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# Legal News

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## INTELLECTUAL PROPERTY LAW

### 1. 2020 overview on IP filing and prosecution at the Intellectual Property Office of Vietnam

Generally, in 2020, the Intellectual Property Office of Vietnam (IP Vietnam) received a 1.7% increase in the total number of applications for registration of industrial property rights, compared with 2019. Also, the number of examined applications increased by 8.3% while the number of protection titles granted rose by 15.6% in comparison with 2019.

Details are as follows:

#### 1. Patent

In 2020, 8,368 applications for inventions/utility solutions were filed with the IP Vietnam, increasing by 3.1% compared to 2019. Noticeably, the total number of invention/utility solution applications in the name of foreign applicants slightly decreased by 2% whereas those filed by Vietnamese applicants went up by 35% in comparison with 2019 (specifically, from 1,115 in 2019 to 1,505 in 2020). This is a positive sign showing that the IP awareness of local applicants has grown extensively as a result of effective government policies and advanced technology over the years.

Regarding the prosecution, 7,842 applications were accepted after formality examination, increasing 7.15% compared with 2019. On the same note, the number of examined applications with final decision (refusal or grant) were 7,155 (a 16.1% rise compared to 2019). Outstandingly, in 2020, the number of patents granted for inventions and utility solutions also increased by 57.3% compared to 2019.

#### 2. Trademark

In comparison with 2019, a 1.6% increase in number of trademark applications were filed with the IP Vietnam in 2020 through national route and international route through the Madrid system.

With regard to the prosecution, the quantity of examined applications with final decision (refusal or grant) rose by 9.7%, and the number of trademark certificates issued by the IP Vietnam also increased by 16.2% compared to 2019.

### 3. Industrial design

In 2020, 3,213 industrial design applications were filed with the IP Vietnam through national route, showing a slightly drop by 8% in comparison with 2019.

2020 is the first year the Hague Agreement concerning the international registration of industrial designs entered into force in Vietnam. In this first year, in sum, the IP Vietnam received 174 international design applications consisting of 328 designs designating Vietnam through the Hague system.

Regarding the prosecution, 3,270 applications were accepted after formality examination, showing a 4.8% increase compared with 2019. Also, the number of examined applications with final decision (refusal or grant) were 2,869 (a 2.8% rise in comparison with 2019).

### 4. Geographical indication

In 2020, the IP Vietnam received 22 applications and issued 21 registration certificates for geographical indications (GI), which is considered the highest yearly number so far. As same as previous years, the products that were granted GI certificates in 2020 are mainly agricultural products including fresh fruit, seafood, spice, fresh animal and rice.

Hence, by the end of 2020, 94 GIs consisting of 88 domestic GIs and 6 foreign GIs have been granted certificates by the IP Vietnam, plus 169 European GIs being recognized and protected in Vietnam under the European Union-Vietnam Free Trade Agreement (“EVFTA”) since 1 August 2020.

## 2. Proposed revisions to Vietnam IP Law

The Intellectual Property Law of Vietnam (IP Law) was first enacted in 2005. Thenceforth, the IP Law has been amended and supplemented twice in 2009 and 2019. This is the third time the IP Law will be reformed for the purpose of complying with Vietnam’s recently signed international agreements, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTTP”), the Hague Agreement concerning the international registration of industrial designs, the EVFTA and the Regional Comprehensive Economic Partnership (“RCEP”), as well as improving the shortcomings of the current IP regulations after more than 15 years in implementation. The proposed revisions to Vietnam IP Law (including 80 amended and supplemented articles) have been made and published for public comments at the time being.

The proposed revisions are expected to be submitted to the National Assembly for approval in 2021, and the amended IP Law would come into effect in 2022.

Hereunder are main proposed amendments to Vietnam IP Law:

**1. Patent**

a) Consideration of secret prior art of other applicant(s) in novelty examination

According to the current Vietnamese provision in relation to novelty (Vietnam IP Law, Art.60), all secret prior art, which can be defined as earlier filed but unpublished patent applications, are not taken into account in the novelty examination. This provision has shown some shortcomings in the implementation.

Under the proposed revisions, it is required that the secret prior art of other applicant(s) would be considered during the examination of novelty of invention, while those of the same applicant would not be taken into account as before.

b) Clearer first filing requirements (security control over invention before filing abroad)

According to the current Vietnamese provision in relation to first filing requirements (Decree No. 122/2010/ND-CP, Art. 23b.2), an invention of a Vietnamese organization/individual and an invention made in Vietnam must be first filed in Vietnam and then the foreign filing can be made after the expiration of six months from the filing date in Vietnam. Such a provision is somewhat vague and could be interpreted in some different ways, but there is no further official guidance on the interpretation of this point. Further, at present, there is no mechanism available in Vietnam to obtain foreign filing license or security examination from the Vietnamese competent authorities in order to file the invention abroad prior to filing in Vietnam.

The revisions provide a clearer provision on this matter. That is, the inventions governed by the security control provision might be limited to those having significant impact on the national security and defence only, which are owned by Vietnamese entity(ies) and made in Vietnam, and there might be a mechanism for obtaining permission of the Vietnamese competent authorities for first filing of those inventions abroad.

c) Clearer and additional grounds for refusal of patent application

The current Vietnamese provision in relation to refusal of patent applications (Vietnam IP Law, Art. 117) only provides that a patent application is refused to grant if (i) *the invention does not fully satisfy the protection conditions*, (ii) *it is not the application having the earliest filing date/priority date*, or (iii) *there are more than one patent applications satisfying the protection conditions and having the same priority date/earliest filing date, but the applicants fail to reach the consensus in keeping only one application*. Such a provision is considered not sufficiently clear and adequate to cover all possible cases of refusal during the examination of the patent application.

According to the proposed revisions to the Vietnam IP Law, apart from the existing grounds as stated above, clearer and additional grounds for the refusal of patent application are further provided as follows:

- The amendment to the patent application expands the scope of the subject matters disclosed in the application, or changes the nature of the subject matters claimed in the application;
- The amended invention goes beyond the contents disclosed in the original description;
- The invention is not sufficiently disclosed in the description for an ordinary person in the art to implement the invention;
- The patent application concerning gene source or traditional knowledge thereof does not disclose or inexactly discloses the origin of gene source or traditional knowledge thereof;
- The patent application is filed in contravention to the provision on security control over invention.

d) *Clearer and additional grounds for invalidation of granted patent*

The current Vietnamese provision in relation to invalidation of granted patents (Vietnam IP Law, Art. 96) only provides that a granted patent is invalidated if (i) *the applicant has not or has not been assigned the right to file the application*; and (ii) *the subject matters failed to satisfy the protection conditions at the time the patent was granted*. Such a provision is considered not sufficiently clear and adequate to cover all possible cases that may arise during the invalidation proceedings.

According to the proposed revisions to the Vietnam IP Law, apart from the existing grounds as stated above, clearer and additional grounds for the invalidation of granted patent are further provided as follows:

- The amendment to the patent application expands the scope of the subject matters disclosed in the application, or changes the nature of the subject matters claimed in the application;
- The granted invention goes beyond the contents disclosed in the original description;
- The invention is not sufficiently disclosed in the description for an ordinary person in the art to implement the invention;
- The patent application concerning gene source or traditional knowledge thereof does not disclose or inexactly discloses the origin of gene source or traditional knowledge thereof;
- The patent application is filed in contravention to the provision on security control over invention.

e) *Mechanism to compensate the patent owner for unreasonable delay in marketing approval process*

Prior to the EVFTA, Vietnam did not have any mechanism to compensate the patent owner for the reduction in the effective patent life due to unreasonable delays by Vietnamese competent authorities. After the EVFTA took effect on 01 August 2020, in order to comply with the commitment under EVFTA (Art. 12.40), the Vietnamese National Assembly stipulates in Resolution No. 102/2020/QH14 (Annex 3, Item 3) a temporary mechanism of deduction of maintenance fee to compensate the patent owner for the reduction in the effective patent life resulting from unreasonable delays in the granting of marketing authorization. Such a mechanism has been applied in Vietnam as from 01 August 2020 until Vietnam IP Law is amended.

Given the above, the proposed revisions to the Vietnam IP Law adds a new provision (Art. 131a) in relation to the above compensation matter. Accordingly, apart from the mechanism of maintenance fee deduction as currently applied, the compensation may alternatively be in the form of patent term extension.

## 2. Design

### *Deferment of publication of design applications*

Under the current IP regulations, it is not allowed to defer the publication of design applications in Vietnam. According to the proposed revisions to the Vietnam IP Law, the deferment of the publication of an industrial design application may be available at the request of the applicant but not more than seven months from the filing date.

### 3. Trademark

#### a) Registration of sound mark

In compliance with the CPTPP requirements (Art. 18.18), the proposed revisions to the Vietnam IP Law additionally include sound mark as an eligible sign for trademark protection.

#### b) Bad faith as a new ground for trademark invalidation

According to the proposed revisions to the Vietnam IP Law, bad faith would be for the first time officially considered a ground for invalidation of a registered trademark.

#### c) Reduction of citation period for an expired trademark

Under the current IP regulations, an earlier expired trademark is used as a citation against later filed trademarks within 5 years from its expiry date. According to the proposed revisions to the Vietnam IP Law, such a citation period would be reduced from 5 years to 3 years.

### 4. Copyrights/Related rights

The proposed revisions to the Vietnam IP Law introduce a new definition of “author”, “technology measures for rights protection” and “rights management information” and suggest a definition of the term “royalty” to end the inconsistency of use of various words in the current law.

At the same time the definition of “reproduction” will be revised for enhancing the efficiency.

Furthermore, the proposed revisions introduce more thorough provisions on authors, copyrights owners, performers, and related rights holders in comparison to the current law. Among the articles, noticeably, the proposed revisions amend Article 25 and 26 on use of published works without obtaining permission and paying royalties, and on use of published works without obtaining permission but with payment of royalties, respectively, and Article 28 and 35 on acts of copyright infringement and related rights infringement, respectively.

### 5. Geographical Indications

Under the current IP regulations, the owner of Vietnam’s GIs is the State. Specifically, the right to register GIs of Vietnam belongs to the State. The State

allows organizations and individuals producing the product bearing the GI, collective organizations representing such organizations and individuals or the administrative authorities of the locality to which the GI pertains to exercise the right to register such GI. The person who exercises the right to register a GI shall not become the owner of such GI.

However, the proposed revisions to the Vietnam IP Law state that GIs will belong to the community. This may be the good sign to boost the participation of manufacturers, businesses, associations of manufacturers and traders in the process of developing GIs in specific and outspread the potential expansion of agricultural products in both quantity and quality in general./.

**Other Sectors:****Finance - Banking**

- Consolidated Document No. 02/VBHN-BTC dated 15 March 2021 of the Ministry of Finance, combining the Circulars providing the framework of remuneration for property auction services in accordance with the Law on Property Auction.
- Circular No. 02/2021/TT-NHNN dated 31 March 2021 of the State Bank of Vietnam, providing guidelines for foreign currency transactions on the foreign currency market of credit institutions licensed to conduct foreign exchange activities.
- Circular No. 01/2021/TT-NHNN dated 31 March 2021 of the State Bank of Vietnam, regulating the domestic issuance of promissory notes, bills, certificates of deposit, and bonds of credit institutions and foreign banks' branches.

**Insurance**

- Decree No. 43/2021/ND-CP dated 31 March 2021, providing for the National Database on Insurance.
- Decision No. 355 / QD-BTC dated 24 March 2021 of the Ministry of Finance, publishing the list of periodic reports in the insurance business field under the management of the Ministry of Finance.
- Decision No. 275/QD-BTC dated 9 March 2021 of the Ministry of Finance, publishing the list of periodical reporting regime in the insurance field under the State management of the Ministry of Finance.

**Taxation**

- Decree No. 44/2021/ND-CP dated 31 March 2021, providing guidelines for implementation of deductible expenses when determining taxable income of corporate income tax regarding enterprises and organizations' expenditures for supporting and sponsoring the COVID-19 pandemic prevention and control activities.
- Decree No. 18/2021/ND-CP dated 11 March 2021, on amendments to Decree No.134/2016/ND-CP, providing guidelines for the Law on Import Tax and Export Tax.
- Decision No. 15/2021/QD-TTg dated 30 March 2021 of the Prime Minister,

amending Article 3.1 of Decision No. 41/2018/QD-TTg, specifying the functions, tasks, powers and organizational structure of the General Department of Taxation directly under the Ministry of Finance;

- Decision No. 14/2021/QD-TTg dated 26 March 2021 of the Prime Minister, amending Decision No. 53/2013/QD-TTg, on temporary import, re-export, destruction and transfer of automobiles and motorbikes of the subjects enjoying privileges and immunities in Vietnam.
- Circular No. 19/2021/TT-BTC dated 18 March 2021 of the Ministry of Finance, providing guidelines for electronic transactions in the tax field.

### **Trade**

- Resolution No. 31/NQ-CP dated 12 March 2021 of the Government, approving the Free Trade Agreement between Vietnam - UK and Northern Ireland;
- Decision No. 804/QD-HDDG dated 8 March 2021 of the Used Automobile Import Tariff Quota Auction Council, on the Regulation on auction of tariff quota for import of used automobile for the year 2021 as committed in the CPTPP Agreement.
- Decision No. 376/QD-TCHQ dated 3 March 2021 of the General Department of Customs, on professional manual on sanctioning administrative violations in the field of Customs.
- Decision No. 07/2021/QD-TTg dated 2 March 2021 of the Prime Minister, amending Decision No. 38/2017/QD-TTg on the change of border gates for imported goods to My Dinh Inland Clearance Depot (ICD), Hanoi, for conducting customs procedures.
- Circular No. 01/2021/TT-BCT dated 31 March 2021 of the Ministry of Industry and Trade, amending Circular No. 30/2016/TT-BCT, providing for judicial forensic in the field of Industry and Trade.
- Circular No. 23/2021/TT-BTC dated 30 March 2021 of the Ministry of Finance, providing guidelines for printing, issuance, management and use of electronic stamps of alcohol and electronic cigarettes.

### **Labour**

- Decree No. 23/2021/ND-CP dated 19 March 2021, providing guidelines for Articles 37.3 and 39 of the Law on Employment regarding employment service

centres and employment service enterprises.

- Decision No. 17/2021/QD-TTg dated 31 March 2021 of the Prime Minister, regulating vocational training support levels for employees of unemployment insurance.
- Decision No. 449/QD-TTg dated 26 March 2021 of the Prime Minister, on establishment of the National Wage Council.

## **Health**

- Decision No. 495/QD-TTg dated 30 March 2021 of the Prime Minister, on the Regulation on organization and operation of the National Medical Council.
- Decision No. 1745 / QD-BYT dated 30 March 2021 of the Ministry of Health, on the plan to prevent common parasitic diseases in Vietnam for the period of 2021-2025.
- Decision No. 1744/QD-BYT dated 30 March 2021 of the Ministry of Health, providing guidelines for monitoring and prevention of common parasitic diseases in Vietnam.
- Decision No. 154/QD-QLD dated 25 March 2021 of the Drug Administration of Vietnam, on Standard operating procedures in the quality management system according to ISO 9001: 2015 standards to be applied to the State management activities at the Drug Administration of Vietnam.
- Decision No. 1624 / QD-BYT dated 18 March 2021 of the Ministry of Health, providing guidelines for temporary screening before vaccination against COVID-19 using AstraZeneca vaccine.
- Decision No. 1473/QD-BYT dated 8 March 2021 of the Ministry of Health, publishing amended administrative procedures in the Pharmaceutical field within the scope of management functions of the Ministry of Health as specified in Circular No. 29/2020/TT-BYT.
- Decision No. 1470/QD-BYT dated 6 March 2021 of the Ministry of Health, on the professional document "Guidelines for treatment and management of end-stage chronic kidney disease in the COVID-19 pandemic period".
- Decision No. 1464/QD-BYT dated 5 March 2021 of the Ministry of Health, providing guidelines for receipt, preservation, distribution and use of COVID-19 vaccine.
- Decision No. 1435/QD-BYT dated 4 March 2021, publishing cancelled

administrative procedures within the scope of management functions of the Ministry of Health as specified in Decree No. 155/2018/ND-CP.

- Decision No. 1429/QD-BYT dated 3 March 2021 of the Ministry of Health, on a set of indicators for management of medical information technology services' quality.
- Consolidated Document No. 7/VBHN-BYT dated 16 March 2021, combining the Circulars regulating cosmetic management issued by the Ministry of Health.
- Circular No. 03/2021/TT-BYT dated 4 March 2021 of the Ministry of Health, cancelling partly Appendix 1 attached to Circular No. 48/2018/TT-BYT on the List of medicinal plants; extracts of medicinal plants and essential oils for medicine; Traditional medicines and plant medicines, which are exported or imported and identified with commodity codes according to the List of exported or imported goods of Vietnam.

### **Education**

- Decree No. 24/2021/ND-CP dated 23 March 2021, providing for management of preschools and public general education institutions.
- Decision No. 1044/QD-BGDĐT dated 25 March 2021 of the Ministry of Education and Training, on the Regulation on receiving, processing, issuing and managing documents of the Ministry of Education and Training.
- Circular No. 09/2021/TT-BGDĐT dated 30 March 2021 of the Ministry of Education and Training, providing for management and organization of online teaching in general education institutions and regular education institutions.
- Circular No. 08/2021/TT-BGDĐT dated 18 March 2021 of the Ministry of Education and Training, on the Regulation on training at university/college level.

### **Transport**

- Resolution No. 33/NQ-CP dated 19 March 2021 of the Government, on execution of a Protocol amending the Agreement on Air Transport between and across the two territories of Vietnam and Oman.
- Consolidated Document No. 11/VBHN-BGTVT dated 30 March 2021, combining Circulars issued by the Ministry of Transport providing for issuance and use of international driving licenses.
- Decision No. 1320/QD-UBND dated 18 March 2021 of the People's Committee of

Hanoi, publishing the list of cancelled administrative procedures in the field of land roads under the jurisdiction of Department of Transport of Hanoi.

- Consolidated Document No. 07/VBHN-BGTVT dated 11 March 2021, combining Circulars regulating road motor vehicle improvement issued by the Ministry of Transport.
- Consolidated Document No. 06/VBHN-BGTVT dated 11 March 2021, combining Circulars issued by the Ministry of Transport providing guidelines for energy labelling for manufactured, assembled or imported motorcycles.
- Consolidated Document No. 05/VBHN-BGTVT dated 2 March 2021, combining the Circulars issued by the Ministry of Transport providing for marine accident reporting and investigation.
- Consolidated Document No. 04/VBHN-BGTVT dated 2 March 2021, combining the Circulars issued by the Ministry of Transport regulating the collection and treatment management of wastes from vessels in seaport waters.
- Consolidated Document No. 03/VBHN-BGTVT dated 2 March 2021, combining the Circulars issued by the Ministry of Transport providing for professional certificate of shipping agent;
- Consolidated Document No. 02/VBHN-BGTVT dated 2 March 2021, combining the Circulars issued by the Ministry of Transport providing for maintenance of marine building works.

### **Construction - Real Estate**

- Decree No. 30/2021/ND-CP dated 26 March 2021, on amendments to Decree No.99/2015/ND-CP, providing guidelines for the Law on Residential Housing.
- Decree No. 15/2021/ND-CP dated 3 March 2021, providing guidelines for some contents on management of construction investment projects.
- Decision No. 290/QD-BXD dated 26 March 2021 of the Ministry of Construction, publishing the cancellation of administrative procedures in the residential housing field within the scope of the State management functions of the Ministry of Construction.

### **Natural Resources - Environment**

- Decree No. 41/2021/ND-CP dated 30 March 2021, amending Decree No. 82/2017/ND-CP, on calculation methods and rates of charge for granting the right to exploit

water resource.

- Decision No. 1299/QD-BNN-KHCN dated 29 March 2021 of the Ministry of Agriculture and Rural Development, publishing new or cancelled administrative procedures in the field of Science, Technology and Environment within the scope of management functions of the Ministry of Agriculture and Rural Development.
- Decision No. 432/QD-TTg dated 24 March 2021 of the Prime Minister, approving the master plan on water resource basic survey up to 2030, with an orientation to 2050.
- Decision No. 12/2021/QD-TTg dated 24 March 2021 of the Prime Minister, on the Regulation on operations in response to oil spill.
- Decision No. 417/QD-BTNMT dated 10 March 2021 of the Ministry of Natural Resources and Environment, approving the Program on digital transformation of the Natural resources and environment up to 2025, with an orientation to 2030.

### **Information - Communications**

- Decision No. 16/2021/QD-TTg dated 30 March 2021 of the Prime Minister, providing for auction and transfer of the right to use telecommunications number inventory and Internet domain names.
- Decision No. 377/QD-BTTTT dated 26 March 2021 of the Ministry of Information and Communications, approving the Program to support digital transformation of small and medium-sized enterprises.
- Decision No. 315/QD-BTTTT dated 16 March 2021 of the Ministry of Information and Communications, on amendments to Decision No.1040/QD-BTTTT, publishing amended administrative procedures in the fields of Publishing, Printing and Release within the scope of management functions of the Ministry of Information and Communications.
- Decision No. 316 / QD-TTg dated 9 March 2021 of the Prime Minister, approving the pilot implementation of using telecommunications accounts to pay for goods and services of small value.
- Consolidated Document No. 01/VBHN-BTC dated 4 March 2021, combining the Circulars issued by the Ministry of Finance regulating the collection rates, collection, payment, management and use of fees for the right to provide pay television services and fees to grant a registration certificate for provision of foreign program channels on pay television.

- Circular No. 18/2021/TT-BTC dated 11 March 2021 of the Ministry of Finance, providing for the rates of collection and payment of fees for assessment and issuance of licenses for trading in civil cryptographic products and services, certificates of conformity with standards of civil cryptography products, certificates of conformity with the national technical regulations of civil cryptographic products.

### **Administration - Judiciary**

- Decree No. 37/2021/ND-CP dated 29 March 2021, on amendments to Decree No.137/2015/ND-CP, providing guidelines for the Law on Citizen's Identity.
- Decree No. 33/2021/ND-CP dated 29 March 2021, providing guidelines for the Resolution No. 131/2020/QH14 on organization of urban government in Ho Chi Minh City.
- Decree No. 16/2021/ND-CP dated 03 March 2021, regulating the collection rates, the order of and procedures for collection and payment, and management and use of the expenses for conciliation and dialogue at the Court and remuneration of Conciliator in Court.
- Decision No. 468/QD-TTg dated 27 March 2021 of the Prime Minister, approving the Project on reforming implementation of one-door, one-stop shop mechanism in handling administrative procedures.
- Circular No. 02/2021/TT-TTCP dated 22 March 2021 of the Government Inspectorate, providing for reporting on inspection, reception of citizens, settlement of complaints and denunciations, and prevention of and fighting against corruption.

### **Agriculture - Forestry - Fishery**

- Decree No. 45/2021/ND-CP dated 31 March 2021, on establishment, organization and operations of the Cooperative Development Assistance Fund.
- Decree No. 27/2021/ND-CP dated 25 March 2021, on management of forest plant varieties.
- Decree No. 14/2021/ND-CP dated 1 March 2021, providing for sanctions against administrative violations in livestock production.
- Circular No. 01/2021/TT-BNNPTNT dated 18 March 2021 of the Ministry of Agriculture and Rural Development, providing for development of national

standards; formulation and promulgation of national technical regulations under the management of the Ministry of Agriculture and Rural Development.

### **Investment**

- Decree No. 31/2021/ND-CP dated 26 March 2021, providing guidelines for the Law on Investment.
- Decree No. 29/2021/ND-CP dated 26 March 2021, regulating order and procedures for assessment and appraisal of national important projects and investment supervision and evaluation.
- Decree No. 28/2021/ND-CP dated 26 March 2021, regulating financial management mechanism for investment projects under the public-private partnership mode.
- Circular No. 01/2021/TT-BKHDT dated 16 March 2021 of the Ministry of Planning and Investment, providing guidelines for enterprise registration.

### **Miscellaneous**

- Decision No. 10/2021/QD-TTg dated 16 March 2021 of the Prime Minister, on criteria for determination of high-tech enterprises.
- Decision No. 820/QD-BVHTTDL dated 9 March 2021 of the Ministry of Culture, Sports and Tourism, publishing amended administrative procedures in the field of culture within the scope of management functions of the Ministry of Culture, Sports and Tourism.

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