

**DECREE No. 106/2006/ND-CP OF SEPTEMBER 22, 2006, PROVIDING FOR
SANCTIONING OF ADMINISTRATIVE VIOLATIONS IN THE DOMAIN OF
INDUSTRIAL PROPERTY**

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the November 29, 2005 Law on Intellectual Property;

Pursuant to the July 2, 2002 Ordinance on Handling of Administrative Violations;

At the proposal of the Minister of Science and Technology,

DECREES:

Chapter I
GENERAL PROVISIONS

Article 1.- Regulation scope and application subjects

1. This Decree provides for administrative violations in the domain of industrial property, sanctioning forms and levels, sanctioning competence and procedures as well as remedies.

2. Administrative violations in the domain of industrial property provided for in this Decree include:

a/ Violation of legal provisions on state management of industrial property;

b/ Industrial property rights infringements defined in Clause 1, Article 211 of the Intellectual Property Law, including infringement of industrial property rights, causing harms to consumers or society; failure to terminate the infringement of industrial property rights in spite of the right holders' written requests for termination; production, import, transportation of, or trading in, industrial property counterfeit goods as prescribed in Article 213 of the Intellectual Property Law or assigning others to commit those violations; production, import, transportation of, or trading in, objects bearing marks or geographical indications, which are identical or confusingly similar to the protected ones, or assigning others to commit those violations.

3. Domestic or foreign organizations or individuals that commit violations specified in Chapter II of this Decree within the territory of the Socialist Republic of Vietnam shall be administratively sanctioned according to the provisions of this Decree. When a treaty to which Vietnam is a contracting party otherwise provides for, the provisions of that treaty apply.

Article 2.- Sanctioning principles

1. When committing acts of violation defined in Chapter II of this Decree, individuals or organizations shall be administratively sanctioned in the domain of industrial property.

2. When detected, all administrative violations must be stopped immediately. The sanctioning of administrative violations must be conducted quickly, fairly and thoroughly; all consequences of administrative violations must be remedied in accordance with the provisions of law.

3. Administrative violations in the domain of industrial property shall be sanctioned by competent persons defined in Article 18 of this Decree in strict accordance with the provisions of law on sanctioning of administrative violations.

4. A violation shall be sanctioned only once; a person who commits more than one violation shall be sanctioned for each violation; many persons who jointly commit the same violation shall each be sanctioned.

5. The sanctioning of administrative violations shall be based on the nature and severity of violations, the personal records of violators as well as extenuating and aggravating circumstances so that appropriate sanctioning forms, levels and handling measures can be decided according to the provisions of this Decree.

6. Sanctions shall not be imposed on administrative violations committed in case of emergency, unexpected incidents or by individuals suffering from mental diseases or other diseases which deprive them of their ability to conceive of or control their acts.

7. When an individual or organization simultaneously commits more than one violation, including industrial property violations, the sanctioning competence shall be determined on the principle specified in Clause 3, Article 42 of the Ordinance on Handling of Administrative Violations.

8. When it is considered that a violation shows signs of a crime, the competent person defined in Article 18 of this Decree shall transfer the case dossier to the criminal procedure-conducting agencies of the same level for handling.

It is prohibited to administratively sanction acts showing signs of crimes in the domain of industrial property.

Article 3.- Sanctioning forms and remedies to consequences

1. Principal sanctions: For each violation, violating individuals or organizations shall be subject to either of the two principal sanctions: caution or fine.

2. Caution shall apply to unintentional violations; minor and first-time violations involving extenuating circumstances or to any administrative violations committed by minors of between full 14 years and under 16 years of age.

3. Fine: Based on the nature and severity of violations, competent persons shall decide on fine levels within the prescribed fine bracket.

For administrative violations in the domain of industrial property, the specific fine level applicable to each violation is the average level of the fine bracket provided for such violation which involves neither extenuating nor aggravating circumstances. The average level of the fine bracket is determined by equally dividing the total of the minimum and maximum levels.

For violations involving extenuating circumstances, the fine level may be reduced but must not be lower than the prescribed minimum level of the fine bracket.

For violations involving aggravating circumstances, the fine level may be increased but must not be higher than the prescribed maximum level of the fine bracket.

4. Additional sanctions: Depending on the nature and severity of violations, violating individuals or organizations may also be subject to one or some of the following additional sanctions:

a/ Confiscation of material evidences and/or means of administrative violations; confiscation of goods bearing counterfeit marks or geographical indications or of raw materials, materials and means used mainly for producing or trading in those goods;

b/ Confiscation of protection titles or documents proving industrial property rights which are modified or erased;

c/ Confiscation of papers or documents which are modified, erased or forged;

d/ Deprivation for a definite or indefinite time period of the right to use industrial property representation practice certificate;

e/ Deprivation for a definite or indefinite time period of the right to use the assessor's card;

f/ Suspension for a definite time period of the trading in infringing products or services.

5. Application of remedies:

Apart from the above principal and additional sanctions, individuals or organizations committing administrative violations may also be forced to apply one or some of the following remedies:

a/ Forcible removal of infringing elements on their products, goods or means of business;

b/ Forcible destruction or distribution or putting in use for non-commercial purposes of goods bearing counterfeit marks or geographical indications or raw materials, materials and means used mainly for producing or trading in those goods, if it does not affect the exercise of the rights by industrial property right holders;

c/ Forcible destruction of infringing goods which cause harm to the human health, animals, plants or environment;

d/ Forcible bringing out of the territory of Vietnam of transit goods in infringement of industrial property rights or forcible re-export of infringing goods, goods with counterfeit marks or geographical indications, or imported raw materials, materials and means used mainly for producing or trading in those goods, after removing the infringing elements on those goods;

e/ Forcible addition of indications on the protection of industrial property rights;

f/ Forcible rectification on the mass media, for acts of giving wrong indications on industrial property rights;

g/ Forcible confiscation of dispersed material evidences or means of violation.

Article 4.- Extenuating, aggravating circumstances

1. Extenuating circumstances:

a/ The violators take measures to prevent, remedy or limit harms of their violations or voluntarily remedy consequences and pay damages;

b/ The administrative violators voluntarily make declaration and show repentance;

c/ The violators are spiritually provoked by illegal acts of other persons to commit violations;

d/ The violators are forced to commit violations or commit violations due to material and spiritual dependence on others;

e/ The violators are pregnant women, weak elderly people, diseased or disabled people, being unable to conceive of or control their acts;

f/ The violators commit violations in a particular plight they have not caused;

g/ The violators commit violations because of the lack of knowledge about industrial property;

h/ The violators commit violations through contractual relationships involving goods order or job assignment without knowing that such are acts of violation.

2. Aggravating circumstances:

a/ Committing violations in an organized manner;

b/ Committing violations repeatedly or relapsing into violation in the domain of industrial property;

c/ Inciting or inducing minors to commit violations, forcing one's materially or spiritually dependent people to commit violations;

d/ Abusing one's own positions or powers to commit violations;

e/ Abusing circumstances of wars, natural calamities or other particular common grieves to commit violations;

f/ Committing violations while serving criminal sentences or executing decisions on handling of administrative violations;

g/ Continuing to commit administrative violations in spite of the competent persons' requests for termination of violations;

h/ Shirking liability or concealing administrative violations after committing them.

Article 5.- Statute of limitations for sanctioning and time limit for being considered as having not been sanctioned

1. The statute of limitations for sanctioning an administrative violation in the domain of industrial property is two years, counting from the date that violation is committed. Past this time limit, violating organization or individual shall not be sanctioned but shall take remedies provided for in Clause 5, Article 3 of this Decree.

2. For individuals who have been criminally instigated or prosecuted or whose cases have been decided to be brought to trial according to criminal procedures but later the investigations or the cases are decided to be stopped, those individuals shall be administratively sanctioned if their acts show signs of administrative violation; in this case, the statute of limitations is three months after the persons with sanctioning competence receive the suspension decisions and the case dossiers.

3. Within the time limit defined in Clause 1 or 2 of this Article, if concerned individuals or organizations commit new violations in the domain of industrial property or deliberately shirk or obstruct the sanctioning, the statute of limitations provided for in Clauses 1 and 2 of this Article does not apply. The statute of limitations for sanctioning administrative violations is counted from the time a new violation is committed or the act of shirking or obstructing the sanctioning stops.

4. If past one year after completely serving the sanctioning decisions or after the expiration of the statute of limitations for executing sanctioning decisions, individuals or organizations already sanctioned for administrative violations in the domain of industrial property do not relapse into violation, they shall be considered as having not been sanctioned for administrative violations in the domain of industrial property.

Chapter II
ACTS OF VIOLATION, SANCTIONING FORMS AND LEVELS

Article 6.- Violation of regulations on the procedures for establishment, exercise and protection of industrial property rights

1. A fine of between VND 1,000,000 and VND 3,000,000 shall be imposed on individuals or organizations that commit one of the acts of modifying or erasing protection titles or documents proving industrial property rights;

2. A fine of between VND 5,000,000 and VND 10,000,000 shall be imposed on individuals or organizations that commit acts of supplying false information or evidence in the following cases:

a/ Carrying out procedures for establishment, recognition, certification, amendment, maintenance, extension, request for termination or cancellation of validity of industrial property rights;

b/ Requesting competent state agencies to issue decisions on compulsory licensing of inventions;

c/ Lodging complaints or denunciations about the establishment and exercise of industrial property rights;

d/ Requesting competent agencies to handle violations; requesting industrial property assessment;

e/ Responding to requests for handling of violations, application of preventive measures to secure administrative sanctioning, application of measures to control goods imported for unsound purposes, which aims to impede normal operations of, or cause damage to, other organizations or individuals.

3. A fine of between VND 10,000,000 and VND 15,000,000 shall be imposed on individuals or organizations that commit acts of forging papers in the cases specified in Clause 2 of this Article.

4. Additional sanctions: Confiscation of modified, erased or forged papers, documents, protection titles or documents proving the relevant industrial property rights, for acts specified in Clauses 1, 2 and 3 of this Article.

Article 7.- Violation of regulations on industrial property representation

1. A fine of between VND 1,000,000 and VND 3,000,000 shall be imposed on industrial property-representing individuals or organizations that commit one of the following acts:

a/ Failing to fully and truthfully report on notices and requests of competent state agencies on the establishment, exercise and protection of industrial property rights to the represented party; failing to hand over on time protection titles and documents proving industrial property rights, certificates and other decisions to the represented party without justifiable reasons;

b/ Failing to notify the state agencies competent to establish, exercise and protect industrial property rights of changes in the names, addresses and other information of the represented party.

2. A fine of between VND 3,000,000 and VND 5,000,000 shall be imposed on industrial property-representing individuals or organizations that commit one of the following acts:

a/ Concurrently representing parties to a dispute over industrial property rights;

b/ Arbitrarily withdrawing applications for protection titles, disclaiming the protection, withdrawing complaints or taking other acts in the establishment, exercise and protection of industrial property rights without permission of the representation authorizer;

c/ Deceiving or forcing customers to enter into and perform industrial property representation contracts;

d/ Failing to notify or untruthfully notifying expenses, charge and fee rates related to the procedures for establishment, exercise and protection of industrial property rights as well as service charges and charge rates already registered with the state management agency in charge of industrial property at the lawful request of customers or competent authorities;

e/ Breaching the obligation to keep secret information and documents handed by customers or competent agencies or industrial property assessment organizations, which are related to the case in question.

f/ Lending industrial property representation practice certificates or using those certificates for purposes in contravention of their functions;

g/ Deliberately advising or giving wrong information on the provisions of industrial property law or information on industrial property activities;

h/ Obstructing the normal progress of the establishment, exercise and protection of industrial property rights, causing damage to people with related rights and interests.

3. A fine of between VND 6,000,000 and VND 10,000,000 shall be imposed on organizations or individuals that commit acts of providing industrial property representation services without sufficient business conditions under the provisions of law.

4. A fine of between VND 10,000,000 and VND 15,000,000 shall be imposed on industrial property-representating individuals or organizations that commit one of the following acts:

a/ Assuming the names of industrial property state management agencies or officials in order to provide industrial property representation services;

b/ Disclosing information of competent state management agencies, which are yet allowed to be publicized, on the process of receiving, examining or processing applications for industrial property registration;

c/ Committing serious violations in representation by grantees of industrial property representation practice certificates, causing harms to the state's and society's interests.

5. Additional sanctions:

a/ Deprivation of the right to use industrial property representation practice certificates for three to six months, for violations specified at Points a, b, e, f, g and h, Clause 2 of this Article;

b/ Deprivation for indefinite time of the right to use industrial property representation practice certificates, for violations specified at Points c and d, Clause 2 and Clause 4 of this Article.

Article 8.- Violation of regulations on industrial property assessment

1. A fine of between VND 10,000,000 and VND 20,000,000 shall be imposed on individuals or organizations functioning to conduct industrial property assessment that commit one of the following acts:

a/ Failing to observe regulations on assessment order and procedures; failing to fulfill obligations of assessment requesters, of individuals or organizations conducting assessment under the provisions of law on assessment;

b/ Accepting and conducting assessment even though such assessment must be rejected under regulations;

c/ Deliberately giving untruthful or groundless assessment conclusions or assessment conclusions with grounds not true to the case in question;

d/ Disclosing secret information acquired while conducting assessment without permission of concerned parties.

2. Additional sanctions: Deprivation of the right to use the assessor's card for 6 to 12 months or for indefinite time, for violations specified in Clause 1 of this Article.

Article 9.- Violation of regulations on indications about protection of industrial property rights

1. A fine of between VND 1,000,000 and VND 3,000,000 shall be imposed on individuals or organizations that commit one of the acts of giving wrong indications about protection of industrial property rights in production, trading, transaction, advertisement and marketing as follows:

a/ Giving misleading indications (including indicative signs) about industrial property right holders; misleading indications about products or services with elements eligible for industrial property right protection; misleading indications or no indications about products or goods supplied under contracts on licensing of industrial property objects; misleading indications about authors of inventions or industrial designs;

b/ Giving misleading indications about the legal status of industrial property protection of inventions, industrial designs, layout designs, marks or geographical indications.

2. Remedies:

a/ Forcible removal of infringing elements from products, goods or means of business, for violations specified in Clause 1 of this Article;

b/ Forcible public rectification on the mass media, for violations specified in Clause 1 of this Article;

c/ Forcible destruction of infringing goods which cause harms to the human health, animals, plants or environment, for violations specified in Clause 1 of this Article.

Article 10.- Violation of the obligation to keep secret test data when filing applications for business licenses or permits for circulation of pharmaceuticals or agro-chemical products

A fine of between VND 7,000,000 and VND 10,000,000 shall be imposed on individuals or organizations that commit violation of the regulations on confidentiality of data on test results as required under the procedures of application for business licenses or permits for circulation of pharmaceuticals or agro-chemical products.

Article 11.- Illegal obstruction of state management, supervision and inspection of industrial property

1. A caution or a fine of between VND 100,000 and VND 300,000 shall be imposed on individuals or organizations for failing to produce or producing incomplete documents, information or data to the state management agency in charge of industrial property or competent persons when so requested.

2. A fine of between VND 1,000,000 and VND 2,000,000 shall be imposed for one of the following acts:

a/ Refusing in contravention of law to execute supervision or inspection decisions or requests;

b/ Failing to supply or supplying incomplete or untruthful documents and data necessary for supervision or inspection at the request of competent persons;

c/ Obstructing, causing difficulties to or shirking supervision or inspection conducted by competent persons.

3. A fine of between VND 2,000,000 and VND 3,000,000 shall be imposed for one of the following acts:

a/ Libeling, offending or humiliating persons competent to conduct industrial property supervision or inspection;

b/ Deliberately delaying, shirking or rejecting the execution of administrative decisions of competent persons, failing to respond to requests, conclusions or decisions of industrial property supervision or inspection teams.

4. A fine of between VND 2,000,000 and VND 4,000,000 shall be imposed for one of the following acts:

a/ Arbitrarily removing or destroying seals or altering scenes of incidents, quantity or category of goods which are material evidences of industrial property violations being subject to supervision, inspection, sealing or seizure;

b/ Dispersing, eliminating material evidences or means of violation being subject to supervision or inspection.

5. Remedies: Forcible recovery of dispersed material evidences and means specified at Point b, Clause 4 of this Article.

Article 12.- Infringement of the rights to inventions, industrial designs or layout designs

1. A caution or a fine of between one and two times the value of products or goods detected in violation shall be imposed on individuals or organizations for committing one of the following violations for business purposes, causing harms to consumers and society or failing to stop acts of infringing upon industrial property rights in spite of the right holders' requests for such stoppage, in case the products or goods in violation are valued at up to VND 20,000,000:

a/ Producing (manufacturing, processing, assembling or packing) products in infringement of the rights to inventions, industrial designs or layout designs;

b/ Applying a process in infringement of the rights to inventions;

c/ Exploiting the utilities (in business activities) of products in infringement of the rights to inventions;

d/ Selling, transporting, advertising, offering or storing for sale products in infringement of the rights to inventions; or products in infringement of the rights to industrial designs;

e/ Importing products in infringement of the rights specified at Point d, Clause 1 of this Article or products containing layout designs in infringement of such rights;

f/ Selling, leasing, storing for sale, transporting, advertising or offering for sale copies of layouts in infringement of rights, of products or goods containing layout designs in infringement of rights, of layout designs or products or goods containing those objects.

2. A fine of between two and three times the value of products or goods detected in violation shall be imposed on individuals or organizations for committing one of the violations specified in Clause 1 of this Article, in case the products or goods in violation are valued at between over VND 20,000,000 and VND 40,000,000.

3. A fine of between three and four times the value of products or goods detected in violation shall be imposed on individuals or organizations for committing one of the violations specified in Clause 1 of this Article, in case the products or goods in violation are valued at between over VND 40,000,000 and VND 60,000,000.

4. A fine of between four and five times the value of products or goods detected in violation shall be imposed on individuals or organizations for committing one of the violations specified in Clause 1 of this Article, in case the products or goods in violation are valued at over VND 60,000,000.

5. Additional sanctions:

a/ Confiscation of material evidences or means of administrative violation, for violations specified in Clauses 1, 2, 3 and 4 of this Article;

b/ Stopping activities of dealing in infringing products or services for 3 to 6 months, for violations specified in Clauses 1, 2, 3 and 4 of this Article.

6. Remedies:

a/ Forcible removal of infringing elements on products, goods or means of business, for violations specified in Clauses 1, 2, 3 and 4 of this Article;

b/ Forcible distribution or use for non-commercial purposes or forcible destruction of goods of inferior quality, which cause harms to human health, animals, plants or environment, for violations specified in Clauses 1, 2, 3 and 4 of this Article;

c/ Forcible bringing out of the Vietnamese territory or forcible re-export of goods or means of violation, for violations specified in Clauses 1, 2, 3 and 4 of this Article.

Article 13.- Infringement of the rights to marks, geographical indications or trade names

1. A caution or a fine of between one and two times the value of goods detected in violation shall be imposed on individuals or organizations for committing one of the following acts in infringement of the rights to marks, geographical indications or trade names, thus causing harms to consumers or society; failing to terminate acts of right infringement despite the right holders' requests for such termination, if the goods detected in violation are valued at up to VND 15,000,000:

a/ Affixing (printing, sticking, attaching, casting, molding or otherwise affixing) signs in infringement of protected rights to marks, geographical indications or trade names on goods or their packings;

b/ Selling, transporting, offering for sale, advertising or storing for sale goods in infringement of the rights to marks, geographical indications or trade names;

c/ Importing goods or services containing infringing elements in relation to marks, geographical indications or trade names;

d/ Using signs on products, goods or their packings with infringing elements in relation to trade names.

2. A fine of between two and three times the value of goods or services detected in violation shall be imposed on individuals or organizations for committing one of the acts specified in Clause 1 of this

Article, if the infringing goods or services are valued at between over VND 15,000,000 and VND 30,000,000.

3. A fine of between three and four times the value of goods or services detected in violation shall be imposed on individuals or organizations for committing one of the acts specified in Clause 1 of this Article, if the infringing the goods or services are valued at between over VND 30,000,000 and VND 45,000,000.

4. A fine of between four and five times the value of goods or services detected in violation shall be imposed on individuals or organizations for committing one of the acts specified in Clause 1 of this Article, if the infringing goods or services are valued at over VND 45,000,000.

5. A fine of between VND 10,000,000 and VND 15,000,000 shall be imposed for acts of affixing (printing, sticking, attaching, casting, molding or otherwise affixing) on means of business or service, transaction papers or signboards signs of infringement of the rights to marks, trade names or geographical indications.

6. Additional sanctions:

a/ Confiscation of material evidences or means of administrative violation, for acts specified in Clauses 1, 2, 3, 4 and 5 of this Article;

b/ Termination of activities of dealing in infringing products or services for one to three months, for violations specified in Clauses 1, 2, 3, 4 and 5 of this Article.

7. Remedies:

a/ Forcible removal of infringing elements on products, goods or means of business, for violations specified in Clauses 1, 2, 3, 4 and 5 of this Article;

b/ Forcible destruction of infringing goods of inferior quality which cause harms to human health, animals, plants or environment, for violations specified in Clauses 1, 2, 3, 4 and 5 of this Article;

c/ Forcible bringing out of the Vietnamese territory or re-export of goods or means of violation, for violations specified in Clauses 1, 2, 3, 4 and 5 of this Article.

Article 14.- Production, transportation, import of, or trading in, objects bearing infringing marks or geographical indications

1. A caution or a fine of between one and two times the value of goods detected in violation shall be imposed on individuals or organizations for producing, importing, transporting or trading in objects bearing marks or geographical indications identical or confusingly similar to, the protected ones or assigning others to do so, if the infringing goods are valued at up to VND 20,000,000;

2. A fine of between two and three times the value of goods detected in violation shall be imposed on individuals or organizations that commit one of the acts defined in Clause 1 of this Article, if the infringing goods are valued at between over VND 20,000,000 and VND 40,000,000.

3. A fine of between three and four times the value of goods detected in violation shall be imposed on individuals or organizations that commit one of the acts specified in Clause 1 of this Article, if the infringing goods are valued at between over VND 40,000,000 and VND 60,000,000.

4. A fine of between four and five times the value of goods detected in violation shall be imposed on individuals or organizations that commit one of the acts specified in Clause 1 of this Article, if the infringing goods are valued at over VND 60,000,000.

5. Additional sanctions:

a/ Confiscation of material evidences or means of administrative violation, for violations specified in Clauses 1, 2, 3 and 4 of this Article;

b/ Termination of activities of dealing in products or services in violation for one to three months, for violations specified in Clauses 1, 2, 3 and 4 of this Article.

6. Remedies:

a/ Forcible removal of infringing elements on products, goods or means of business, for violations specified in Clauses 1, 2, 3 and 4 of this Article;

b/ Forcible destruction of goods or objects which are no longer usable, cannot ensure safety for use or cause harms to production, human health, animals, plants or environment, for violations specified in Clauses 1, 2, 3 and 4 of this Article;

c/ Forcible bringing out of the Vietnamese territory or re-export of goods or means of violation, for violations specified in Clauses 1, 2, 3 and 4 of this Article.

Article 15.- Production, import, transportation of, trading in, or storing for sale of goods bearing counterfeit marks or geographical indications

1. A fine of between one and two times the value of goods detected in violation shall be imposed on individuals or organizations for committing one of the following acts or assigning other to commit such an act, if the detected goods bearing counterfeit marks or geographical indications are valued at up to VND 10,000,000:

a/ Producing, importing, printing, sticking, attaching, casting, molding or otherwise affixing on products, packings or goods counterfeit marks or geographical indications;

b/ Transporting, storing products or goods bearing counterfeit marks or geographical indications;

c/ Trading in, advertising or offering for sale products or goods bearing counterfeit marks or geographical indications;

2. A fine of between two and three times the value of goods bearing counterfeit marks or geographical indications defined in Clause 1 of this Article shall be imposed if those goods are detected and valued at between over VND 10,000,000 and VND 20,000,000.

3. A fine of between three and four times the value of goods bearing counterfeit marks or geographical indications defined in Clause 1 of this Article if those goods are detected and valued at between over VND 20,000,000 and VND 30,000,000.

4. A fine of between four and five times the value of goods bearing counterfeit marks or geographical indications defined in Clause 1 of this Article shall be imposed if those goods are detected and valued at over VND 30,000,000.

5. Additional sanctions:

a/ Confiscation of material evidences or means of administrative violation, for violations specified in Clauses 1, 2, 3 and 4 of this Article;

b/ Termination of activities of dealing in products or services in violation for one to three months, for violations specified in Clauses 1, 2, 3 and 4 of this Article.

6. Remedies:

a/ Forcible destruction or distribution or putting to use for non-commercial purposes of goods bearing counterfeit marks or geographical indications, raw materials, materials and means used mainly for production of, or trading in, those goods, which, however, must not affect the exercise of the rights by industrial property right holders, for violations specified in Clauses 1, 2, 3 and 4 of this Article;

b/ Forcible destruction of goods which cause harms to human health, animals, plants or environment, for violations specified in Clauses 1, 2, 3 and 4 of this Article;

c/ Forcible bring out of the Vietnamese territory transit goods infringing upon industrial property rights or re-export of infringing goods, goods bearing counterfeit marks or geographical indications as well as means, raw materials or materials imported for use mainly for production of, or trading in, those goods, after removing infringing elements thereon, for violations specified in Clauses 1, 2, 3 and 4 of this Article;

Article 16.- Unfair competition and infringement of business secrets in the domain of industrial property

Individuals or organizations committing acts of unfair competition or infringing upon business secrets in the domain of industrial property shall be sanctioned according to regulations on sanctioning of administrative violations in competition.

Chapter III SANCTIONING COMPETENCE AND PROCEDURES

Section 1. SANCTIONING COMPETENCE

Article 17.- Competence of violation-handling agencies

The competence to apply administrative measures of the violation-handling agencies defined in Clause 3, Article 200 of the Intellectual Property Law is specified as follows:

1. Scientific and technological inspectorates shall have the competence to handle administrative violations in the domain of industrial property, which are committed in production, trading, exploitation, advertisement or circulation, except for violations in the import or export of goods.
2. Market management offices shall have the competence to handle violations in the domain of industrial property, which are committed in the circulation of goods and commercial business in the market.
3. Customs offices shall have the competence to handle violations in the domain of industrial property, which are committed in the import or export of goods.
4. Police offices shall have the competence to detect, verify, gather information and evidence on violations in the domain of industrial property, and notify them to the violation-handling agencies defined in Clauses 1, 2 and 3 of this Article and handle violations in the domain of industrial property;
5. Provincial-level People's Committees and district-level People's Committees shall have the competence to handle violations in the domain of industrial property which are committed in their respective localities whereby the sanctioning levels, forms and handling measures applicable to those acts fall beyond the competence of the agencies defined in Clauses 1, 2 and 3 of this Article.

Article 18.- Competence to sanction administrative violations in the domain of industrial property

1. Industrial property specialized inspectors of the Ministry of Science and Technology or provincial/municipal Services of Science and Technology are, while on duty, competent to apply the following sanctions for violations specified in Chapter II of this Decree:

a/ Caution or a fine of up to VND 200,000;

b/ Confiscation of material evidences or means of violation valued at up to VND 2,000,000;

c/ Remedies provided for at Points a and c, Clause 5, Article 3 of this Decree.

2. The chief inspectors of provincial/municipal Services of Science and Technology are competent to apply sanctions for violations specified in Chapter II of this Decree:

a/ Caution or a fine of up to VND 20,000,000;

b/ Additional sanctions provided for at Points a, c and e, Clause 4, Article 3 of this Decree;

c/ Remedies provided for at Points a, b, c, e, f and g, Clause 5, Article 3 of this Decree.

3. The chief inspector of the Ministry of Science and Technology is competent to apply the following sanctions for violations specified in Chapter II of this Decree:

a/ Caution or a fine of up to the maximum level of the fine bracket provided for in this Decree;

b/ Additional sanctions provided for in Clause 4, Article 3 of this Decree;

c/ Remedies provided for in Clause 5, Article 3 of this Decree.

4. Presidents of district-level People's Committees are competent to apply the following sanctions for violations defined in Chapter II of this Decree:

a/ Caution or a fine of up to VND 20,000,000;

b/ Additional sanctions provided for at Points a and c, Clause 4, Article 3 of this Decree;

c/ Remedies provided for at Points a, b, c, e, f and g, Clause 5, Article 3 of this Decree.

5. Presidents of provincial-level People's Committees are competent to apply sanctions provided for in Article 30 of the Ordinance on Handling of Administrative Violations for violations specified in Chapter II of this Decree, including:

a/ Caution or a fine of up to the maximum level of the fine bracket provided for in this Decree;

b/ Additional sanctions provided for at Points a, c and f, Clause 4, Article 3 of this Decree;

c/ Remedies provided for in Clause 5, Article 3 of this Decree.

6. Heads of control teams of Customs Departments, directors of Customs Sub-Departments and directors of provincial-level Customs Departments shall sanction industrial property violations in the import and export of goods according to their competence provided for in Clauses 2 and 3, Article 34 of the Ordinance on Handling of Administrative Violations.

7. Heads of market management teams, directors of market control sub-departments and directors of market management departments shall sanction industrial property violations in the circulation of

goods and commercial business in the market according to their competence provided for in Clauses 2, 3 and 4, Article 37 of the Ordinance on Handling of Administrative Violations.

8. Heads of police offices for investigation of economic management and position-related crimes under provincial Public Security Departments or the Director of the Police Department for investigation into economic management and position-related crimes are competent to sanction industrial property violations according to the provisions of Clauses 5 and 7, Article 31 of the Ordinance on Handling of Administrative Violations.

Article 19.- Principles for determination of sanctioning competence

1. Presidents of provincial-level People's Committees or district-level People's Committees are competent to sanction administrative violations in the domain of industrial property in their respective localities.

2. Chief inspectors and science and technology specialized inspectors of the Ministry of Science and Technology or provincial/municipal Services of Science and Technology are competent to sanction administrative violations in the domain of industrial property, which fall within the scope of state management of the Ministry or Services respectively.

When violations fall beyond the sanctioning competence of the chief inspectors of provincial/municipal Services of Science and Technology, violation dossiers shall be transferred to presidents of provincial-level People's Committees for administrative sanctioning according to their competence.

Section 2. SANCTIONING PROCEDURES

Article 20.- Receipt and consideration of written requests for handling of violations

1. Receipt of written requests for handling of violations:

When receiving written requests for handling of violations, violation-handling agencies shall carry out the following tasks:

a/ To determine the competence to handle violations according to the provisions of Article 19 of this Decree; if the written requests for handling of violations fall under the handling competence of other agencies, to guide the requesters to file their requests with those agencies;

b/ To examine and acknowledge the receipt of the lists of documents and evidence enclosed with the written requests.

2. Consideration of written requests for handling of violations:

a/ Within 10 working days after receiving a complete dossier, the violation-handling agency shall consider the validity of documents and evidence in the dossier. It may examine and verify evidence by itself or request the police to do so in order to prove the capacity of the right holder, prove the infringement or ask for assessment when necessary;

When the dossier meets the requirements, the handling agency shall carry out the prescribed procedures to handle the infringement of rights.

b/ When documents or evidence supplied by the requester are insufficient to prove the capacity of the right holder and the violation, the violation-handling agency shall issue a notice, asking the requester to supplement documents, evidence and assessment conclusions or explain the violation within 30 days from the date of issuing the notice.

3. The violation-handling requester may file the request with the competent agency defined in Article 18 of this Decree, asking the latter to apply preventive measures to secure administrative sanctioning according to the following regulations:

a/ The request for the application of preventive measures to secure administrative sanctioning may be filed simultaneously with or after the filing of the request for violation handling, enclosed with evidence mentioned at Point b, Clause 2 of this Article;

b/ The request for the application of preventive measures to secure administrative sanctioning must state the requester's commitment to pay compensation for damage caused by the improper application of those measures to concerned organizations or individuals;

c/ The agency competent to apply preventive measures to secure administrative sanctioning shall consider and verify evidence proving that the case in question falls in one of the cases eligible for the application of preventive measures prescribed in Clause 1, Article 215 of the Intellectual Property Law and decide on the application of those measures in accordance with the provisions of Clause 2, Article 215 of the Intellectual Property Law.

When the agency competent to apply preventive measures to secure administrative sanctioning decides on the application thereof without sufficient evidence proving that the concerned case is eligible for such application or applies measures which are inappropriate or at variance with the requests of the requesters, they shall have to pay compensation for damage caused to relevant organizations or individuals in accordance with the provisions of law.

Article 21.- Rejecting requests for handling of violations

In the following cases, the violation-handling agency may issue a notice, rejecting a written request for violation handling:

1. Upon the expiration of the time limit prescribed at Point b, Clause 2, Article 20 of this Decree, the violation-handling requester still fails to meet the requirements of the violation-handling agency regarding the supplementation or explanation of evidence proving the capacity of the right holder and the violation.

2. The statute of limitations for administratively handling industrial property infringements expires under the provisions of Clause 1, Article 10 of the Ordinance on Handling of Administrative Violations.

3. The results of verification by the violation- handling agency or the police disprove violation as described in the written request for violation handling.

4. There's a document of the competent agency on the lack of grounds for violation handling.

5. The violation-handling requester has a written notice on the withdrawal of his/her/its request for violation handling or on the fact that the involved parties have reached agreement on the settlement of the case through other measures.

When a violation relates to production of, or trading in, goods bearing counterfeit marks or geographical indications, causing harms to consumers or society, the violation-handling agency may apply administrative measures to handle the violation even though it may receive a said notice.

Article 22.- Handling of written requests involving disputes or filed with incompetent agencies

1. When a written request for violation handling involves a dispute over holder, protectability or scope of protection of industrial property rights, the request-receiving agency guides the requester and the persons with relevant rights and interests to exercise the right to request the settlement of the dispute at the competent agency.

2. When a case falls under the handling competence of another agency, the agency receiving the written request for violation handling transfers the case dossier to the competent agency for handling.
3. When a violation shows signs of a crime, the agency receiving the written request for violation handling transfers the case dossier to the competent agency for criminal investigation and instigation.

Article 23.- Coordination in handling of violations

1. Requirements for coordination in handling of violations

a/ The agency receiving a written request for violation handling shall send a request for coordination in violation handling to relevant competent agencies if the violation falls in one of the following cases: one violation in the domain of industrial property falls under the handling competence of different agencies or the same violation is committed in different areas or localities;

b/ The request for coordination in violation handling must have the following principal contents: the brief information on the case; the summary of the violation, the scope of the violation which may be committed in a locality or a domain under management of the request-receiving agency; the copies of the written request for violation handling and enclosed documents and photos of sample objects; the summary of the results of consideration of the written request for violation handling; the proposed contents of coordination in violation handling and the setting of a time limit of 15 days for the request-receiving agency to reply;

c/ Agencies receiving the request for coordination in violation handling shall reply within the set time limit, clearly justifying the reasons for not handling the violation as requested (if any).

2. Use of results of consideration and handling of written requests for violation handling from other agencies:

a/ A violation-handling agency may use results of determination of the violation or infringing goods given by another competent agency (if any) to ensure the uniformity of handling measures and sanctioning levels applicable to the same or similar violations or related to the same industrial property object of the same right holder;

b/ When competent agencies have different opinions and decisions on the modes, measures and extent of handling of violations, the violation-handling agency shall report such to the superior agency for direction.

Article 24.- Simplified procedures applicable to acts of producing or trading in goods bearing counterfeit marks or geographical indications

1. When detecting and having enough evidence on the production of, or trading in, goods bearing counterfeit marks or geographical indications, the violation-handling agency may decide to stop the violation and make a written record thereon without following the order and procedures prescribed in Article 20 of this Decree.

When evidence is sufficient to prove that a violation falls in one of the cases subject to the application of preventive measures to secure administrative sanctioning according to the provisions of Clause 1, Article 215 of the Intellectual Property Law, the violation-handling agency may apply appropriate measures provided for in Clause 2, Article 215 of the Intellectual Property Law.

When necessary and upon requests, the violation-handling agency may apply preventive measures to secure administrative sanctioning according to the provisions of Article 215 of the Intellectual Property Law and Article 25 of this Decree.

2. When the evidence on goods bearing counterfeit marks or geographical indications is unclear, the counterfeit goods-detecting agency shall inspect and verify such evidence or request the police to verify and gather evidence on the violation or ask for industrial property assessment.

3. The coordination in handling of violations and issuance of sanctioning decisions shall comply with the provisions of Article 23 of this Decree.

Article 25.- Application of preventive measures to secure administrative sanctioning

1. The competence to apply preventive measures to secure administrative sanctioning provided for in Clause 2, Article 215 of the Intellectual Property Law is vested to the agencies competent to handle violations defined in Article 18 of this Decree.

2. The competent persons of agencies competent to apply preventive measures to secure administrative sanctioning defined in Clause 1 of this Article shall have corresponding competence to apply those measures according to the provisions of Clause 1 of Article 45, Clause 1 of Article 46, Clause 2 of Article 47, Clause 2 of Article 48, Clause 2 of Article 49 and Clause 2 of Article 50 of the Ordinance on Handling of Administrative Violations.

3. The order of, and procedures for, the application of preventive measures to secure administrative sanctioning shall comply with the provisions of Chapter V of the Ordinance on Handling of Administrative Violations.

Article 26.- Procedures for sanctioning administrative violations

1. When detecting a violation, the person with sanctioning competence shall immediately order the termination of such violation, clearly explaining regulations on sanctioning of administrative violations in the domain of industrial property and relevant provisions of law on industrial property to the violating organization or individual, requesting the latter to strictly observe the provisions of law.

2. When a violation is subject to a caution, the person with sanctioning competence shall not make a written record thereof but decide on sanctioning right at the place of violation and the caution shall be decided in writing.

Except simple procedures are applied, when a violation is subject to a fine, the person with sanctioning competence shall have to make a written record of the administrative violation according to the provisions of Article 35 of the Ordinance on Handling of Administrative Violations and create conditions for the violating individual or organization to present their opinions about the violation.

3. A sanctioning decision and its contents must comply with the provisions of Article 56 of the Ordinance on Handling of Administrative Violations.

A sanctioning decision must be sent to the sanctioned organization or individual within three days after its signing. When the sanctioning decision covers additional sanctions which require the completion of procedures for establishment, modification, termination or cancellation of validity of relevant protection titles or certificates, it must be sent to the Inspectorate of the Ministry of Science and Technology and the National Office of Intellectual Property for coordination in monitoring and execution.

4. When detecting a violation involving a dispute or complaint about the right holder, the protectability or scope of protection of industrial property rights, the dossier-receiving agency shall request the concerned parties to settle the dispute at the competent agency.

Within 10 days after receiving final conclusions from the agency competent to settle the dispute or complaint, the person with sanctioning competence shall make conclusions on the violation.

Article 27.- Confiscation of material evidence and means of administrative violation

1. The confiscation of goods bearing counterfeit marks or geographical indications, raw materials, materials and means used mainly for the production of or trading in, those goods applies in the following cases:

a/ It is necessary to ensure that the evidence are not destroyed, dispersed or altered or to prevent a future violation;

b/ The violating organization or individual has neither capability nor conditions to remove the infringing elements on goods or deliberately reject the request of the person with sanctioning competence regarding the removal of industrial property-infringing elements on goods, modification or addition of signs or indications on goods or means of business;

c/ The goods on market or import or export goods contain right-infringing elements and though the goods' origin, owners, producers or releasers are unidentified, there is sufficient evidence to determine that those goods are not produced or released to the market by industrial property right holders.

2. Procedures for confiscation of material evidences and means of administrative violation in the domain of industrial property shall comply with the provisions of Article 60 of the Ordinance on Handling of Administrative Violations.

Article 28.- Handling of confiscated material evidences and means of administrative violation

1. With regard to goods bearing counterfeit marks or geographical indications, the competent handling agency shall apply one of the following measures:

a/ Confiscation for distribution for non-commercial purposes or putting to use for non-commercial purposes according to the provisions of Article 29 of this Decree.

b/ Confiscation for destruction according to the provisions of Article 30 of this Decree;

c/ Forcible removal of infringing elements and bringing out of the Vietnamese territory of transit goods bearing counterfeit marks or geographical indications; forcible re-export of import goods bearing counterfeit marks or geographical indications.

If the removal of infringing elements cannot be applied, the provisions of Points a and b, Clause 1 of this Article shall apply.

2. Raw materials, materials and means functioning or used solely for production of, or trading in, infringing goods or for provision of services in violation shall be considered raw materials, materials and means used mainly for production of, or trading in, infringing goods.

Article 29.- Forcible distribution and use for non-commercial purposes

1. Forcible distribution or putting to use for non-commercial purposes shall apply to infringing goods which fully satisfy the following conditions:

a/ The goods are still usable;

b/ The infringing elements have been removed from the goods;

c/ The distribution and use is for non-commercial purposes with priority given to humanitarian or charity purposes or public interest;

d/ The receivers of goods for use are not potential customers of the right holders.

2. The provisions of Clause 1 of this Article also apply to raw materials, materials and means used mainly for production of, or trading in, infringing goods.

Article 30.- Forcible destruction

The forcible destruction of infringing goods as well as raw materials, materials and means used mainly for production of, or trading in, those goods applies to cases where exist no conditions to apply the forcible distribution or putting to use for non-commercial purposes of goods as prescribed in Article 29 of this Decree.

Article 31.- Execution of sanctioning decisions

1. Past 10 days after sanctioned organizations or individuals receive sanctioning decisions, if they do not voluntarily execute such decisions, the persons with sanctioning competence shall issue decisions to coerce the execution thereof.

2. The execution and coercive execution of sanctioning decisions as well as the statute of limitations for execution of sanctioning decisions against administrative violations comply with the provisions of Articles 64, 65, 66, 67, 68 and 69 of the Ordinance on Handling of Administrative Violations.

Chapter IV
COMPLAINT, DENUNCIATION, AND HANDLING OF VIOLATIONS

Article 32.- Complaints about decisions on sanctioning of administrative violations

Individuals, organizations or their lawful representatives are entitled to complain about decisions on sanctioning of administrative violations in the domain of industrial property, issued by competent persons defined in Article 18 of this Decree. The complaint and complaint settlement procedures comply with the provisions of Articles 118 and 119 of the Ordinance on Handling of Administrative Violations. Complaints about decisions on sanctioning of administrative violations do not suspend the execution of decisions on sanctioning of administrative violations in the domain of industrial property.

Article 33.- Handling of persons with competence to sanction administrative violations

Persons with competence to handle administrative violations in the domain of industrial property who violate the regulations on sanctioning of administrative violations shall be handled according to the provisions of Article 121 of the Ordinance on Handling of Administrative Violations.

Article 34.- Handling of violations committed by persons administratively sanctioned in the domain of industrial property

If persons administratively sanctioned in the domain of industrial property commit violations while executing sanctioning decisions or other violations, they shall be handled according to the provisions of Article 122 of the Ordinance on Handling of Administrative Violations.

Chapter V
IMPLEMENTATION PROVISIONS

Article 35.- Transitional provisions

1. This Decree's provisions on handling of infringement of rights to inventions also apply to infringement of rights to utility solutions protected under the 1995 Civil Code and the Government's Decree No. 63/CP of October 24, 1996, providing in detail for industrial property, which was amended and supplemented by Decree No. 06/2001/ND-CP of February 1, 2001.
2. This Decree's provisions on handling of infringement of rights to geographical indications also apply to infringement of appellations of origin of goods protected under the 1995 Civil Code and the Government's Decree No. 63/CP of October 24, 1996, providing in detail for industrial property, which was amended and supplemented by Decree No. 06/2001/ND-CP of February 1, 2001.

Article 36.- Implementation effect

1. This Decree takes effect 15 days after its publication in "CONG BAO."
2. This Decree replaces the Government's Decree No. 12/1999/ND-CP of March 6, 1999, on sanctioning of administrative violations in the domain of industrial property.
 - a/ Violations which have been recorded in writing as administrative violations before the promulgation of this Decree shall be sanctioned according to the provisions of Decree No. 12/1999/ND-CP.
 - b/ Violations which have been recorded in writing as administrative violations after the promulgation but before the effective date of this Decree shall be sanctioned according to Decree No. 12/1999/ND-CP, if the fine levels applicable to such violations are higher than those prescribed in Decree No. 12/1999/ND-CP.
3. This Decree replaces the provisions on counterfeit goods related to trademarks, industrial designs or appellations of origin of goods at Points 2.4 and 4.1, Part III of Joint Circular No. 10/2000/TTLT-BTM-BTC-BCA-BKHCNMT of April 27, 2000, of the Ministry of Trade, the Ministry of Finance, the Ministry of Public Security and the Ministry of Science and Technology, guiding the implementation of the Prime Minister's Directive No. 31/1999/CT-TTg of October 27, 1999, on the fight against production of, and trading in, counterfeit goods.

Article 37.- Responsibilities for implementation

1. The Minister of Science and Technology, the Minister of Trade, the Minister of Public Security and the Minister of Finance shall, within the ambit of their management functions, detail, guide, organize and inspect the implementation of this Decree.
2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and presidents of provincial/municipal People's Committees shall implement this Decree.

On behalf of the Government
Prime Minister
NGUYEN TAN DUNG
