



DESIGNS FILING REQUIREMENTS

VIETNAM



JULY 2015



RECEIPT OF THE APPLICATION

The application for registration of a design must be filed using the prescribed form. The filing language is Vietnamese.

The application must be filed with the National Office of Industrial Property (NOIP) Vietnam or at any of its receiving offices.

IP representation is required if the applicant does not have local presence in Vietnam. The power of attorney must be submitted to the Office. If the document is in a foreign language, a translation in Vietnamese must be submitted together with the original power of attorney.

CONDITIONS FOR PROTECTION

An industrial design shall be protected if it satisfies the following conditions:

1. It is new;
2. It is creative;
3. It is susceptible of industrial application.

An industrial design shall be considered creative if, based on industrial designs already publicly disclosed through use or by means of written descriptions or in any other form, inside or outside the country, before the filing date or the priority date, as applicable, of the industrial design registration application, it cannot be easily created by a person with average knowledge in the art.

An industrial design shall be considered susceptible of industrial application if it can be used as a model for mass manufacture of products with appearance embodying such industrial design by industrial or handicraft methods.

FILING REQUIREMENTS

1. Documents identifying an industrial design claimed for protection in an industrial design application shall contain a specification and a set of photos or drawings of industrial design. The specification includes a description of industrial design and a claim of scope of protection.

2. The description of industrial design shall fulfill the following conditions:

- (a) It fully discloses features that express the nature of the industrial design and specify features that are new, different from the least different known industrial design, and be consistent with the photos or drawings;
- (b) Where the industrial design registration application consists of variants, the description shall fully specify these variants and clearly define distinctions between the principal variant and the other variants;
- (c) Where the industrial design in the application is of a set of articles, the description shall fully specify features of each article of the set.



3. The scope of protection of industrial design shall specify features claimed for protection, including features that are new, different from similar known industrial designs.

4. The set of photos, drawings shall fully specify features of the industrial design.

FILING DATE

The filing date shall be the date on which the application is received by the NOIP or the filing in a foreign country in case there is a priority claim.

STATEMENT OF NOVELTY

An industrial design shall be considered new if it significantly differs from other industrial designs that are already publicly disclosed through use or by means of written descriptions or in any other form, inside or outside the country, prior to the filing date or the priority date, as applicable, of the industrial design application.

Two industrial designs shall not be considered significantly different from each other if they are only different in appearance features which are not easily noticeable and which cannot be used to distinguish these industrial designs as whole.

An industrial design shall not be considered as having been publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret.

An industrial design shall not be considered having lost its novelty if it is published in the following cases, provided that the industrial design application is filed within 6 months from the date of publication:

- (a) It was disclosed by another person without permission of the person having the right to apply for its registration;
- (b) It was published in the form of a scientific report by the person having the right to apply for its registration;
- (c) It was exhibited at a national exhibition of Vietnam or at an official or officially recognized exhibition by the person having the right to apply for its registration.

PRIORITY

1. An applicant for registration of an industrial design may claim priority on the basis of the first application for registration of the same subject matter if the following conditions are fully satisfied:

- (a) The first application was filed in a country that is a contracting party to a treaty containing provisions on priority right to which the Socialist Republic of Vietnam is also a contracting party, or in a country having agreed with Vietnam to apply such provisions;
- (b) The applicant is a citizen of Vietnam or of a country identified in the preceding paragraph, who resides or has a production or business establishment in Vietnam or in the foreign country in the preceding paragraph;



(c) The claim for the priority right is clearly stated in the application and a copy of the first application certified by the office, where the first application was filed, is enclosed;

(d) The application is filed within the time limit provided for in a treaty to which Vietnam is contracting party.

2. In an industrial design, the applicant may claim the priority right on the basis of different earlier filed applications, provided that the corresponding contents of such earlier applications and the application are indicated.

3. An industrial property registration application enjoying priority right shall bear the priority date, which is the filing date of the first application.

WHAT IS NOT REGISTRABLE

The following subject matters shall not be protected as industrial designs:

1. Appearance of a product, which is dictated by the technical features of the product;
2. Appearance of a civil or an industrial construction work;
3. Shape of a product, which is invisible during the use of the product;
4. Contrary to social morality, public order or harmful to national defense or security.

EXAMINATION AND REGISTRATION

1. Industrial design applications shall be subject to formal examination for evaluating their validity.

2. The application shall be considered invalid in the following cases:

- (a) It does not fulfil the formal requirements;
- (b) The subject matter stated in the application is ineligible for protection;
- (c) The applicant does not have the registration right, including where the registration right belongs to more than one organization or individual but one or several of them do not agree with the filing;
- (d) It is filed in contravention of regulations on the filing mode provided for;
- (e) The applicant fails to pay fees and charges.

3. Industrial design applications that are accepted as formally valid shall be subject to substantive examination for the evaluation of the fulfilment of protection conditions of the subject matter stated in the applications and to determine the scope of protection.



INVALIDATION

Organizations and individuals may request the NOIP to invalidate protection titles in the following cases, and subject to the payment of fees and charges:

- (a) The applicant has no right or has not been assigned the right to register an industrial design;
- (b) The subject matter of industrial property fails to satisfy the protection conditions at the time the protection title is granted.

The time period for making request for invalidation of the protection title of an industrial design shall be its whole term of protection.

OPPOSITION

As from the date an industrial design application is published the Industrial Property Official Gazette until prior to the date of decision on the grant of a protection title, any third party shall have the right to present opinions to the NOIP in relation to the grant or refusal of a protection title in respect of the application. Such opinions must be given in written form and be accompanied by materials as proof or must specify the source of information used as proof.

TERM OF PROTECTION

An industrial design shall have a validity starting from the grant date and shall expire at the end of five (5) years after the filing date. It may be renewed for two consecutive terms of five (5) years each.

CONTACT

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