

CIRCULAR

Amending and supplementing a number of provisions of Circular No. 01/2008/TT-BKHCN of February 25, 2008 on the withdrawal of industrial property assessor cards and certificates for industrial property assessment organizations as amended and supplemented by Circular No. 04/2009/TT-BKHCN of March 27, 2009, and Circular No. 18/2011/TT-BKHCN of July 22, 2011

Pursuant to the Intellectual Property Law No. 50/2005/QH11 of November 29, 2005 and Law No. 36/2009/QH12 of June 19, 2009 amending and supplementing some articles of the Intellectual Property Law of November 29, 2005 (hereinafter referred to as "*Intellectual Property Law*");

Pursuant to the Government's Decree No. 105/2006/ND-CP of September 22, 2006 on detailing and guiding some articles of the Intellectual Property Law on intellectual property rights protection and the state management of intellectual property; and the Government's Decree No. 119/2010/ND-CP of December 30, 2010 on amending and supplementing some articles of Decree No. 105/2006/ND-CP (hereinafter referred to as "*the amended Decree No. 105/2006/ND-CP*");

Pursuant to the Government's Decree No. 28/2008/ND-CP of March 14, 2008 on defining the functions, tasks, powers and organizational structure of the Ministry of Science and Technology;

Minister of Science and Technology amends and supplements some provisions of Circular No. 01/2008/TT-BKHCN of February 25, 2008, on guiding the withdrawal of industrial property assessor cards and certificates for industrial property assessment organizations as amended and supplemented by Circular No. 04/2009/TT-BKHCN of March 27, 2009, and Circular No. 18/2011/TT-BKHCN of July 22, 2011 (hereinafter referred to as "*Circular No. 01/2008/TT-BKHCN*"), as follows:

Article 1. Amend, supplement some Items of Circular No. 01/2008/TT-BKHCN as follows:

1. Amend Item 1.1 of Circular No. 01/2008/TT-BKHCN as follows:

"1. Subjects under industrial property assessment

The assessment of industrial property as stipulated at Article 201 of Intellectual Property Law and Item 2.b, Article 39 of Decree No. 105/2006/ND-CP shall consist of the following subjects:

- a) Assessment of inventions and semi-conductor integrated circuit layout designs;
- b) Assessment of industrial designs;
- c) Assessment of trademarks and geographical indications;

d) Assessment of other industrial property rights.

2. Amend, supplement Item 1.2 of Circular No. 01/2008/TT-BKHCH as follows:

"2. Requirements for granting industrial property assessor cards

2.1 The requirements for granting industrial property assessor cards (hereinafter referred to as "assessor cards") as stipulated at Article 201.3 of Intellectual Property Law shall be construed as follows:

a) "Permanent residence in Viet Nam" shall be construed as a person having a regular, stable and unlimited residence in Viet Nam, and legally permitted in accordance with laws and regulations on residence;

b) "Possessing good ethical qualities" shall be construed as a person having not been subject to any administrative sanction for violation of industrial property rights or professional ethics nor accused of criminal liability nor suspected guilty.

c) "Being a university graduate or higher qualifications on the assessment subjects" shall be construed as a person having bachelor or master degrees in engineering, physics, chemistry or biology for assessment of inventions and semi-conductor integrated circuit layout designs; a person having bachelor or master degrees in any field for other assessment subjects.

d) "Having at least five-year experience in the field requested for granting assessor cards" shall be construed as a person having at least 05 years of experience in directly settling disputes, appeals and inspect, legal affairs, consultancy on industrial property law; doing researches for researcher titles; teaching law on industrial property with lecturer titles; or a person having at least 05 years of experience in providing explanation, guiding implementation of legal provisions, drafting laws and regulations; directly involving or carrying out substantive examination of inventions (and utility solutions), industrial designs, trademarks or geographical indications (and appellations of origin) at national or international industrial property offices, or a person having at least 05 years of experience in industrial property agent.

2.2. Industrial property assessors may work for industrial property assessment organizations or operate independently. If assessors work under organizations, his information shall be recorded in the List of Industrial property assessors under the organizations in accordance with procedures on granting Certificates for assessment organizations and that performance shall be recorded in the List of industrial property assessors as stipulated at Item III.6 of this Circular.

3. Amend, supplement Item 1.3 of Circular No. 01/2008/TT-BKHCH as follows:

"3. Requirements for granting Certificates for industrial property assessment organizations

3.1 Organizations shall be granted Certificates for industrial property assessment (hereinafter referred to as "*Certificates for assessment organizations*") if they fully meet requirements stipulated at Article 201.2 of Intellectual Property Law.

3.2 Organizations as referred to in Article 42.1 of the amended Decree No. 105/2006/ND-CP include:

a) Businesses, including limited liability companies, joint stock companies, partnerships, private enterprises of any economic sector established and operated in accordance with laws and regulations on businesses;

b) Cooperatives and cooperative associations established and operated in accordance with laws and regulations on cooperatives;

c) Public service organizations established and operated under decisions of competent authorities;

d) Vietnamese lawyer organizations established and operated in accordance with laws and regulations on laws and regulations on lawyers, including: offices of lawyers, limited liability companies, partnerships on legal affairs, except branches of foreign lawyer organizations, 100% foreign capital companies, joint ventures between Vietnamese and foreign lawyer organizations.

Branches, affiliates of organizations as stipulated at this provision shall only operate assessment activities under the name of and authorized by those organizations.

4. Delete Item I.4 of Circular No. 01/2008/TT-BKHCHN.

5. Amend Item II.1.a of Circular No. 01/2008/TT-BKHCHN as follows:

"a) Issues to be tested for industrial property assessment as stipulated in Article 201.3 of Intellectual Property Law include industrial property law and other subjects on industrial property assessment".

6. Amend Item III.5 of Circular No. 01/2008/TT-BKHCHN as follows:

"5. Withdrawal of assessor cards

The Director General of NOIP shall issue decisions on withdrawal of assessor cards in the following cases:

a) There is evidence showing that assessor cards are illegally granted;

b) Owners of assessor cards no longer comply with regulations provided in Clause 3, Article 201 of Intellectual Property Law and Item I.2 of this Circular;

c) Owners of assessor cards no longer carry out the assessment service".

7. Amend Item IV.1 of Circular No. 01/2008/TT-BKHCHN as follows:

"1. Competence in grant, re-grant, withdrawal of Certificates of assessment organizations

a) The Director General of NOIP shall be competent to grant, re-grant or withdraw Certificates of assessment organizations as stipulated in Item IV.2, 3, 4, 5 of this Circular from public institutions that have registered with Ministry of Science and Technology as scientific and technological organizations.

b) Director Generals of provincial Departments Science and Technology shall be competent to grant, re-grant, withdraw Certificates of assessment organizations as stipulated in Item IV.2, 3, 4, 5 of this Circular from organizations that have registered for business and operation with the local authorities, as stipulated in Item I.3 of this Circular.

c) NOIP and provincial Departments of Science and Technology shall receive and examine applications for Certificates for assessment organizations at their corresponding competence as stipulated in (a) and (b) being mentioned above.

8. Amend IV.2.b of Circular No. 01/2008/TT-BKHCHN as follows:

"2. Applications for Certificates for assessment organizations shall consist of the following:

b) A copy (with a public notary) of Certificates of Business Registration (for businesses and cooperatives, cooperative associations), Registrations for scientific and technological operation (for scientific and technological organizations), Certificates of Establishment and Business Registration (according regulations - for non scientific and technological organizations) or Certificates of lawyer organization operation".

9. Amend Item V.2 of Circular No. 01/2008/TT-BKHCHN as follows:

"2. Fees and charges

Collection, payment, management and use of fees and charges for assessment tests, examination of dossier, granting, re-granting assessor's Cards and Certificates of assessment organizations as stipulated in this Circular shall be applied under the provisions of Circular No. 22/2009/TT-BTC of February 04, 2009 of Ministry of Finance on guiding the collecting, receiving, managing and using industrial property fees and charges".

Article 2. Validity

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

If any problems, difficulties or obstacles arise in the course of implementation, they should be promptly reported to the Ministry of Science and Technology for study and settlement./.

**FOR THE MINISTER
VICE-MINISTER**

(Signed and sealed)

Tran Van Tung
