

Overview

1.1 History

Although having been launched just over two decades ago, Intellectual Property (“IP”) protection is one of the fastest developing areas of law in Vietnam and IP laws have been continuously renewed and improved. Protection of industrial property was first introduced in 1981 with the promulgation of the Ordinance on Innovation and Invention in 1981 that focused on moral rights rather than ownerships of inventors/creators. From 1981 to 1989, the industrial property protection in Vietnam had administrative effects only, although a number of governmental regulations on trademarks (1982), utility solutions (1988), industrial designs (1988), licensing of industrial property (1988), and copyright (1986) were issued.

The Ordinance on the Protection of Industrial Property Rights, passed by the State Council on 28 January 1989 marked a turning point for the industrial property laws of Vietnam. The Ordinance laid the foundation for the protection of inventions, utility solutions, designs, and trademarks in the country. Following the 1989 Ordinance, the Government issued Decree 84 HDBT providing for amendments and additions to regulations on particular industrial objects issued earlier in 1990. The 1994 Ordinance on Copyrights provided a higher level of copyright protection.

Another landmark in the development of the IP regime in Vietnam was the introduction of the Civil Code, adopted by the National Assembly on 28 October 1995, which came into effect on 1 July 1996, codifying all existing legislations on civil matters and creating the legal foundation for ownership and civil rights. The Civil Code 1995 replaced all former legal regulations on IP, including the 1989 Ordinance on IP Protection and the 1994 Ordinance on Copyrights. For implementation, the Government also issued corresponding

subordinate decrees on industrial property and copyrights. Significant changes were made to the Civil Code 1995 and its implementing regulations in order to achieve compliance with the TRIPs Agreement and other international conventions to which Vietnam had acceded.

The Civil Code 2005 was passed on 14 June 2005 by the National Assembly and replaced the Civil Code 1995 as of 1 January 2006. In contrast to the twenty six industrial property right provisions discussed in the Civil Code 1995, the Civil Code 2005 contains only four general provisions on protection of industrial property and plant varieties. However, the coverage of subject matters of industrial property protection has been extended to further include layout designs of semiconductor integrated circuits, trade secrets, trade names, and geographical indications. With regards to copyrights, in addition to lowering the number of relevant provisions from thirty five down to fourteen, for the first time in the development of IP laws in Vietnam, the term "related rights" has been used to substitute for the "rights and obligations of performers, producers of phonograms and videograms and broadcasting organizations". Such related rights shall include the rights of entities and individuals over performances, phonograms, videograms, broadcasting programs, and encrypted program-carrying satellite signals.

However, as a matter of fact, prior to the advent of the new IP Law 50/2005, IP related provisions in Vietnam were scattered over 40 legal documents that were not always consistent with each other and that were not all TRIPS-WTO compliant. As part of its bid to gain accession to the WTO, Vietnam consolidated its confusing maze of partially conflicting IP rules and regulations into a streamlined version, IP Law 50/2005, that became effective as of 1 July 2006. IP Law 50/2005 has been perceived by IP owners and practitioners in Vietnam as a great advance toward adequate protection and fully compliance with the TRIPs obligations.

Subsequently, implementing decrees and regulations have been established to make detailed provisions and guidelines to implement the IP Law 50/2005.

1.2 International Conventions and Treaties

Vietnam has been a member of the Paris Convention for Protection of Industrial Property and the Madrid Agreement Concerning International Registration of Marks since 1949. The country also became a member of the Convention Establishing WIPO in 1976, and acceded to the Patent Cooperation Treaty (PCT) in 1993. Vietnam is neither a member of the Nice Agreement nor the Strasbourg Agreement, but it has adopted the International Classification of Goods and Services and the International Patent Classification thereunder. Vietnam officially became a member of the Berne Convention for the Protection of Literary and Artistic Works on 26 October 2004.

Further developments toward international integration include the country becoming an official member of the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms on 6 July 2005, joining internationally recognized collective management organizations established with respect to musical works (Vietnam became a member of CISAC – International Confederation of Societies of Authors and Composers and BIEM – The Bureau International des Sociétés Gérant les Droits d'Enregistrement et de Reproduction Mécanique, International Organization representing Mechanical Rights Societies in November 2005). Vietnam also signed the Brussels Convention relating to the distribution of encrypted program-carrying satellite signals that took effect in Vietnam on 12 January 2006. The Madrid Protocol has been effective in Vietnam since 11 July 2006.

As a member of the Association of Southeast Asia Nations (ASEAN), Vietnam ratified the ASEAN Framework Agreement on IP Cooperation in 1996. The Framework Agreement cites conformity with the TRIPs Agreement and other international conventions

as a basis for ASEAN cooperation. In June 1997, Vietnam and the United States entered into the Bilateral Agreement on Copyright Protection, providing for copyright protection of each country's citizens' works. Vietnam and Switzerland also signed a Bilateral Agreement on the Protection of IP in July 1999.

The landmark bilateral trade agreement (BTA) between Vietnam and the United States of America on trade relations was signed on 13 July 2000 in Washington, DC. Through this trade agreement, Vietnam has committed to most of the obligations covered by the WTO-TRIPS Agreement. The most important milestone in the normalization of relations with the US was Vietnam's accession to the WTO on 11 January 2007. This achievement followed an official agreement between Vietnam and the US on the terms and conditions for Vietnam's accession to the WTO, signed on 31 May 2006, and approval of Permanent Normal Trade Relations (PNTR) status for Vietnam by the US Congress on 21 December 2006. As a result of these agreements, cooperation in economic, legislative, health, education, and social welfare matters, as well as in cultural and scientific development, including cooperation in all aspects of IP protection, is expected to be further strengthened in the years to come.

1.3 Current Legislation on Intellectual Property

Listed hereunder are the major legal instruments for protection and enforcement of intellectual property rights in the country:

(i) Civil Code 2005 passed by the National Assembly on June 2005 and effective from 1 January 2006 (Part VI "Intellectual Property and Technology Transfer", Part VII "Civil Relations having foreign elements", particularly Article 774 "Copyrights having foreign elements" and Article 775 "Industrial property Rights and Plant Variety Rights having foreign elements").

(ii) Civil Procedure Code 2004 passed by the National

Assembly on June 2004 and effective from 1 January 2005 providing processes and procedures for settlement of civil affairs and enforcement of civil judgments.

(iii) Criminal Code of 1999 of the National Assembly, enacted in December 1999 (Section 131 – on copyrights, Section 156, 157, 158 – on counterfeits, Section 170, 171 – on industrial property).

(iv) Criminal Procedure Code of 2003 of the National Assembly, enacted in November 2003 and effective from 1 July 2004 providing processes and procedures for institution of legal proceedings, investigation, prosecution, and enforcement of criminal judgments.

(v) Intellectual Property Law 2005 passed by the National Assembly on 29 November 2005 and came into force on 1 July 2006 (six parts, 222 articles).

vi) Competition Law 2004 of the National Assembly, enacted in December 2004 and effective from 1 July 2005 (six chapters, 123 articles).

(vii) The Customs Law of 2001 of the National Assembly, enacted in June 2001 and effective as of 1 January 2002 amended in June 2005.

(viii) Law on Information Technology No. 67/2006 passed by the National Assembly on 29 July 2006 and came into force on 1 January 2007.

(ix) Cinematography Law passed by the National Assembly on 29 June 2006 and came into force on 1 January 2007.

(x) The Ordinance on procedures for judgment of administrative violations enacted in July 2002 and effective from 1 October 2002.

(xi) Law on Appeal and Denunciation No. 9/1998/QH10 of the National Assembly, enacted on December 1998, amended and supplemented by Law on Appeal and Denunciation No. 26/2004/QH11 of June 2004 and Law on Appeal and Denunciation No. 58/2005/QH11 of November 2005.

(xii) Decree 175/2004/ND-CP of the Government, enacted October 2004, providing the provisions on Sanctions Against Administrative Violations in Commerce.

(xiii) Decree No 100/2006/ND-CP of the Government, enacted in September 2006 and effective as of November 2006, guiding the implementation of articles of the IP Law concerning copyrights and related rights.

(xiv) Decree No 103/2006/ND-CP of the Government, enacted in September 2006 and effective as of November 2006, providing guidelines for implementing certain articles of the Intellectual Property Law concerning industrial property.

(xv) Decree No 104/2006/ND-CP of the Government, enacted in September 2006 and effective as of November 2006, guiding the implementation of articles of the IP Law concerning rights on plant varieties.

(xvi) Decree No 105/2006/ND-CP of the Government, enacted in September 2006 and effective as of November 2006, providing guidelines for the implementation of certain articles of the Law on Intellectual Property regarding Enforcement of Intellectual Property Rights and State management of intellectual property.

(xvii) Decree No 106/2006/ND-CP of the Government, enacted in September 2006 and effective as of November 2006, detailing and providing guidelines for implementing the provisions on handling of administrative violations concerning industrial property.

(xviii) Decree 101/2001/ND-CP of the Government, enacted in December 2001, providing detailed provisions for the implementation of the Customs Law.

(ixx) Decree No. 89/2006/ND-CP of the Government, enacted on 30 August 2006 providing regulations on goods labeling.

(xx) Circular 01/2007/TT-BKHCN of the Ministry of Science and Technology, establishing regulations to implement Decree 103/2006/ND-CP, promulgated on 22 September 2006, that provides guidelines for implementing certain articles of the Intellectual Property Law concerning industrial property. The Circular came into effect as of 9 May 2007.

(xxi) Circular No. 132/2004/TT-BCT of the Ministry of Finance, enacted in December 2004 and came into force on 31 January 2005, guiding the Collection, Payment, Management and

Use of Industrial Property Fees and Charges.

(xxii) Circular No. 129/2004/TTLT/BTC-BKHCN of the Ministry of Science and Technology, enacted in December 2004, guiding the implementation of border measures concerning the industrial property rights for export and import goods.

(xxiii) Joint Circular 58/2003/TTLT-BVHTT-BTC of the Ministry of Culture and Information and the Ministry of Finance, enacted in October 2003 providing guidelines on copyright protection for exportations and importations at customs offices.