminal measures for intellectual property right protection**

Depending on its nature and seriousness, an act of infringement may be dealt with by civil remedies, administrative or criminal measures as set out in Section Five (Intellectual Property Right Protection) of the Intellectual Property Law and in accordance with the following provisions:

1. Civil remedies shall be applied to deal with an act of infringement at the request of the intellectual property right holder or of the aggrieved party (either an organization or an individual) due to that act of infringement, even when such act has been dealt with or is dealing with by way of administrative or criminal measures.

Procedures for request of civil remedies, the jurisdiction, formalities and procedures for application of civil remedies shall be in accordance with the legislation on civil procedures.

2. An administrative measure shall be applied to deal with an act of infringement falling into one of the cases referred to in Article 211 of the Intellectual Property Law at the request of an intellectual property right holder or of the aggrieved party (either an organization or individual) due to the act of infringement or of the organization or the individual that detects the act of infringement or by the competent authority that detects the act of infringement.

Sanctions, fines, authority and procedures for handling an act of infringement and

applying remedial measures shall be in accordance with the Intellectual Property Law and the legislation on the settlement of violations of administrative regulations in the fields of copyrights and related rights, industrial property rights and rights to plant varieties.

3. Criminal measures shall be applied to deal with an act of infringement that constitutes a crime as defined by the Penal Code.

The jurisdiction, formalities and procedures for applying criminal measures shall be in accordance with the legislation on criminal procedures.

## **Chapter II**

### **DETERMINATION OF INFRINGEMENT ACT, NATURE AND SERIOUSNESS OF INFRINGEMENT AND DETERMINATION OF DAMAGES**

#### **Section 1**

##### **Legal bases for determination of infringement act, nature and seriousness of infringement**

#### **Article 5. Determination of infringement act**

An examined act shall be regarded as an act of intellectual property right infringement under Articles 28, 35, 126, 127, 129 and 188 of the Intellectual Property Law upon consideration of the following conditions in full:

1. The examined object falls into the range of subject-matters being protected by an intellectual property right;
2. The examined object contains an infringing element;
3. The person committing the examined act is neither the intellectual property right holder nor anyone who is permitted under the legislation or by the permission of the competent authorities under Articles 25, 26, 32, 33, 125.2, 125.3, 133, 134, 137.2, 145, 190 and 195 of the Intellectual Property Law;
4. The examined act takes place in Vietnam.

The examined act will be regarded as taking place in Vietnam if it takes place on the Internet and aims at the consumers or the information-users locating in Vietnam.

#### **Article 6. Legal bases for determination of protected subject-matters**

1. The determination of a protected subject-matter shall be carried out by way of considering all the documents and evidence to prove the basis for appearance or establishment of the right as set out in Article 6 of the Intellectual Property Law.
2. With regard to the intellectual property rights that have been registered with the competent authorities, the protected subject-matter shall be determined under the registration certificates, titles of protection and other documents accompanying such registration certificates and titles of protection.

3. With regard to copyrights and rights of performers, rights of sound/video recording producers and rights of broadcasting organizations which are not registered with the competent authorities, these rights shall be determined on the basis of the original as to works or the first fixation as to performances, sound/video recordings, broadcasting programs and other relevant documents (if any).

Where the original of a work or the first fixation of a performance or a sound/video recording or a broadcasting program and other relevant documents no longer exists, the copyrights or the rights of the performer or the rights of the sound/video recording producer or the rights of the broadcasting organization to such subject-matter shall be assumed to be existent on the basis of the information about the author or the performer or the sound/video recording producer or the broadcasting organization being of the relevance that is expressed in a normal manner on the lawfully published copies.

4. With regard to trade names, the protected subject-matters shall be determined on the basis of their using process and the sector and territory where the trade names are used.

5. With regard to business secrets, the protected subject-matters shall be determined on the basis of the documents expressing the contents and the nature of the business secrets and the explanations and the descriptions of the relevant measures of secrecy.

6. With regard to well-known trademarks the protected subject-matters shall be determined on the basis of the materials and the evidence proving the famousness of the trademarks under the criteria set out in Article 75 of the Intellectual Property Law.

#### **Article 7. Determination of infringing elements as to copyrights and related rights**

1. An infringing element as to copyrights may be one of the following:

- a) The copy of a work which is unlawfully created;
- b) The derivative work which is unlawfully created;
- c) The work falsifying the name or the signature of the author or affixing unlawfully the name of the author or misappropriating the authorship of the author;
- d) The part of a work which is quoted or copied or inserted unlawfully;
- dd) The product containing the copyright protecting equipment which has been unlawfully circumvented.

A product containing any infringing element referred to in this clause shall be regarded as the copyright infringing product.

2. An infringing element as to related rights may be one of the following:

- a) The first fixation of a performance which is unlawfully created;
- b) The copy of a fixation of a performance or a copy of a fixation of a sound/video recording or a copy of a broadcasting program which is unlawfully created;
- c) The part or the whole of a fixed performance or a sound/video recording or a broadcasting program which is copied or quoted or inserted unlawfully; The part or the whole of a broadcasting program which is recorded, decoded and distributed unlawfully;

d) The product containing the related right protecting equipment which has been unlawfully circumvented; the fixation of a performance of which the related right management information has been dismantled or modified unlawfully.

A product containing any infringing element referred to in this clause shall be regarded as the related right infringing product.

3. The legal basis for determination of a copyright infringing element shall be the scope of copyright protection which is determined by the form of expression of the original of a work or by the characters, the figures and the way of expression of personality of the characters, the figures and the events by the original work in the case of determining the infringing element as to a derivative work.

4. The legal basis for determination of a related right infringing element shall be the scope of the related right protection which is determined by the form of expression of the first fixation of a performance or a sound/video recording or a broadcasting program.

5. In order to determine whether a copy or a work (or a fixation of a performance or a sound/video recording or a broadcasting program) is an infringing element as to copyrights or related rights, it is required to compare such copy or work to the original of the work (or the first fixation of the performance or the sound/video recording or the broadcasting program) or the original work, as it is relevant to the case.

A copy of a work or of a fixation of a performance or of a sound/video recording or of a broadcasting program shall be regarded as an infringing element in the following cases:

a) The copy is a duplication of a part or the whole of a work or of the first fixation of a performance or of a sound/video recording or of a broadcasting program being protected in the name of another person;

b) Such work (or part of it) is a part or the whole of a work or the first fixation of a performance or of a sound/video recording or of a broadcasting program being protected in the name of another person;

c) Such work or part of it has the character or the figure or the way of expression of personality of the character or of the figure or of the events possessed by the work being protected in the name of another person.

6. A work containing any infringing element set out in clauses 1(a), 1(d) and 2(c) of this Article shall be regarded as pirated goods as under Article 213 of the Intellectual Property Law.

## **Article 8. Infringing elements as to the rights to patented inventions**

1. An infringing element as to the rights to a patented invention may be one of the following:

a) The product or the part (or the component) of a product which is identical or similar to the product or the part (or the component) of a product falling within the protection scope of an invention patent;

b) The process which is identical or similar to the process falling within the protection scope of an invention patent;

c) The product or the part (or the component) of a product which is produced by the

process identical or similar to the process falling within the protection scope of an invention patent.

2. The legal basis for determination of an infringing element as to the rights to a patented invention shall be the invention protection scope which is determined by the Invention Patent or the Utility Solution Patent.

### **Article 9. Infringing elements as to the rights to layout designs of semi-conducting integrated circuits**

1. An infringing element as the rights to the layout design of a semi-conducting integrated circuit may be one of the following:

a) The layout design which is created by unlawfully copying a protected layout design;

b) The semi-conducting integrated circuit which is created unlawfully by using a protected layout design;

c) A product or a part (or a component) thereof which contains a semi-conducting integrated circuit defined in clause (b) above;

2. The legal basis for determination of an infringing element as to the rights to the layout design of a semi-conducting integrated circuit shall be the protection scope of the rights thereto defined by the Certificate of Registration of the Layout design of the Semi-conducting Integrated Circuit.

### **Article 10. Infringing elements as to the rights to industrial designs**

1. An infringing element as to the rights to a patented industrial design may be a product or a part of a product whose external appearance is identical to or not significantly different from an industrial design being protected.

2. The legal basis for determination of an infringing element as to the rights to a patented industrial design shall be the protection scope of the industrial design defined by the Industrial Design Patent.

3. In the following cases, a product or a part of a product shall be regarded as an infringing element as to the rights to a patented industrial design:

a) The examined product or the part of the examined product, including one for which an Industrial Design Patent has been granted, contains a combination of the shaping features that create an overall appearance which is a copy or substantially a copy (almost undistinguishable from) of an industrial design being protected in the name of another person without permission of such person.

b) The examined product or the part of the examined product, including one for which an Industrial Design Patent has been granted, contains a combination of the shaping features that create an overall appearance which is a copy or substantially a copy (almost undistinguishable from) of an industrial design being protected in the name of another person without permission of such person.

4. An industrial design of a product (or a part of it) shall only be regarded as not significantly different from an industrial design being protected as referred to in clause 1

of this Article if such industrial design is a copy or substantially a copy of an industrial design of, at least, one product belonging to a set of products whose industrial design(s) being protected in the name of another person.

### **Article 11. Infringing elements as to the rights to trademarks**

1. An infringing element as to the rights to a trademark may be any sign affixed on goods and their packaging, service providing means, transaction documents, signboards, advertising means and other business instruments which are identical or confusingly similar to a trademark being protected.

2. The legal basis for determination of an infringing element as to the rights to a trademark shall be the protection scope of such trademark, including the trademark specimen and the list of goods and services defined by the Trademark Registration Certificate or the Certificate of International Registration of the trademark being protected in Vietnam.

3. In order to determine whether a suspected sign is an infringing element as to the rights to a trademark, it is required to compare such sign to the [protected] trademark and at the same time to compare the products and the services bearing such sign to the products and the services falling within the scope of protection [of the protected trademark]. An infringing element can only be confirmed if the following two conditions are met in full:

a) The suspected sign is identical or confusingly similar to the protected trademark; for that purpose, a sign shall be regarded as identical to a protected trademark if it consists of the same composition and the method of presentation (including the colors); and a sign shall be regarded as confusingly similar to a protected trademark if it consist of several features being identical or similar [to the protected trademark] to such an extent that it is not easy to distinguish between them in terms of composition, the way of pronunciation, the way of phonetic transcription of signs, letters, meaning, the method of presentation and colors and that leads to a confusion for the consumers about the goods and services bearing the trademark;

b) The goods and services bearing the suspected sign are identical or similar in their essence to, or in the interrelationship in terms of their functions or utility with, or in the same distribution channels with, the goods and services that fall within the scope of protection [of the protected trademark];

4. With regard to a well-known trademark, a suspected sign shall be regarded as an infringing element if:

a) The suspected sign meets the conditions set out in clause 3(a) of this Article;

b) The goods and services bearing the suspected sign meet the conditions set out in clause 3(b) of this Article or the goods and services which are not identical or not similar or unrelated to the goods and services bearing the well-known trademark but there are likely to cause confusion among the consumers as to the origin of goods and services or to cause a wrong impression about the existence of a relationship between the producer or trader of such goods and services with the owner of the well-known trademark;

5. Where any products or services bear a sign which is identical to or difficult to be distinguished, in terms of the overall composition and the way of display [of such sign],

from a protected trademark for the same goods and services falling within the protection scope [of the protected trademark], such products and services shall be regarded as counterfeit goods defined in Article 213 of the Intellectual Property Law.

## **Article 12. Infringing elements as to the rights to geographical indications**

1. An infringing element as to the rights to a geographical indication may be any sign affixed on goods and their packaging, service means, transaction documents, signboards, advertising means and other business instruments which are identical or confusingly similar to a protected geographical indication.

2. The legal basis for determination of an infringing element as to the rights to a geographical indication shall be the protection scope of such geographical indication defined by the Decision on Registration of the Geographical Indication.

3. In order to determine whether a suspected sign is an infringing element as to the rights to a geographical indication, it is required to compare such sign to the [protected] geographical indication and at the same time to compare products bearing such sign to the products bearing the protected geographical indication on the basis of the following considerations:

a) The suspected sign is identical or confusingly similar to the protected geographical indication; for that purpose, a sign shall be regarded as identical to the protected geographical indication if it is similar to that geographical indication regarding of the composition of words including the way of pronunciation, the way of phonetic transcription of letters, meaning, images or symbols that fall within the protection scope of such geographical indication; and a sign shall be regarded as confusingly similar to a protected geographical indication if it is confusingly similar to the protected geographical indication regarding the composition of words including the way of pronunciation and the way of phonetic transcription of letters, meaning, images or symbols that fall within the protection scope of that geographical indication;

b) The products bearing the suspected sign is identical or similar to the products bearing the protected geographical indication, for that purpose, the products shall be regarded as identical or similar if they are identical or similar to each other in terms of their nature, functions, utility and distribution channels;

c) With regard to wine and spirits, in addition to clauses 3(a) and 3(b), any sign that is identical to a protected geographical indication, even it is displayed in the form of translation or transcription [of the protected geographical indication] or accompanied with such words as “kind”, “type”, “style”, “imitation” or the like, and used for those products which do not originate in the territory bearing the protected geographical indication shall also be regarded as infringing element as to the rights to the geographical indication.

4. Where any products bear a sign which is identical to or is difficult to be distinguished, in terms of the overall composition and the way of display [of such sign], from a protected geographical indication for the same products falling within the protection scope, such products shall be regarded as counterfeit goods defined in Article 213 of the Intellectual Property Law.

### **Article 13. Infringing elements as to the rights to trade names**

1. An infringing element as to the rights to a trade name may be any commercial indication affixed on goods and their packaging, service means, transaction documents, signboards, advertising means and other business instruments which is identical or confusingly similar to a protected trade name.

2. The legal basis for consideration of an infringing element as to the rights to a trade name shall be the protection scope of the trade name that is defined on the basis of the evidence proving the lawful use of that trade name, *inter alia*, the business owner, the business establishment, the business operations and the products and services bearing the trade name shall be specified.

3. In order to determine whether a suspected sign is an infringing element as to the rights to a trade name, it is required to compare such sign to the [protected] trade name and at the same time to compare products bearing such sign to the protected products on the basis of the following considerations:

a) The suspected sign is identical or confusingly similar to the protected trade name; for that purpose, a sign shall be regarded as identical to a protected trade name if it is similar to that trade name, in terms of composition of words including the way of pronunciation and the way of phonetic transcription of letters; and a sign shall be regarded as similar to a protected trade name if it is similar to the protected trade name in terms of composition of words, pronunciation, transcription of letters and causes confusion to consumers as to the business owner, the business establishment and business operations under the protected trade name;

b) The products and services bearing the suspected sign shall be regarded as identical or similar to the products and services bearing the protected trade name if they are identical or similar to each other regarding their nature, functions, utility and distribution channels;

### **Article 14. Infringing elements as to the rights to plant varieties**

1. An infringing element as to the rights to a plant variety may be one of the following:

a) Using the entire breeding plants or the propagating materials of a protected plant variety in order to take any action defined in Article 186.1 of the Intellectual Property Law without permission of the holder of the Protection Certificate;

b) Using the entire breeding plants or propagating materials of a protected plant variety referred to in Articles 187.1 and 187.2 of the Intellectual Property Law;

c) The process of producing plant varieties defined in Article 187.3 of the Intellectual Property Law;

d) Using the name of a plant belonging to the same or the similar species in comparison with the species of the protected plant variety that is identical or confusingly similar to the name of the protected plant variety;

dd) The provisions of points (a) and (b) of this clause also apply appropriately to the harvesting materials if the holder of the Protection Certificate has not been yet in the reasonable conditions to exercise his/her rights over the propagating materials of the

same species.

2. The legal basis for consideration of an infringing element of the rights to a plant variety:

- a) The Description of the plant variety certified by the plant variety protection authority;
- b) The Protection Certificate of the plant variety.

### **Article 15. Bases for determination of natures and seriousness of infringements**

1. The nature of infringement referred to in Article 199.1 of the Intellectual Property Law shall be determined on the following bases:

- a) The circumstance and motivation of the infringement: innocent infringement, willful infringement, infringement under constrain or due to dependence, first infringement or repeated infringement;
- b) Manner on which the act of infringement is committed: individual infringement, organized infringement, self-committed act of infringement, bribery or deceit or inducement of other people to commit the act of infringement.

2. The seriousness of infringement referred to in Article 199.1 of the Intellectual Property Law shall be determined on the following bases:

- a) The scope of territory, timing, volume and scale of the act of infringement;
- b) Influence and consequences of the act of infringement.

## **Section 2**

### **Determination of damages**

### **Article 16. Principles for determination of damages**

1. Damage as a result of an intellectual property right infringement referred to in Article 204 of the Intellectual Property Law shall be actual losses including both physical and spiritual losses directly caused to the intellectual property right holder by such acts of intellectual property right infringement.

2. Actual losses shall be regarded as having been occurred on the following bases:

- a) The physical and spiritual losses are real and belong to the aggrieved person;
- b) The aggrieved person could achieve the interest referred to in point a of this clause;
- c) There is a decrease in or a loss of income of the aggrieved person after the act of intellectual property right infringement is committed as compared to the possibility of achieving such profits if such act of intellectual property right infringement would not happen and the act of intellectual property right infringement is the direct reason for such decrease or loss of income.

3. The level of loss shall be determined in accordance with the infringing elements

of the rights to intellectual property right subject matters.

The determination of the level of loss shall be made on the basis of the evidence of the losses produced by the parties, including the expert opinions and a list of losses, which must specify the bases for determination and calculation of the losses.

### **Article 17. Loss in property**

1. Losses in property shall be determined in accordance with the level of decrease in or loss of the in-cash value of the protected intellectual property right subject matters.

2. The in-cash value of an intellectual property right subject matter referred to in clause 1 of this Article shall be determined in accordance with one or more bases as follows:

- a) The price of transfer of the ownership right or the licensing price of the intellectual property right subject matter;
- b) The value of business capital contribution by the value of intellectual property right;
- c) The ratio of the value of intellectual property right to the total enterprise assets;
- d) The value of investments in creating and developing the intellectual property right subject matter including costs of marketing, research, advertising, labor, taxes and other costs.

### **Article 18. Decrease in income and in profits**

1. The income and profits referred to in Article 204.1(a) of the Intellectual Property Law and in this Article include the following:

- a) The income and profits gained from directly using and exploiting the intellectual property right subject matters;
- b) The income and profits gained from leasing the intellectual property right subject matters;
- c) The income and profits gained from licensing the intellectual property right subject matters.

2. The level of decrease in income and in profits shall be determined on one or several of the following bases:

- a) Direct comparison between the levels of actual income and profits before and after the acts of infringement are committed, applicable to each type of income set out in clause 1 of this Article;
- b) Comparison between the productions and volumes of products, goods and services actually consumed or supplied before and after the acts of infringement are committed;
- c) Comparison between actual sales price of the products, goods and services in the market before and after the acts of infringement are committed.

### **Article 19. Losses in business opportunities**

1. The business opportunities set out in Article 204.1(a) of the Intellectual Property Law include the following:

- a) Actual possibility of directly using or exploiting intellectual property right subject matters in the business course;
- b) Actual possibility of leasing intellectual property right subject matters to other people;
- c) Actual possibility of licensing or transferring the intellectual property right subject matters to other people;
- d) Other business opportunities lost directly due to the act of infringement.

2. A loss in business opportunities means loss of the in-cash value of the income that the aggrieved person would have achieved in any of the cases referred to in Clause 1 of this Article but fails to do so due to the acts of infringement.

### **Article 20. Reasonable expenses for prevention and restoration of damages**

Reasonable expenses for prevention and restoration of damages referred to in Article 204.1(a) of the Intellectual Property Law include expenses of temporary custody, maintenance, storage of infringing goods, costs of implementation of provisional measures, reasonable cost for assessment services, prevention and dealing with consequences of the act of infringement and cost of notification and correction in the mass media relating to acts of intellectual property right infringement.

## **Chapter III**

### **REQUESTING FOR SETTLEMENT OF INFRINGEMENTS AND DEALING WITH SUCH REQUESTS**

### **Article 21. Exercise of the right to self-protection**

1. Organizations and individuals shall exercise the right to self-protection as set out in Article 198 of the Intellectual property Law and detailed provisions of this Article.

2. Those technological measures referred to in Article 198.1(a) of the Intellectual property Law comprise of the following:

- a) Provide instructive information about the basis of the establishment, the protection title, owner, scope and term of protection and other related intellectual property rights information on products, service vehicles, the original and copies of a work, the fixation of the performance, sound/video recording or the broadcasting program (to be jointly referred to in this Article as “works”) in order to make notification of the fact that the product is a protected intellectual property rights subject matter and to recommend others not to infringe it.
- b) Use a technical equipment or measure to mark, identify, distinguish and protect the protected products.

3. A request for termination of an infringing act referred to in Article 198.1(b) of the Intellectual property Law shall be made by the intellectual property rights holder by serving a written notice upon the infringer. The written notice must contain instructive information about the basis of the establishment, the protection title, scope and term of protection and must fix a reasonable period of time for the infringer to terminate his/her infringing acts.

4. A request for the competent State agency to deal with acts of infringements set out in Article 198.1(c) of the Intellectual property Law must be made in compliance with Articles 22, 23, 24, 25, 26 and 27 of this Decree.

## **Article 22. Petition for settlement of infringement**

1. A petition for settlement of infringement must have the following contents:

- a) Full date of the petition;
- b) Name and address of the requester for settlement of infringement; name of the representative of the requester if such request is made by the representative;
- c) Name of the agency that receives the petition;
- d) Name and address of the infringer; name and address of the person suspected from committing an infringement with regard to a request for suspension of completion of customs formalities with regard to suspected imports and exports;
- dd) Name and address of organizations/individuals with related rights and obligations (if any);
- e) Name and address of the witness (if any);
- g) Brief information about the infringed intellectual property rights, including the right, bases for appearance of the right and its subject matters;
- h) Brief information about the act of infringement: full date and venue of the infringement, brief description of the infringed subject matter, acts of infringement and other information (if any);

With regard to a petition for suspension of completion of customs formalities with regard to suspected imports, exports, it is necessary to provide additional information about the method of importation, exportation, exporting country, mode of packaging, legal exporter/importer, criteria for distinguishing between legal imports, exports and infringing goods; threats of circumstances when certain measures need to be applied to prevent [infringements] and to secure the imposition of penalties and other information (if any);

- i) Details of the request for application of a measure to deal with the infringement;
- k) A list of documents and evidence accompanying the petition;
- l) Signature of the petitioner with a seal (if it is so required).

2. A petition for settlement of infringement must be accompanied by documents and evidence proving such request.

## **Article 23. Documents, evidence and exhibits accompanying petitions for settlement**

## **of infringements**

1. A requester for settlement of infringement must submit the petition for settlement of the infringement together with the following documents, evidence and exhibits to prove his/her request:

a) Evidence proving that he/she is the right holder, if the requester is the rights holder or a transferee or heir of the intellectual property rights;

b) Evidence proving the actual occurrence of the acts of infringement; or proving the suspicion of imports and exports suspected from infringement (with regard to a petition for suspension of completion of customs formalities with regard to imports/exports suspected from infringement);

c) A copy of the notification from the intellectual property rights holder to the infringer which has fixed a reasonable period of time for the infringer to terminate his/her infringing act; and evidence of the failure of the infringer to terminate such infringing act in case a petition for settlement of infringement is lodged under Article 211.1(b) of the Intellectual property Law.

d) Evidence of the losses to consumers or the society due to the infringing products including food, foodstuff, disease preventative and treatment medicines, foods for animal husbandry, fertilizer, sanitary medicines, insecticides, plant varieties and animal breeds that cause harms to human health, animals and the environment in case a petition for settlement of infringement is lodged under Article 211.1(a) of the Intellectual property Law.

dd) Evidence and exhibits of the intellectual property rights counterfeit goods or products, parts of products, decan, labels, marks, packaging, materials, raw materials and equipment mainly used to produce and trade intellectual property rights counterfeit goods; documents evidencing the act of job assignment, ordering, production and trading of products or parts of products, decan, labels, marks, packaging, materials, raw materials and equipment mainly used to produce and trade intellectual property rights counterfeit goods in case a petition for settlement of infringement is lodged under Articles 211.1(c) and (d) of the Intellectual property Law.

e) Evidence of a request for application of prohibitory measures, penalties (if such request is made simultaneously).

2. If a request for settlement of infringement is lodged through the representative by proxy, it is necessary to provide a letter of authorization or an authorization contract as notarized by the public notary or certified by the local authority; If a request for settlement of infringement is lodged through the representative by law, it is necessary to provide documents evidencing the status of the representative.

## **Article 24. Evidence to prove [someone] being the right holder**

The documents referred to in Article 203.2 of the Intellectual property Law as detailed in this Article shall be regarded as evidence to prove the right holder status.

1. With regard to inventions, industrial designs, layout design, marks, geographical indications, plant varieties, rights of authors, rights of performers, rights of phonograms producers and rights of broadcasting organizations that have been registered, evidence to

prove one's right holder status shall be one of the following two documents:

a) The original or a copy of the Title of protection for the inventions, industrial designs, layout design, marks, geographical indications; the original of the Title of protection for the plant varieties; the original of a copyright/related right registration Certificate or a copy of the above titles that has been notarized or certified by the issuing agency;

b) An excerpt of the National Registry of Industrial Property; an excerpt of the National Registry of Rights over Plant Varieties; an excerpt of the National Registry of Copyrights/Related Rights issued by the competent authorities that registered those subject matters.

2. For an internationally registered mark, the evidence to prove one's right holder status shall be the original of the Certification of the protection in Vietnam of an internationally registered issued by State management agency in charge of industrial property; a copy of the international mark official gazette of the WIPO with certification of the State management agency in charge of industrial property or a copy of the Certification of the protection in Vietnam of an internationally registered or of the industrial property official gazette which is notarized or certified by the State management agency in charge of industrial property.

3. With regard to other intellectual property rights subject matters, evidence to provide one's right holder status shall be any documents, exhibits or information used as the basis for appearance/establishment of the relevant right as provided in Articles 6.1, 6.2, 6.3(b) and 6.3(c) of the Intellectual property Law as detailed as follows:

a) With regard to unregistered rights of authors, rights of performers, rights of phonograms producers and rights of broadcasting organizations; the original or copy of the work, fixation of the performance, sound/video recording or broadcasting program, satellite signals carrying encrypted program together with other documents evidencing their creation, publication or dissemination accompanied by documents and evidence (if any);

b) With regard to business secrets: descriptions of the contents, form of storage, method of protection and method of acquisition of the secret;

c) With regard to trade names: a description of the contents, form of using and using process of the trade name;

d) With regard to well-known marks: documents evidencing the criteria of a well-known mark as set out in Article 75 of the Intellectual property Law and explanation of the using process of a mark to become a well-known mark.

4. If the requester for settlement of infringement is an assignee of the intellectual property rights subject matter, a licensee or heir of the intellectual property rights, in addition to those documents set out in clauses 1, 2 and 3 of this Article, he/she must produce the original or a valid copy of the contract for transfer of the ownership right over the intellectual property object or of the contract for using the intellectual property object or a document of certification of the inheritance. If any transfer has been acknowledged in a protection Title or in a Certificate of registration of the contract for transfer of the ownership right over the intellectual property subject matter, a Certificate of registration of the contract for using the intellectual property subject matter, those documents shall only be regarded as evidence of one's right holder status.

## **Article 25. Evidence to prove infringements**

1. The following documents and exhibits shall be regarded as evidence to prove an infringement:
  - a) The original or a valid copy of the descriptive documents or relevant specimen and physical exhibits expressing the protected subject matter;
  - b) Relevant specimen and physical exhibits, photos or recorded images of the examined products;
  - c) The document of explanation and comparison between the examined products and protected subject matter;
  - d) Minutes, testimonies and other documents evidencing acts of infringement.
2. Documents and exhibits referred to in clause 1 of this Article must be made in a list which is certified by the requester for settlement of infringement.

## **Article 26. Responsibilities of requesters for settlement of infringement**

1. A requester for settlement of infringement must assure and be held liable for the truthfulness of the information, documents and evidence that he/she supplied.
2. A requester for settlement of infringement who takes advantage of the right to request for settlement of infringement for unfair purposes and therefore causing damages to other organizations and individuals must pay compensation.

## **Article 27. Filing and processing petitions for settlement of infringement**

1. A petition for settlement of infringement shall be filed with authorities settling the infringement of intellectual property rights as set out in Article 200 of the Intellectual property Law (to be referred to as infringement settlement authority).
2. Upon receipt of a petition for settlement of infringement, if it is deemed to fall within the power of another agency, the agency that receives such petition shall instruct the requester to lodge such petition to the competent agency or shall forward the petition to the competent agency within 10 days from the date of receipt of the petition.
3. If a request for settlement of infringement does not yet provide sufficient documents, evidence and exhibits, the authority that settles the infringement shall request the requester to provide additional documents and evidence and shall fix a reasonable period of time not exceeding 30 days for the filing to do so.
4. In the following cases, the infringement settlement agency shall refuse to process a request for settlement of infringement and specify the reasons therefore:
  - a) Upon the expiration of the period of time referred to in clause 3 of this Article and the requester does not meet the requirements of the infringement settlement agency to provide additional documents, evidence and relevant exhibits;
  - b) Upon the expiration of the statute of limitations period provided for by law to settle the infringement;

- c) It is revealed by the verification of the infringement settlement agency or the police that none infringement exists as described in the petition for settlement of infringement;
  - d) Upon a written document of a competent agency specifying that there are not enough bases for settlement of the infringement.
5. In case of a dispute or complaint in relation to the right holder, protect ability, scope of protection of the intellectual property rights, the agency that receives the petition for settlement of infringement shall instruct the requester to complete procedures for dispute resolution or settlement of complaint with the competent agency within 10 days from the date of dispute.

## **Chapter IV**

### **SETTLEMENT OF INFRINGEMENT BY ADMINISTRATIVE AND MEASURES**

#### **Section 1**

#### **Article 28. Determining the value of infringing goods**

1. Infringing goods:
  - a) Infringing goods referred to in Article 214.4 of the Intellectual Property Law may be a component (or a part or an accessory) of the goods containing the infringing element(s) that can be circulated [in the market] as an independent product (hereinafter referred to as infringing goods).
  - b) Where it is impossible to detach the component containing the infringing element(s) [from an entire product] to be an independent product as specified in paragraph a of this clause, the infringing goods shall be defined as the entire product containing the infringing element(s).
2. The infringing goods value mentioned in Article 214.4 of the Intellectual Property Law shall be determined by the authority in charge of dealing with the infringement at the time of taking place the act of infringement on the basis of taking the following considerations one after another:
  - a) Listed prices of the infringing goods;
  - b) Actual prices of the infringing goods;
  - c) Market price of the infringing goods (if not yet sold);
  - d) Market prices of the equivalent goods which are of the same technical standards and the same quality.
3. The infringing goods value is calculated on the basis of the component (or the part or the accessory) of the product that contains the infringing element(s) as specified in Clause 1.a of this Article or on the basis of the value of the entire product containing infringing element(s) as specified in Clause 1.b of this Article.
4. Where the application of the considerations specified in Clause 2 of this Article is not appropriate or in case the authority in charge of dealing with the infringement and the financial agency of the same level cannot agree upon the determination of the infringing goods value, the value of the infringing goods shall be decided by the infringing goods

value determination council.

The establishment, members and working principles of the infringing goods value determination council shall be regulated by the relevant laws.

### **Article 29. Dealing with infringing goods**

1. With regard intellectual property right counterfeit goods, materials, raw materials and instruments mainly used for manufacturing or trading intellectual property right counterfeit goods, the competent authority in charge of dealing with the infringement may apply one of the following measures:

- a) Distribution or use for non-commercial purposes in accordance with Article 30 of this Decree;
- b) Destruction in accordance with Article 31 of this Decree;
- c) Compelling the persons that own, transfer or storage those goods to remove infringement elements or delivery out of the Vietnamese territory with respect to transit goods being counterfeit marks, or re-export with respect to the imported goods being the goods of counterfeit marks, imported materials, equipment that are mainly used to produce or trade goods of counterfeit marks; if it is impossible to remove the infringement elements from the goods of counterfeit marks, raw materials and equipment that are mainly used to produce or trade that counterfeit goods, then the appropriate measures specified in Clause 4 of this Article shall be applied.

With regard to the imported goods, materials and equipment that are mainly used to produce or trade goods bearing counterfeit geographical indication and pirated goods, then, depending on specific case, the competent authority in charge of dealing with the infringement shall apply the measures to compel the removal of infringing elements and other appropriate measures as specified in Clause 4 of this Article.

2. With regard to infringing goods that which are not defined as intellectual property right counterfeit goods or raw materials and equipment that are mainly used to produce or trade such goods, the competent authority shall apply the measure to compel the owner of the goods, the transporter or the keeper of the goods to remove the infringing elements from the goods and apply appropriate measures as specified in Clause 4 of this Article.

With respect to imported goods which are infringing goods but not defined as intellectual property right counterfeit goods, materials and equipment mainly used to produce intellectual property right counterfeit goods, the competent authority in charge of dealing with the infringement shall apply appropriate measures specified in Clause 1.c of this Article.

3. The materials and equipment that have the only function to produce or to exploit in commerce IP counterfeit goods and other infringing goods or those materials and equipment which are in fact used only for that purpose shall be regarded as the materials and equipment mainly used to produce and trade intellectual property right counterfeit goods and other infringing goods.

4. Depending on each specific case, the authority in charge of dealing with the infringement shall decide on the application of the measures specified in Clause 1 (a) and

(b) of this Article or other measures, if appropriate. During the process of handling the case, the competent agency may consider the proposals of the related parties concerning the handling of the infringement.

### **Article 30. Compelling distribution or use for non-commercial purposes**

1. The compelling distribution or use of infringing goods for non-commercial purposes with respect to IP counterfeit goods and other infringing goods must satisfy the following conditions:

- a) The goods are useable;
- b) Infringement elements have been removed from the goods;
- c) The distribution or use shall not be for the commercial purposes and shall not unreasonably prejudice the normal exploitation of the rights of the intellectual property right holder, *inter alia*, the purposes of humanity, charity and public interest are of priority;
- d) The persons to whom the goods are distributed or delivered for use shall not be the potential customers of the intellectual property right holder;

2. The provisions of Clause 1 of this Article shall also apply to materials and equipment mainly used for producing and trading intellectual property right counterfeit goods and other infringing goods.

### **Article 31. Compelling destruction**

The measure of compelled destruction of intellectual property right counterfeit goods and other infringing goods, materials and equipment mainly used for producing and trading such goods shall be applied when the conditions for application of the measure of compelling distribution or use for non-commercial purposes mentioned in Article 30 of this Decree are not met in full.

### **Article 32. Confiscation**

The measure of confiscating intellectual property right counterfeit goods, materials and equipment mainly used for producing and trading such goods is applied in the following cases:

1. In cases of emergency to ensure that evidence will not be destroyed or dispersed and the situation is kept unchanged or to prevent further infringement.
2. Infringing organizations and individuals are unable or of no condition to remove infringing elements from the goods; or intentionally fail to remove infringing elements from the goods or fail to take other measures as requested by the authority in charge of dealing with the infringement.
3. The goods of unidentified source and owner which are firmly determined to be intellectual property right counterfeit goods.

### **Article 33. Other administrative measures; authority and procedures for**

## **application of sanctions and fines**

Other administrative and remedial measures; authority and procedures to impose sanctions and fines on infringing acts shall be in accordance with regulations on administrative sanctions in the fields of copyrights and related rights, industrial property rights and rights to plant varieties.

## **Chapter V**

### **CONTROL OVER IP RELATED IMPORTS AND EXPORTS**

#### **Article 34. Requests for controlling over intellectual property right related imports and exports**

Intellectual property right holders may either directly or through their authorized persons lodge a request for control or supervision for the purpose of detecting goods containing signs of intellectual property right infringement or an application for temporary suspension of the customs procedures with respect to imports and exports suspected of intellectual property right infringement.

#### **Article 35. Competent agencies for receipt of applications**

1. The Customs sub-Departments shall have the power to receive requests for checking or supervision or temporary suspension of completion of customs procedures at the border gates falling under the scope of their management.
2. Provincial and municipal Customs Departments shall have the power to receive requests checking or supervision or temporary suspension of completion of customs procedures at the border gates falling under the scope of their management.
3. The General Department of Customs shall have the power to receive requests for checking or supervision or temporary suspension of completion of customs procedures at the border gates falling under the scope of management of two and more Customs Departments of provinces and cities under central authority.
4. The IP right holders can also lodge their applications to each of the Custom sub-Departments or Customs Departments in cases specified in Clauses 2 and 3 of this Article.

#### **Article 36. Procedures for processing applications**

1. Within 30 days since the date of receipt of the request for control of imports or within 24 working hours since the receipt of the request for temporary suspension of completion of customs procedures, the customs authority shall be liable to consider and issue a notice on accept of the request, if the applicant has satisfied the requirements under Articles 217.1(a), (b), (c) and Article 217.2 of the Intellectual Property Law. In case of refusal, the customs authority must reply in writing to the applicant and specify the reasons thereof.
2. Where a request is accepted by the General Department of Customs, then the

General Department of Customs shall forward and instruct relevant Customs Departments for settlement.

Where a request is received by the Customs Departments, after acceptance the Customs Departments shall forward and instruct the relevant Customs sub-Departments for settlement.

The relevant Customs sub-Department shall be liable to inspect and detect the goods being suspected infringing goods or suspend customs procedures on the basis of the request and instructions of the General Department of Customs, or relevant Customs Departments.

### **Article 37. Dealing with suspected infringing goods**

1. Where the goods being suspected infringing goods are detected, at the request of the intellectual property right holder or under the power to impose administrative sanctions, the customs authority shall issue a decision to temporarily suspend the completion of customs procedures, and give a notice on the temporary suspension of the goods shipment to the intellectual property right holder and the goods owner, in which the names, addresses, facsimile numbers and telephone number of the concerned parties and the reasons and the duration of the temporary suspension shall be specified.

2. The customs authority shall allow to continue the customs declaration procedures for the suspended shipment of goods as mentioned in Article 218.3 of the Intellectual Property Law in the following cases:

- a) The decision on temporary suspension of the customs procedures is cancelled or revoked by a decision on the settlement of complaints and denunciations;
- b) The requester withdraws the request for temporary suspension of completion of customs procedures.

### **Article 38. Procedures for controlling intellectual property right-related imports and exports**

The procedures for controlling intellectual property right-related imports and exports shall comply with the provisions of this Decree and the laws and regulations on customs.

## **Chapter VI**

### **INTELLECTUAL PROPERTY ASSESSMENT**

#### **Article 39. Details and scope of intellectual property assessment**

1. Intellectual property assessment shall comprise of the following details:
  - a) Determining the legal status and possibilities of protection of the intellectual property right subject matter, the scope of intellectual property protection;
  - b) Finding evidences to determine the level of damage;
  - c) Determining infringement elements, infringing products/services, the elements

regarded as the bases for determining the value of the protected intellectual property right subject matter and the infringing object;

d) Determining the ability in proving one's intellectual property right holder status and in proving the act of infringement or the ability in arguing for the contrast allegations on the basis of the documents and evidence used in the dispute or in the infringement case;

dd) [Determining] other facts of the dispute or the infringing case needed to clarify.

2. Intellectual property assessment shall cover the following sectors:

a) Assessment of copyrights and related rights;

b) Assessment of industrial property rights;

c) Assessment of the rights to plant varieties.

#### **Article 40. The right to call for intellectual property assessment and the right to request intellectual property assessment**

1. The authorities having competence to call for intellectual property assessment are the authorities being in charge of handling disputes or dealing with infringements or settling complaints and denunciations as specified in Article 200 of the Intellectual Property Law.

2. The following organizations and individuals shall have the right to request intellectual property assessment:

a) Intellectual property right holders;

b) Organizations and individuals being requested to stop the infringing acts or being subject to an intellectual property related complaint or denunciation;

c) Other organizations and individuals having any rights or related interests in an intellectual property dispute, infringement, complaint or denunciation.

3. Organizations and individuals having the right to request intellectual property assessments as provided in Clause 2 of this Article can act by themselves or authorize other organizations or individuals to request intellectual property assessing organizations or intellectual property assessors to conduct the assessments.

#### **Article 41. Rights and obligations of the persons request for intellectual property assessing and the persons that call for intellectual property assessing**

1. Persons that call for and request for intellectual property assessing have the following rights:

a) Request intellectual property assessing organizations and assessors to provide proper assessment conclusion on time;

b) Request intellectual property assessing organizations and assessors to provide detailed explanation on assessment conclusions;

c) Request additional assessment and re-assessment as specified in Article 50 of this Decree;

d) Agree on the assessment fees in case of requesting for assessment;

2. Persons that call for and request for intellectual property assessing have the following obligations:

- a) Provide sufficient and accurate documents, evidence and information regarding assessing subject matters as requested by assessing organizations and assessing persons;
- b) Clearly present specific assessing requirements;
- c) Pay assessing fees as agreed; pay advanced fees as requested by assessing organizations and assessing persons;
- d) Get the assessing subject matters back from the assessing organizations and assessing persons.

#### **Article 42. Intellectual property assessing organizations**

1. Intellectual property assessing organizations are ones satisfy the conditions of providing intellectual property assessment.

2. Conditions of assessing organizations establishment:

- a) At least, there are two members owning intellectual property assessing persons card;
- b) To satisfy other conditions in accordance with the provisions of law concerned.

3. Conditions for assessing organizations providing intellectual property assessment

- a) To have sufficient conditions as provided for in clause 2.a of this Article;
- b) To have the License of register of the science and technology activities and the business Register, intellectual property assessment permit in accordance with current legislation;
- c) The intellectual property assessing organizations shall only be allowed to provide assessment in the field which is registered.

#### **Article 43. Rights and obligations of intellectual property assessing organizations**

1. In assessing activities, intellectual property assessing organizations shall have the rights and obligations as provided for in Article 44(4) of this Decree; having the responsibility to ensure the necessary conditions for the assessing persons to exercise their rights and obligations; assuming the liability for their assessment decisions if the assessment are conducted in the name of this assessing organizations.

- a) The intellectual property assessing organizations shall have the responsibility to the following activities:
- b) scientific studying on the intellectual property assessment;
- c) participate in the training for assessing persons and professional training on the intellectual property assessment.

#### **Article 44. Intellectual property assessing persons**

1. Intellectual property assessing persons are person with sufficient specialist knowledge to assess and conclude on issues related to assessing requests and are recognized by the competent authorities as specified in Clause 5 of this Article.

Intellectual property assessing person can work as a freelance or work for an intellectual property assessing organization.

2. The Ministry of Science and Technology, Ministry of Culture and Information and the Ministry of Agriculture and Rural Development, depending on their State management functions on intellectual property rights, shall work with the Ministry of Training and Education, the Ministry of Justice to regulate in details on training program for each field.

3. Persons that meet the following requirements are recognized and received “intellectual property assessing persons card”:

(a) To have a university degree in the assessment sector.

(b) To have a good morality records.

(c) To have full civil conduct capacity.

(d) To pass a professional examination aimed at assessing their legal knowledge on intellectual property rights, technical and scientific qualifications, professional skills and experiences for the purpose of conducting assessment services relating to industrial property, copyright, related rights and rights to plant varieties.

Ministry of Science and Technology, the Ministry of Culture and Information and Ministry of Agriculture and Rural development shall provide for the contents of those professional examinations referred to in this clause with regard to their respective the scope of control; shall provide guidelines for and regularly organize those examinations and issue certificates of eligibility for assessment activities to intellectual property rights assessors.

4. Intellectual property assessors shall have the following rights and obligations:

a) Conducting an assessment upon a call or a request for assessment; to carry out the assessment in accordance with the details set out in the request or calls for assessment and within the time limit for assessment. Where additional time is required to conduct an assessment, it must be notified to the caller or requester for assessment.

b) Refusing to conduct examination if the objects of the assessment or related document are not sufficient or not valuable enough to produce the assessment conclusions, the assessor has rights and obligations related to the assessment object or the assessment detail or for other reasons which may affect the objectiveness of the assessment conclusions;

c) Requesting agencies and organizations to provide documents, exhibits and information relating to the assessment object.

d) Selecting an appropriate and necessary method to conduct the assessment; using testing results or professional or experts opinions for the assessment purpose;

dd) Making assessment dossiers, to be present upon summon by the assessment calling agency; clarifying the assessment conclusions upon request.

e) Maintaining relevant documents and exhibits of the assessment case; keeping

confidential the assessment conclusions, and other relevant information and documents;

- g) Being independent in taking assessment conclusion and responsible for his conclusion;
- h) Compensating damages in case of willfully taking fraud assessment conclusion, causing damages to relevant individuals, organizations;
- i) Complying with provisions on procedures of assessment and performing other rights and obligations in accordance with laws.

5. The Ministry of Culture – Information, the Ministry of Science and Technology, the Ministry of Agriculture and Rural Development stipulate procedures of recognizing, issuing, revoking Intellectual Property Assessing Card, publishing List of the intellectual property assessing persons in respective fields of copyright and related rights, industrial property rights; rights to plant variety.

#### **Article 45. Call for assessment**

- 1. Any call for assessment must be made in writing.
- 2. A minute of calling for assessment must have the following contents:
  - a) Name and address of the agency calling for assessment; Name and title of the person that calls for assessment;
  - b) Name and address of the assessing organization or the assessing persons;
  - c) Details that need to be assessed;
  - d) Relevant evidence, items and documents;
  - dd) The time limit for issuing the assessment conclusions.

#### **Article 46. Assessment request**

- 1. A request for assessment must be made in the form of an assessment service contract to be entered into between the person requesting for such assessment and an assessing organization or an assessing person.
- 2. An assessment service contract shall contain the following major details:
  - a) name and address of the organization/agency requesting for such assessment;
  - b) name and address of the assessing organizations or assessing persons;
  - c) specific objects and contents of the assessment request;
  - d) relevant evidences, items and documents;
  - dd) the time limit for issuing assessment conclusions.
  - e) rights and obligations of the parties.
  - g) liabilities for breach of the contract.

#### **Article 47. Sending, receiving and returning objects for intellectual property assessment**

When an application for assessment is applied together with an object for assessment, the sending, receiving and returning of the object must be recorded in a written document which has the following main contents:

1. Time and place where the object is sent, received and returned;
2. Names and addresses of the senders and the receivers of the object or names and addresses of their representatives;
3. Name of the object to be assessed; relevant documents or items;

Status and preservation method of the assessment object at the time when it is sent, received or returned;

Signatures of the senders and receivers.

#### **Article 48. Taking the intellectual property assessing specimens**

1. Assessing organizations, assessing persons can take the assessing specimens (specific specimens are intellectual property infringed elements and intellectual property right protected objects) by themselves or persons calling, requesting for assessment to provide the assessing specimen. Specimens taken must be recorded in a written document with the witness and signatures of relevant parties.
2. Sending, receiving, returning of the assessing specimen shall be carried out in accordance to Article 47 of this Decree.

#### **Article 49. Performing intellectual property assessment**

1. The intellectual property assessment can be performed by one or more intellectual property assessing persons. Personal assessment is the assessing method performed by one assessing person. Collective assessment is the assessing method performed by more than two assessing persons.
2. In case of personal assessment, the assessing person shall perform his assessment as whole and be responsible for his assessment conclusion. In case of collective assessment on issues under the same professional field, the assessing persons performing the assessment must sign in the joint conclusion document and be responsible for their assessment conclusion; where there are different conclusions, each assessing person must conclude his own ones in the joint conclusion document and be responsible for such own conclusion. In case of collective assessment on issues under different professional field, each assessing person must perform his own assessing work and be responsible for his conclusion.

#### **Article 50. Supplemental assessment, re-assessment.**

1. Supplemental assessment shall be performed where the assessment conclusion on contents of assessment is not adequate and clear or new circumstances appear need to make clear. The request of supplemental assessment and the performance hereof must comply with provisions for initial assessment.
2. Re-assessment shall be performed where persons calling or requesting for

assessment do not agree with the assessment conclusion or assessment conclusions on the same assessed issues are contrary. The re-assessment can be performed by the old assessing organizations or persons or other ones upon request of assessing callers or requesters.

3. Where the initial assessment conclusion and re-assessment conclusion on the same assessing issues is contrary, then it can continue to request or call for the assessing organizations or persons to perform re-assessment.

### **Article 51. Written conclusion of assessment**

1. Written conclusion of assessment shall be considered as evidence as grounds for determining the case.

2. Written conclusion of assessment is a document specifying the following details:

- a) Name and address of the assessing organization or assessing persons;
- b) Name and address of the agency calling for assessment or the organization, person requesting for assessment;
- c) Objects that need assessing, and the contents and scope of such assessment;
- d) The mode of assessment;
- dd) Assessment conclusions;
- e) Time and place of performance and completion of the assessment.

3. Written conclusions of assessment must be signed by the persons performing the assessment. Where the assessment is done by an assessing organization, then the written conclusions must also be signed by the head of the assessing organization and sealed by the assessing organization.

### **Article 52. Prohibited acts in the assessment**

The following acts shall be prohibited during the course of assessment:

1. Receiving and conducting the assessment in the cases that are prohibited by laws and regulations.
2. Deliberately taking the false assessment conclusions.
3. Disclosing the secret information acquired during the course of assessment without permission of the related parties.
4. Abusing the position of an assessor and the assessment activities to gain illegal benefit.

### **Article 53. Assessment fees**

Fees of intellectual property assessment upon a call for assessment shall be applied in accordance with the regulations of the laws on fees and charges.

Fees of intellectual property assessment at the service request are agreed between parties.

## Chapter VII

### STATE ADMINISTRATION OF INTELLECTUAL PROPERTY

#### **Article 54. Principles for Uniformed State Administration of Intellectual Property**

The performance of State administration of intellectual property activities stipulated in Article 10, 11 of the Intellectual Property Law shall be based on the principles of uniformity as to objectives, contents and measures; and put under general direction of the Government, with clear assignment of responsibilities and strong coordination among Ministries, Ministerial-level Agencies, Government Agencies and People Committees of several levels.

#### **Article 55. Responsibilities of the Ministry of Science and Technology**

1. The Ministry of Science and Technology shall take the lead and coordinate with the Ministries of Culture – Information, Agriculture and Rural Development, and Ministries, Ministerial-level Agencies, Government Agencies and People Committees of several levels in performing the following activities in order to secure uniformed state administration of intellectual property:

- a) Formulation, promulgation or submission to competent authorities for promulgation, and organization the implementation of general strategies of, policies, legal documents on protection of intellectual property rights;
- b) Monitoring, supervising and controlling the performance of tasks assigned by the National Assembly, Government to Ministries, Ministerial-level Agencies, Government Agencies and People Committees of several levels under the provisions of Articles 10 and 11 of the Intellectual Property Law and this Decree;
- c) Summarizing, evaluating, reporting to the Government the situations of intellectual property rights protection activities, making proposal for concrete policies, measures in order to enhance the effectiveness of the intellectual property system and secure uniformed state administration of intellectual property;
- d) Formulating and directing the implementation of general programs, projects on intellectual property rights protection, and of coordinated measures among the state competent agencies in the field of intellectual property;
- dd) Negotiations, conclusion for accession to, and organization of the implementation of international treaties on intellectual property in general; making proposals for handling national disputes concerning intellectual property in international relations.

2. In addition to the responsibility for taking the lead in conducting common activities that are stipulated in the first paragraph of this Article, the Ministry of Science and Technology shall also bear the following responsibilities:

- a) Directly performing the function of state administration of industrial property, ensuring the consistency between strategies of, policies, legal documents on industrial property and general strategies of, policies, legal documents on intellectual property;
- b) Carrying out other tasks as assigned by the Government.

## **Article 56. Responsibilities of the Ministry of Culture - Information**

The Ministry of Culture - Information shall have the responsibility to coordinate with the Ministry of Science and Technology to perform tasks provided for in paragraph 1 Article 55 of this Decree and the following specific tasks:

1. Directly performing the State management in copyright and related rights, securing policies, strategies, legal documents on copyright, related rights to be implemented in uniform with the common ones on intellectual property; periodically or suddenly reporting to the Ministry of Science and Technology about activities of the State management and enforcement of intellectual property rights to coordinate in settling arising issues, summarize to report to the Prime Minister;
2. Performing the other tasks assigned by the Government.

## **Article 57. Responsibilities of the Ministry of Agriculture and Rural Development**

The Ministry of Agriculture and Rural Development shall have the responsibility to coordinate with the Ministry of Science and Technology to implement the tasks provided for in Article 55(1) of this Decree and implement the following specific tasks:

1. Directly assuming the State administration function with regard to the plant varieties, ensuring that policies, strategies and legal documents on the protection of plant varieties are consistent with the general policies, strategies and legal documents on the intellectual property; submitting regular or unforeseen reports to the Ministry of Science and Technology on activities concerning the State administration and enforcement of intellectual property rights in order to jointly solve the emerging issues and reporting to the Prime Minister
2. Performing other tasks assigned by the Government.

## **Article 58. Responsibilities of other Ministries, Ministerial-level agencies, other agencies under the Government and PCs of provinces and centrally-run cities**

The Ministries, Ministerial-level agencies, other agencies under the Government and PCs of provinces and centrally-run cities within their functions and tasks have the responsibility to coordinate with the Ministry of Science and Technology, the Ministry of Culture - Information and the Ministry of Agriculture and Rural Development to implement the following specific tasks:

1. Implementing the tasks provided for in Article 55(1) of this Decree and directly implementing specific tasks assigned by the Government and the National Steering Committee for the Intellectual Property;
2. Ensuring that the implementation of policies and legislation on the intellectual property in localities is in consistence and compliance with the Intellectual Property Law and its other guiding legal documents;
3. Submitting regular or unforeseen reports to the Ministry of Science and Technology on activities concerning the State administration and enforcement of intellectual property rights in order to jointly solve the emerging issues, reporting to Prime Minister.

## **Article 59. National Steering Committee for the Intellectual Property**

The Prime Minister shall decide on the establishment of the National Steering Committee for the Intellectual Property and provide for specific responsibilities and authorities of the National Steering Committee for the Intellectual property

## **Article 60. Coordination mechanism**

1. The Ministry of Science and Technology has the responsibility to take the lead in and coordinate with the Ministry of Culture and Information, the Ministry of Agriculture and Rural Development and other relevant agencies in implementing the State administration and enforcement, checking, inspection and handling of the infringement of intellectual property rights.
2. State administration agencies have the responsibility to provide adequate and timely answers to requests of the enforcement agencies.
3. State administration agencies have the responsibility to participate in inspection or checking missions at request to serve the inspection and checking.
4. The relevant Ministries have the responsibility to make reports of the enforcement of intellectual property rights on annual basis or at the request of the National Steering Committee for the Intellectual Property, at the international request.

## **Chapter VIII**

### **IMPLEMENTATION PROVISIONS**

## **Article 61. Transitional provisions**

1. Provisions on patents of this Decree shall be applied for utility solutions protected according to provisions of the Civil Code 1995 and the Decree No. 63/CP dated October 24, 1996 of the Government on detailed regulations concerning industrial property, amended and supplemented by the Government Decree Number 06/CP dated February 1<sup>st</sup>, 2001.
2. Provisions on geographic indications of in Decree shall be applied for original name of goods protected according to provisions of the Civil Code 1995 and Decree No. 63/CP dated October 24, 1996 of the Government on detailed regulations concerning industrial property, amended and supplemented by Decree No. 06/CP dated February 1<sup>st</sup>, 2001 of the Government.
3. The application of the Decree's provisions for other intellectual property subjects shall comply with paragraph 1 and 3 of Article 220 of the Intellectual Property Law.

## **Article 62. Validity**

This Decree shall take effect after 15 days since being posted in the Official Gazette.

Other provisions contained in the documents issued prior to the time this Decree takes effect that are contrary to this Decree shall be cancelled.

**Article 63. Responsibilities for implementing guidelines**

1. Minister of Science and Technology, Minister of Culture-Information, Minister of Agriculture and Rural development shall be responsible to provide guidelines for implementing this Decree.
2. Ministers, Heads of Ministerial level agencies, Chairmen of people's committees of provinces and cities under central authority shall be responsible to implement this Decree.

**FOR AND ON BEHALF OF THE GOVERNMENT**

**THE PRIME MINISTER**

**Nguyen Tan Dung**  
*(Signed and Sealed)*