

VIETNAM: PPP LAW UPDATE PAPER

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The Intellectual Property Office of Vietnam tightening requirements on authorized representatives to sign documents on behalf of applicants/owners

On 23 November 2020, the Intellectual Property Office of Vietnam (“IP Vietnam”) issued Notification No. 13822/TB-SHTT giving their interpretation of the current regulations on representatives of applicants/owners before the IP Vietnam during the establishment of industrial property rights and related procedures.

Heretofore, the IP Vietnam has accepted the POAs (and other required documents) signed by any representatives internally authorized by applicants/owners without the evidence of authorization required. However, under the new Notification, the IP Vietnam requires all documents to be signed by a legal representative of applicants/owners, such as Chairman of Board of Members, Chairman of Board of Management, President, Director, General Director. If the documents are signed by the signatories be any other titles, the evidence of authorization granted to such signatories is required. If such evidence is not available, the document must be legalized.

This new practice regarding signatories in POAs is demanding strictly that directly affected both Vietnamese and foreign applicants/owners, especially during the time of COVID-19 when many are working from home, which appears to be quite sudden and harsh and it is not yet clear how this regulation is applied in fact.

The existing POAs previously submitted for pending cases which do not meet the new requirements that now might face the risks of getting rejected by the Intellectual Property Office of Vietnam. We expect this new practice might cause difficulties and inconveniences for IP applicants/owners in the upcoming time.

The key contents of the Notification are summarized of the following:

1. Individual applicants/owners

The representatives of applicants/owners are legal representatives (in accordance with Article 136 of the Civil Code) or through Power of Attorney (“**POA**”) signed by authorized representatives (including individuals, organizations or IP representative). In this particular case, the POA must be signed by the individuals themselves, and the authorization must comply with Rules 3 and 4 of Circular 01/2007/TT-BKHCHN.

2. Organizational applicants/owner

2.1. In the event the signatory is the legal representative of the applicants/owners

If the signatory is the Chairperson of Board of Members, Chairperson of Board of Management, President, Director, General Director of corporate applicants/owners, the signatory only needs to sign and imprint the applications and/or required documents with the company’s seal (as obligatory by law, if any).

Otherwise, for all signatories bear other titles, such as the vice of the abovementioned titles such as Vice Chairman, Vice President, Deputy Director, or heads of departments, or other titles such as attorney in fact, authorized signatory, proxy, officer, the applicants/owners must submit evidence of authorization granted to such signatories to sign in the POA. The signed documents must be sealed (as required by law, if any).

2.2. In the event the signatory is a staff member of organizations authorized by the applicants’/owners’ legal representatives

Along with complying with the regulations on legal representatives as stated in Section 2.1, the applicants/owners must submit evidence of authorization granted to such signatories to sign in the POA.

2.3. *In the event the signatory is an IP representative*

In case a law firm that is authorized to represent the applicants/ owners, proof of authorization is also required.

3. Other problem

Additionally, on the same note, if the signatories of a foreign applicant/owner unable to prove their authorization, the POAs must be legalized up to consulate.
