

# **The Draft Law on Amending and Supplementing a number of Articles of the Law on Intellectual Property: A more transparent legal system will promote research and development activities of science and technology**

**The Draft Law on Amending and Supplementing a number of Articles of the Law on Intellectual Property: A more transparent legal system will promote research and development activities of science and technology**

*By: Bich Lan (Reporter of Vietnam National Assembly Television)*

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**Lawyer Pham Nghiem Xuan Bac – Vice President and Secretary General of Vietnam Industrial Property Association**

According to Lawyer Pham Nghiem Xuan Bac – Vice President and Secretary General of Vietnam Industrial Property Association, the amendment and supplement a number of Articles of the Law on Intellectual Property will promote research and development activities in science and technology and contribute to creating valuable intellectual property assets for organizations, individuals and businesses.

During the 8th meeting of the National Assembly Standing Committee, the National Assembly Standing Committee has provided opinions on the explanation, internalization and revision of the Draft Law on Amending and Supplementing a number of Articles of the Law on Intellectual Property and this Draft Law is scheduled to be approved by the National Assembly in the upcoming 3rd Session.

Previously, at the 2nd Session, the 15th National Assembly discussed and commented on the Draft Law on Amending and Supplementing a number of Articles of the Law on Intellectual Property with the expectation that this Law will create intense motivation for research and development activities in science and technology when Vietnam extensively joints with countries around the world.

According to Lawyer Pham Nghiem Xuan Bac – Vice President and Secretary General of Vietnam Industrial Property Association, the Law on Intellectual Property of Vietnam and other related legal documents is being amended and supplemented to internalize the international commitments of Vietnam in FTAs, especially in CPTPP and EVFTA. With such amendment and supplement, Vietnamese enterprises will certainly be benefited from a legal system which is more clear and transparent in establishing Intellectual Property rights and more effective in the enforcement of rights. Such powerful and transparent legal system will definitely promote the creation, research and development activities in the field of science and technology in Vietnam and contribute to creating valuable intellectual property assets for organizations, individuals and businesses in Vietnam.

**Reporter:** *In the upcoming 3rd Session of the 15th National Assembly, the National Assembly will continue to consider and possibly approve the Draft Law on Amending and Supplementing a number of Articles of the Law on Intellectual Property. This amendment and supplement of the Law on Intellectual Property is an urgent requirement for Vietnam's socio-economic development. In this Draft Law, what issues are you interested*

*in and why?*

**Lawyer Pham Nghiem Xuan Bac – Vice President and Secretary General of Vietnam Industrial Property Association:** In this Draft Law, I am most interested in 2 issues. The first is to overcome the limitations of the current Intellectual Property legal system. The second is to meet Vietnam's commitments in International Agreements that Vietnam has just signed, especially two new generation trade agreements, EVFTA and CPTPP.

There are some limitations of the current Intellectual Property legal system that can be mentioned: Some provisions on copyright and related rights to cinematographic works, theatrical works & computer programs, rights of performers, producers of phonograms & video recordings and broadcasting organizations are still unclear which causes difficulties in the implementation process; A number of provisions on ensuring the harmonization of interests between copyright/related rights holders, organizations/individuals who exploiting and using the rights and the interested public in limited and exceptional cases have not met the requirements on promoting the exploitation and use of copyright/related rights and being a foundation for the development of cultural industries based on copyright/related rights; Some legal provisions related to the procedure for establishing industrial property rights are not really clear and reasonable, i.e. provisions on receipt and settlement of third party opinions on applications for registration of industrial property rights, requirements for industrial design applications or scope of security control for inventions, ...; There is a lack of provisions on specific issues, namely deferment of publication of industrial design applications, settlement of appeals in the field of industrial property; Some legal provisions related to the requirements and scope of protection of industrial property objects have not yet ensured the adequacy and balance between the rights of owners and the interests of the public, such as provisions on

prior art to assess the novelty of inventions, provisions on grounds for invalidation of Patents/Utilities Patents; There is no regulation on the case of licensing the right to use an invention under a compulsory decision for export and resolving conflicts of rights between trademarks and other subjects; The provisions of examination and evaluation of famous trademarks is not clear; There is a lack of regulations on handling cases of trademarks which are filed with bad faith and trademarks that have lost their distinctiveness (i.e. a trademark becomes a common name of the respective goods/services); Regulations on acts of unfair competition related to domain names and regulations on the protection of homonymous geographical indications are unclear..

On the other hand, along with the process of international economic integration, Vietnam has negotiated and signed many FTAs – such as FTA between Vietnam and Korea (VKFTA, taking into effect from December 20, 2015), FTA between Vietnam and the Eurasian Economic Union (VN-EAEU FTA, taking into effect from October 5, 2016) and new generation FTAs – such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP, taking into effect for Vietnam from January 14, 2019), FTA between Vietnam and the European Union (EVFTA, taking into effect from August 1, 2020), FTA between Vietnam and the United Kingdom and Northern Ireland (UKVFTA, taking into effect from May 1, 2021).

Some obligations of Vietnam under these treaties must be performed right after the treaties come into effect while other commitments may be performed in the upcoming time after a transition period of 3 or 5 years. For example, Vietnam has commitments on protection of sound marks, ensuring information and time for patent holders to exercise their rights before products are allowed to market, allowing customs authorities to proactively conduct border control procedures under the CPTPP, or commitments on clarifying the principal of protection of industrial design for component parts of complex

products, compensating the patent owner for the reduction of the effective patent term due to any delay in the marketing authorization procedure under EVFTA. Therefore, it is required to amend and supplement the current Law on Intellectual Property to comply with these commitments.

***Reporter:** Promoting the role of intellectual property in encouraging creative activities, exploiting intellectual property rights and especially improving the efficiency of enforcement of intellectual property rights is very important and practical for scientists, businesses and organizations. What is your view on this issue?*

**Lawyer Pham Nghiem Xuan Bac – Vice President and Secretary General of Vietnam Industrial Property Association:** I completely agree with the mentioned statement. According to unofficial statistics in several reports of international organizations, the contribution to GDP of IP-intensive industries is 42.3% in the European Union, 38.2% in the United States, 32.1% in China and 43.1% in Korea. In Vietnam, the Intellectual Property Strategy with Visions to 2030 of the Government has clearly stated the goal of making Vietnam a leading country in the ASEAN region in terms of intellectual property development and protection and the effort to bring the contribution to GDP of cultural industries based on copyright and related rights to 7%.

In this context, with the impact of the 4.0 economy and new trends in the world, i.e. the use of artificial intelligence (AI), I opine that promoting creative activities and exploitation of intellectual property rights will create a great advantage for businesses and organizations in the competitive environment, enhance value of businesses by owning high-value intellectual property assets and at the same time, create a foundation for the long-term and sustainable development of the businesses. However, the creation and exploitation of intellectual property rights will only matter if the created intellectual property assets and intellectual

property rights are properly protected, the acts of infringement are limited and the exercise of defence rights is effective. These are the limitations of the IP legislation and practice of Vietnam and we will have to overcome in the near future.

***Reporter:** The Draft Law on Amending and Supplementing a number of Articles of the Law on Intellectual Property has mentioned the application of administrative measures in handling violations of intellectual property rights. As an intellectual property representative for industrial property rights, what are your opinions on this matter as well as on the proposed solutions to create a strong motivation for investment in research activities and industrial product innovation?*

**Lawyer Pham Nghiem Xuan Bac – Vice President and Secretary General of Vietnam Industrial Property Association:** As mentioned above, the effective exercise of rights is very important and necessary for the strong development of research and innovation activities which are the basis of the creation of intellectual property assets. In this respect, administrative measures in handling intellectual property violations are effective measures that have been applied in Vietnam in recent years in the context that Vietnamese courts do not really have enough resources to solve cases related to intellectual property that are arising more and more. Therefore, although there are opinions that it is necessary to limit the scope of administrative measures in handling intellectual property violations, I opine that these measures should be maintained as an option for the rights holders which ensures the equal rights of the subject of different intellectual property rights in accessing the measures to handle the infringement, so that in each case, the right holders can choose a measure which is most suitable to the content of the case and the request of the subject with consideration to the incurred cost and time. The maintenance of administrative measures is also not at all contrary to the

provisions of international treaties that Vietnam has recently joined.

As far as I know, the Drafting Committee of the Law on Amending and Supplementing a number of Articles of the Law on Intellectual Property has absorbed the comments and accordingly, comments on narrowing the scope of administrative measures in handling intellectual property infringement have been dropped in the most recent Draft Law.

***Reporter:** What does joining new-generation Free Trade Agreements (FTAs), especially with developed countries, bring to Vietnam in promoting the benefits of intellectual property rights enforcement? What do you expect when the enforcement of intellectual property rights is included in the Draft Law and applied to real life?*

**Lawyer Pham Nghiem Xuan Bac – Vice President and Secretary General of Vietnam Industrial Property Association:** Basically, the participation in FTAs, especially new generation FTAs, has a positive effect on Vietnam's intellectual property legal system. The Law on Intellectual Property of Vietnam and a number of relevant legal documents are being amended and supplemented to internalize Vietnam's commitments in FTAs, especially in CPTPP and EVFTA. With such amendment and supplementation, Vietnamese businesses will definitely benefit from a legal system which is more clear and transparent in establishing Intellectual Property rights and more effective in the enforcement of rights. Such powerful and transparent legal system will definitely promote the creation, research and development activities of science and technology in Vietnam and contribute to creating many valuable intellectual property assets for organizations, individuals and businesses in Vietnam. However, in order for this legal system to be effective, Vietnamese individuals, organizations and businesses also need to raise the legal awareness in general and particularly in intellectual property to meet the higher requirements of intellectual property protection under these

FTAs.

The results of the implementation of intellectual property protection have prospered recently, e.g. despite the negative effects of the epidemic, the number of submitted applications and granted certifications are maintained at a decent level. This also partly shows the positive impact of the FTAs, besides the increased awareness and need for intellectual property protection of businesses and the public in general. The exercise of intellectual property rights with its own characteristics meets some difficulties due to the epidemic. The higher requirement on the effectiveness of the implementation of intellectual property rights under CPTPP and EVFTA is a challenge for Vietnam in perfecting the legal system on the enforcement of intellectual property rights, as well as improving the capacity of the court system according to an appropriate roadmap.

**Reporter:** *Thank you very much!*

(**Source:** Official website of the National Assembly of the Socialist Republic of Vietnam

**Link:**

<https://quochoi.vn/tintuc/Pages/tin-hoat-dong-cua-quoc-hoi.aspx?ItemID=62295>).

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