

CIRCULAR

**Guiding the grant and withdrawal of industrial property assessor cards and certificates
for industrial property assessment organizations**

Pursuant to the Decree No. 54/2003/ND-CP dated 19 May 2003 by the Government stipulating functions, tasks, competence and organizational structure of the Ministry of Science and Technology and the Decree No. 28/2004/ND-CP dated 16 January 2004 by the Government supplementing and amending a number of articles of the Decree No. 54/2003/ND-CP;

Pursuant to the Decree No. 105/2006/ND-CP dated 22 September 2006 by the Government providing details and guiding implementation of several articles in the Intellectual Property Law on protection of intellectual property rights and state management on intellectual property;

The Ministry of Science and Technology provides guidance on granting and withdrawing industrial property assessor cards and industrial property assessment organization certificates (hereafter referred to as "industrial property assessment organizations") as follows:

I. CONDITIONS AND FORMS OF INDUSTRIAL PROPERTY ASSESSMENT PRACTICES

1. Subjects of industrial property assessment

Industrial property assessment stipulated at Item 2.b, Article 39 of the Decree No. 105/2006/ND-CP consists of the following:

- 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. Conditions for granting industrial property assessor cards

The conditions for granting industrial property assessor cards (hereafter referred to as "assessor cards") as stipulated at Article 44.3 of the Decree No. 105/2006/ND-CP can be interpreted as follows:

a) Being a university graduate in the assessment subject can be interpreted 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.

b) Having virtuous characters can be interpreted as a person having not been subject to any administrative violations for violating industrial property rights or professional ethics nor accused of criminal liability nor suspected guilty.

c) Being qualified in industrial property field can be interpreted as a person granted with eligibility certificate for industrial property assessment as stipulated at II.6.c of this Circular.

3. Operational conditions for industrial property assessment organizations

Science and technology organizations and businesses are eligible for industrial property assessment practices if they fully meet requirements as stipulated at Item 2 and 3, Article 42 of the Decree No. 105/2006/ND-CP, in which "Business license for industrial property assessment operation under current law" is the Qualified certificate for industrial property assessment granted under Item IV.3 of this Circular (hereafter referred to as "certificate for assessment organizations").

4. Forms of industrial property assessment practices

Individuals granted with assessor cards shall choose only one of the two practical forms stipulated in Article 44.1 of the Decree No. 105/2006/ND-CP. If an individual chooses the form of industrial property assessment organization, he/she must be acknowledged in the list of assessors of that organization under the procedures of granting certificate for assessment organizations and the practical form shall be acknowledged in the list of industrial property assessors described at Item III.6 of this Circular.

II. PROFESSIONAL EXAMINATION ON INDUSTRIAL PROPERTY ASSESSMENT

1. Contents and persons exempted from the examination for industrial property assessment

a) Contents of examination for industrial property assessment as stipulated in Article 44.3.d of the Decree No. 105/2006/ND-CP include subjects on industrial property law and other subjects on industrial property assessment.

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

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

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

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

2. Professional Examination Council for industrial property assessment

a) Upon the request of the National Office of Intellectual Property (NOIP), the Minister of Science and Technology will issues a decision on establishment of a Professional Examination Council for industrial property assessment (hereafter referred to as "the Examination Council"). Chairman of the Examination Council shall be the Director General of NOIP, members of the Examination Council should be experienced and prestigious in the field of industrial property.

b) The Examination Council shall be responsible for preparing tests (including answer keys and grades), organizing examinations and evaluating the results as stipulated at Items II.3, 5 and 6 of this Circular.

c) The Examination Council shall have rights to use NOIP stamp to serve the examination of industrial property assessment.

d) NOIP shall provide supports to the Examination Council and bear responsibilities as stipulated at Items II.3 and 5 of this Circular and other responsibilities under assignments of the Chairman of the Examination Council.

3. Organization of the examination

a) NOIP shall publicize all information related to the examination on its website and a central daily newspaper on 3 consecutive editions, notifying conditions for participating the examination, procedures for examination registration, subjects for examination, time and venue of examination.

b) The examination shall take place within three months since the date when registration dossiers of at least five applicants are accepted according to Item II.5a of this Circular.

c) The test shall be randomly selected from the test bank systems by the Chairman of the Examination Council as mentioned at Item II.2b of this Circular.

4. Registration dossier

Registration dossiers shall consist of following documents:

a) Registration form as attached in the Annex I of this Circular;

b) A copy (with public notary) of the undergraduate or graduate degrees;

c) Confirmation of working duration by applicant's employer if he/she requests exemption for subjects as mentioned at Item II.1b,c of this Circular;

d) 02 pictures of 3 x 4 cm;

e) Receipts of fees and charges.

5. Competence, procedures for checking registration dossiers

NOIP is the receiving office of registration dossiers. Within 15 days as of the receiving date, NOIP shall be responsible for checking registration dossiers in compliance with the following provisions:

a) If the dossier is sufficient as provided at Item II.4 of this Circular and the applicant fulfills requirements to take the examination, the NOIP's Director General shall deliver a notification on acceptance of the dossier which clarifies whether Examination schedule is fixed or cannot be fixed due to inadequate number of examinees as regulated at Item II.3b of this Circular.

b) If the dossier is insufficient or the applicant does not fulfill requirements to take the examination, the NOIP's Director General shall deliver a notification on temporary refusal of the dossier which clarifies reasons and sets a one month time limit for the applicant to make supplements or objections. If the deadline is over and neither does the applicant make any amendments or objections nor are the amendments or objections satisfactory, the NOIP's Director General shall deliver an official notification on refusal of the dossier indicating clear reasons for refusal.

6. Evaluation of the test

a) The test shall be marked basing on answer keys and grades of the subject. The results shall be checked and approved by the Chairman of the Examination Council.

b) Those obtaining the mark of average upwards or being exempted from taking the test of any subject shall be considered as being qualified at that subject.

c) Within two months since the Examination date, the Chairman of the Examination Council shall inform test results to examinees and grant certificates for industrial property assessment to qualified people as mentioned in the Annex V of this Circular).

The certificates include information of the assessment subject corresponding to exam subjects and shall be valid (to make a request for granting assessor cards) in one year since the date of issuance.

d) Within 15 days since the announcement of test results, the examinees have rights to request the Examination Council to re-check the test with fees payment under the said provisions. Re-checking shall be carried out according to marking principles.

III. COMPETENCE, PROCEDURES FOR THE GRANT AND WITHDRAWAL OF ASSESSOR CARDS

1. Competence for the grant, re-grant, and withdrawal of assessor cards; making and publishing the list of industrial property assessors

The NOIP's Director General shall be competent to grant, re-grant, withdraw assessor cards, to make and publish the list of industrial property assessors under Item III.3, 4, 5 and 6 of this Circular.

NOIP shall receive and examine applications requesting for the grant, re-grant, withdrawal of assessor cards in accordance with Item III.2, 3 and 4 of this Circular.

2. Applications for granting assessor cards

Dossiers applied for assessor cards consist of the following documents:

- a) A declaration form as attached in the Annex II of this Circular;
- b) The original or copy of qualified certificate for industrial property assessment issued by the Chairman of the Examination Council as stipulated in Item II.6.c of this Circular;
- c) A copy of identification card (ID);
- d) 02 photos of 3x4 cm size;
- e) Receipts of paid fees and charges.

3. Procedures for granting assessor cards

Within one month as of the receiving date, NOIP shall examine dossiers in accordance with the following provisions:

a) If a dossier satisfies provisions under Item III.2 of this Circular and the applicant fulfills requirements under Item I.2 of this Circular, the NOIP's Director General shall grant the assessor card in which full name, permanent home address, ID number and assessment subject of the assessor shall be specified.

b) If the dossier is insufficient and the applicant does not fulfill requirements under Item I.2 of this Circular, the NOIP's Director General shall issue a temporary refusal of the application indicating reasons for refusal and set a one month time limit for the applicant to make amendments or objections.

If the time limit is over and neither does the applicant make any amendments or objections nor are the amendments or objections satisfactory, the NOIP's Director General shall issue a decision on refusal of the application in which reasons for refusal shall be specified.

c) The assessor card shall be made according to the form attached in Annex IV of this Circular.

4. Re-granting of assessor cards

a) Upon request of the assessor, the NOIP's Director General shall decide to re-grant assessor's card in case it was lost, mistaken or too defected (torn-out, contaminated or faded) to be used; or the information in the card is changed under Item III.3a of this Circular.

b) The assessor has rights to request NOIP to re-grant a new assessor card in which changes mentioned in the (a) are acknowledged.

c) Provisions under Item III.2 and 3 shall be applied for re-granting assessor card; the time for examination shall be within 15 days as of the date in which NOIP receives the dossier.

d) If the defect of the assessor card is caused by NOIP, it shall be responsible for re-granting the card free of charge within five days after receiving the request.

5. Withdrawal of assessor cards

The NOIP's Director General shall issue a decision on the withdrawal of assessor card in the following cases:

a) There is evidence showing that the assessor card is granted illegally;

b) The owner of the assessor card no longer complies with regulations provided in Article 44.3 of the Decree No. 105/2006/ND-CP and Item I.2 of this Circular;

c) The owner of the assessor card is deprived of the right to use the Card in an indefinite time by a competent agency as stipulated in Article 8.2 of the Decree No. 106/2006/ND-CP dated 22 September 2006 by the Government on settlement of administrative violations on industrial property;

d) The owner of the assessor card stops carrying out assessment operation.

6. Making and publishing the List of industrial property assessors, notification on change of information in assessor's cards

a) NOIP shall make a List of industrial property assessors; acknowledge, eliminate names of assessors from the List of industrial property assessors according to decisions on the grant, re-grant, withdrawal of assessor card; acknowledge the performance of assessors complying with the List of industrial property assessment organizations under Item IV.6 of this Circular. The List of industrial property assessors and the List of industrial property organizations shall be published in the Industrial Property Gazette and on the website of NOIP.

b) NOIP shall notify to provincial Departments of Science and Technology on changes relating to assessor card of assessors operating at local industrial property assessment organizations to serve the grant, re-grant and withdrawal of Certificate of assessment organizations at local level.

IV. COMPETENCE, PROCEDURES FOR THE GRANT AND WITHDRAWAL OF CERTIFICATE FOR ASSESSMENT ORGANIZATIONS

1. Competence for the grant, re-grant, withdrawal of Certificate for assessment organizations, making and publishing the List of industrial property assessment organizations

a) The NOIP's Director General shall be competent to grant, re-grant, withdraw Certificate of assessment organizations, to make and publish the List of industrial property assessment organizations as stipulated in Item IV.3, 4, 5 and 6 of this Circular for organizations registering for scientific and technological operation at the Ministry of Science and Technology.

b) Director Generals of Science and Technology Departments shall be competent to grant, re-grant, withdraw Certificate for assessment organizations, to make and publish the List of industrial property assessment organizations as stipulated in Item IV.3, 4, 5 and 6 of this Circular

for organizations registering for scientific and technological operation at the Ministry of Science and Technology.

c) NOIP and 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.

2. Applications for Certificates for assessment organizations

Applications for Certificate for assessment organizations shall consist of the following documents:

a) An application form requesting for the Certificate for assessment organizations as attached in the Annex III of this Circular;

b) A copy (with public notary) of Registration for scientific and technological operation stipulated in Article 42.3.b of Decree No. 105/2006/ND-CP;

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

d) Receipts of paid fees and charges.

3. Procedures for granting Certificates for assessment organizations

Within one month as of the receiving date, the NOP and Departments of Science and Technology shall examine applications under the following provisions:

a) If dossiers satisfy provisions under Item IV.2 of this Circular or the organizations fulfill requirements under Item I.3 of this Circular, the NOIP's Director General and the Director Generals of Science and Technology Departments shall grant Certificates for assessment organizations, in which name, address of the organization, assessment subjects corresponding to its assessor's fields and the list of industrial property assessors being members of the organization shall be specified.

b) If applications are insufficient or organizations do not fulfill requirements under Item I.3 of this Circular, the NOIP's Director General, the Director Generals of Science and Technology Departments shall issue a temporary refusal of the applications, in which reasons for refusal shall be clarified and a deadline of one month since the issuance of the notification shall be set for applicants to make amendments to their dossiers or objections against the refusal. In case, the deadline is over and neither does the organization make any amendments or objections nor are the amendments or objections satisfactory, the NOIP's Director General, the Director Generals of Science and Technology Departments shall issue a decision to refuse granting Certificates to assessment organizations, in which reasons for refusal shall be specified.

c) Certificates for assessment organizations shall be made according to the sample form attached in the Annex IV of this Circular.

4. Re-granting Certificate for assessment organizations

a) Upon request of assessment organizations, the NOIP's Director General, the Director Generals of Science and Technology Departments shall issue decisions on re-granting Certificates for assessment organizations in case Certificates were lost, mistaken or too defected (torn-out, contaminated or faded) to be used; or the information contained in Certificates are changed under Item IV.3a of this Circular.

b) Assessment organizations are supposed to request NOIP for new Certificates in which changes mentioned in item a above are acknowledged.

c) Provisions under Item IV.2 and 3 of this Circular shall be applied for re-granting Certificates for assessment organizations; examination of dossiers shall be within 15 days since NOIP, the Departments of Science and Technology receives applications.

d) If the defect of Certificates for assessment organizations is caused by NOIP or the Departments of Science and Technology, the granting authority shall be responsible for re-granting Certificate free of charge within five days after being requested by the assessment organization.

5. Withdrawal of Certificates for assessment organizations

The NOIP's Director General, the Director Generals of Science and Technology Departments shall issue a decision on withdrawal of Certificate in the following cases:

- a) There is evidence showing that Certificates are granted illegally;
- b) Organizations no longer comply with regulations provided in Item 1.3 of this Circular;
- c) Organizations stop carrying out assessment operation.

6. Making and publishing the List of industrial property assessment organizations, notifying changes concerning Certificate for assessment Organizations

a) NOIP shall make a List of industrial property assessing organizations, acknowledge, eliminate names of assessment organizations from the List of industrial property assessment organizations according to decisions on the grant, re-grant, withdrawal of Certificate for assessment organizations; and publish the List in the industrial property Gazette and on the website of NOIP.

b) The Departments of Science and Technology shall notify NOIP on the grant, re-grant, withdrawal of Certificate for assessment organizations to serve the establishment of the List of industrial property assessing organizations as stipulated in (a) of this article.

V. IMPLEMENTATION

1. Appeal and denouncement

Appeals, settlement of appeals; denouncement, settlement of denouncement for infringing acts concerning procedures for the grant, re-grant, withdrawal of assessor cards and Certificates for assessment organizations shall be implemented under the appeal law.

2. Fees and charges

Collecting, paying, managing and using fees and charges for assessment examination, examination of dossiers, granting, re-granting Assessor's Cards and Certificates for assessment organizations as stipulated in this Circular shall be temporarily applied under the provisions corresponding to industrial property services in Circular No. 132/2004/TT-BTC dated 30 December 2004 by the Ministry of Finance on guiding the collecting, receiving, managing and using industrial property fees and charges until stated otherwise.

3. Validity

This Circular comes into effect 15 days after its publication in "CONG BAO". Any problem arising in the implementation process should be reported to the Ministry of Science and Technology for solutions. /.

**FOR THE MINISTER
VICE-MINISTER**

(signed)

Nguyen Quan
