



NEWS

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THE NATIONAL ASSEMBLY APPROVED 12 LAWS & 12 RESOLUTIONS

The 3rd plenary session of Legislature XIV of the Vietnamese National Assembly (NA) concluded on June 21, 2017. In this session, the NA approved 12 laws including:

1. Law on Support for Small-and Medium-sized Enterprises;
2. Law on Foreign Trade Management;
3. Law on Tourism;
4. Law on Legal Assistance;
5. Penal Code (Revised);
6. Law on Management and Use of State

Property;

7. Law on Railway;
8. Law on Technology Transfer;
9. Law on Irrigation;
10. Law on State Compensation Liability;
11. Law on Guard;
12. Law on Management and Use of Weapons, Explosives and Supporting Tools.

In addition, the NA also approved 12 resolutions and gave their opinions on 6 other draft laws.

STATISTICS: APPLICATIONS FILED WITH AND REGISTERED BY THE NOIP IN 2016

According to statistics of the National Office Intellectual Property of Vietnam ("NOIP"), in the 2016, a total of 58 078 applications for registration of industrial property rights filed with the NOIP, representing an increase of 12,4% compared with the preceding year (50 838 applications were filed in 2015). The number of registrations of patents/utility solutions, industrial designs and trademarks granted by the NOIP in the 2016 was 25 877, representing an increase of 1,4% compared with the preceding year (25 503 registrations were granted in 2015). The table below shows details of applications filed with and registrations granted by the NOIP during 2016:

APPLICATIONS FILED:

	Patent	Utility Solution	Industrial Design	Trade-mark*	Total
2016	5228	478	2868	49504	58078
2015	5033	450	2445	42910	50838

REGISTRATIONS GRANTED:

	Patent	Utility Solution	Industrial Design	Trade-mark*	Total
2016	1423	138	1454	22862	25877
2015	1501	128	1353	22521	25503

(*) Note: Trademark applications also include international applications designating Viet Nam.

THE NOIP AND THE JFID SIGNED A MOU ON COOPERATION IN THE FIELD OF GEOGRAPHICAL INDICATIONS

D on June 2, 2017, at the headquarters of the National Office of Intellectual Property in Vietnam (“NOIP”), the General Director of the NOIP, Mr. Dinh Huu Phi, and the Director General of Japan Food Industry Department (“JFID”), Mr. Koji Inoue, signed a memorandum of understanding on cooperation in the field of geographical indications (“the MOU”).

Accordingly, the parties will co-operate in three fields including: (i) Promoting protection of geographical indications (through a pilot project to select a number of products bearing geographic indication of each country for registration, to provide information on the results of examination of geographical indication applications and to build an electronic database on geographical indications protected in each country); (ii) Exchange of information relating to policies and legal provisions on geographical indications as well as lists of protected geographical indications in each country; and (iii) Enhancing the awareness on geographical indications through educational programs and organizing joint exhibitions of products bearing geographical indications of both countries.

The executive-level departments of the NOIP and Japan Food Industry Department will closely coordinate to build and unify the plan to implement such MOU in the future.

BUILDING A NATIONAL STRATEGY ON INTELLECTUAL PROPERTY FOR VIETNAM

Within the framework of the cooperation program for building a National Strategy on Intellectual Property (IP), following the signing ceremony of the Memorandum of Understanding on building a national IP strategy between Mr. Tran Viet Thanh, Vice Minister of The Ministry of Science and Technology (MOST), and Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO) on March 22, 2017, a workshop organized by the National Office of Intellectual Property (NOIP) in coordination with WIPO experts entitled "Building a National IP Strategy on Intellectual Property for Vietnam" took place from June 20 to 22, 2017.

In the signing ceremony in March, WIPO and MOST signed a cooperation agreement under which WIPO would provide technical assistance for Vietnam in building such strategy. Accordingly, WIPO and MOST will establish a cooperation mechanism to develop the National IP Strategy, addressing specific country's needs and priorities for long, medium and short terms in consistence with the national development policy and the general economic objectives of Vietnam.

The National IP Strategy contains three main contents: Guiding standpoint and overall objective

of the IP system; Specific strategic objectives up to 2030; strategic tasks.

The Strategy also sets specific targets until 2030, including: Making IP System a key tool for promoting creative activity in order to create intellectual property assets, contributing to meet the demand for new and innovative products, especially endogenous technology to develop industries.

The process to build and implement the National IP Strategy comprises eight steps: organizing consultation workshops, setting up a drafting team, reviewing documents; gathering information, organizing consultative meetings, developing a draft strategy, obtaining opinions on the draft and submit to the competent authorities for issuing and implementing the strategy.

This workshop on June 20-22 was the start of a series of activities to implement the cooperation agreement between WIPO and Vietnam. At the workshop, international and Vietnamese experts discussed about the works to be carried out for to build successfully the strategy, as well as the methodology of linking the IP strategy with Socio-economic development strategy and science & technology development strategy.

EVALUATING 10-YEAR IMPLEMENTATION OF THE IP LAW

The Law on Intellectual Property (“IP Law”) was passed in 2005 by the National Assembly of the Socialist Republic of Vietnam. It became effective as of July 1st, 2006 and was amended and supplemented in 2009. Since its promulgation, activities relating to establishment of IP rights have taken place ardently with a steady growth of the number of IP registration applications. According to ministerial reports, from 2006 to 2015, the Copyright Office (Ministry of Culture, Sports and Tourism) granted 43,450 copyright and related rights registration certificates; the Department of Crop Production (Ministry of Agriculture & Rural Development) received 927 applications for registration and granted 432 plant variety protection certificates; from 2006 to the end of 2016, the National Office of Intellectual Property (“NOIP”) received 403,914 applications for registration of industrial property rights and granted 231,765 certificates.

In May, Conferences on Evaluating 10-year implementation of the IP Law took place in Hanoi and Ho Chi Minh City to evaluate the achievements obtained during the last decade, point out difficulties and limitations and propose for amendment and supplements to improve the law.

A problem which draws great attention during the conferences is the overload situation of patent applications at the NOIP. As a matter of fact, a very few number of granted patents are exploited in reality, and the number of infringement cases is insignificant. Meanwhile, the number of patent applications filed with the NOIP is quite big

(approximately 5,000 applications each year). Therefore, there was suggestion that Vietnam would better follow the registration system (without substantive examination) to diminish the amount of examination work. Under such registration system, applications shall only be examined as to form, and then certificate may be granted. Any subsequent dispute regarding to the patents shall be resolve through administrative appeal or the courts.

NEW LEGISLATION

LAW ON TECHNOLOGY TRANSFER No. 07/2017/QH14: AMENDMENT, SUPPLEMENT TO SOME ARTICLES OF THE 2006 LAW ON TECHNOLOGY TRANSFER

D on June 19, 2017, the 14th National Assembly adopted the Law on Technology Transfer No. 07/2017/QH14 (the New TT Law) which amends, supplements some articles of the Law on Technology Transfer No. 80/2006/QH11 providing regulations on technology transfer activities (the Old TT Law). The New TT Law comes into effect as of July 01, 2018, replacing the Old Law. Below are some remarkable features of the New TT Law.

1. Assistance for the development of Science and Technology market

The State promulgates policies and measures to support or make investment in the science and technology sector with funding from state budget and mobilize other lawful sources of funds to develop the science and technology market by means of developing sources of technological supply and demand, and intermediary organizations for the science and technology market.

According to Article 43 of the New TT Law, in order to help undertaking the role of technology transfer brokerage, consultancy, promotion, technology evaluation, appraisal and verification, connection and assistance for suppliers, demanders and other parties involved in technology-related transactions, intermediary organizations operating in the science and technology market shall be supported by the State via the following measures:

- a) Building technical infrastructure and assisting operations of the National Technology Transactions Exchange, National Technological Start-up Supporting Center in the first 05 years of operation;
- b) Supporting the training of human resources of intermediary organizations;

- c) Assisting, enhancing the capability of exploiting information on technology, intellectual property, findings of domestic and foreign scientific research and domestic and foreign technological development for organizations, individuals providing services of technology transfer consultancy, brokerage and promotion, technology evaluation, appraisal and verification.

In addition, the State shall also encourage the organizations and individuals to conduct technology transfer brokerage, consultancy, and promotion in research institutions and training institutions; to establish a network for connecting domestic and foreign technology transfer, consultancy activities.

2. Commercialization of findings of scientific research and technological development

With respect to promoting the commercialization of findings of scientific research and technological development, Article 36 provides regulations for clarifying some outstanding difficult contents regarding:

- a) Transfer of ownership of and right to use findings of scientific research and technological development funded by the state budget;
- b) Responsibility of State management agencies in collecting, evaluating, selecting, recognizing, publishing the findings of scientific research and technological development;
- c) The State's assistance for connecting the local organizations of technology application, transfer with science and technology organizations in finalizing the findings of scientific research and technological development in compliance with the local specific characteristics;
- d) The State's assistance in establishment of the industrial property rights, recognition, registration for circulating new products, new technologies for organizations, individuals

performing the commercialization of findings of scientific research, technological development, technology transfer

- e) The distribution of profits obtained from commercialization of findings of scientific research and technological development created by funds from the State budget must guarantee the interests of the owners, authors, presiding organization, intermediaries, organizations, individuals involved in commercialization of findings of scientific research and technological development in accordance with the regulations of relevant laws.

3. Assistance and encouragement for enterprises' technology application and innovation

New Law on Technology Transfer is amended and supplemented with the enterprise-assisting orientation, specifically in Article 35:

- a) The State shall offer assistance to the enterprises with projects within the investment-incentive areas or sectors which perform the technology transfer with the science and technology organizations.
- b) Enterprises may use their science and technology development funds for investment, counterpart funding, receipt of counterpart funds for making investment in technology innovation, technology incubation, science and technology business incubation, creative start-up, commercialization of their findings of scientific research and technological development and covering other expenses according to the regulations in laws on science and technology.
- c) Ownership, right to use, other rights arising from findings of scientific research and technological development, intellectual property objects whose value can be evaluated are referred to as property rights.

National Foundation for Science and Technology Development, National Technology Innovation Fund, and credit institutions may receive the property rights as stipulated in this Clause as collaterals for loans for investment in projects of science and technology, creative start-up, business and manufacture development from findings of scientific research and technological development.

- d) The State shall encourage forms of cooperation between the enterprises and agencies, organizations, individuals to deploy projects of technology innovation investment, creative start-up, infrastructures development in service of science and technology development, and general research activities.
- e) Enterprises making investment in material – technical facilities for reverse engineering, and

organizations, individuals conducting the reverse engineering may enjoy the following incentives: (i) Funding assistance, loan guarantee, preferential loan interest rate from National Technology Innovation Fund and credit institutions; (ii) Other supports and incentives according to the provision of this Law and other provisions of the relevant laws.

- f) Socio-political organizations, social organizations, socio-professional organizations shall, within their functions and duties, facilitate organizations, individuals and enterprises in technology transfer.

Moreover, the State also offer tax incentives to those entities as stipulated in Article 39 of the New TT Law to motivate the technology transfer, application and innovation.

4. State management with respect to technology transfer

Article 3 provides the State policies on technology transfer, specifically including:

- a) Giving priority to the transfer of high technologies, advanced technologies, new technologies, clean technologies, technologies for developing national key products, technologies for national defense and security from foreign countries to Vietnam and domestic technology transfer; allocating investment resources for technology transfer in agriculture and rural development; placing emphasis on technology transfer in those areas under difficult and extremely difficult socio-economic conditions;
- b) Assisting technological ideas, creative start-up, technology incubation, science and technology business incubation; assisting the technology application, technology innovation, connection of the organizations of scientific research and technological development with training centers, manufacturing facilities; paying attention to commercialization of domestic findings of scientific research and technological development; developing intermediaries of the science and technology market;
- c) Promoting the transfer of advanced technologies, high technologies from foreign countries to Vietnam; encouraging the technology transfer from Vietnam to foreign countries; motivating domestic technology transfer; paying attention to spreading advanced technologies, high technologies from foreign-invested enterprises to domestic enterprises; motivating the creative innovation movement of organizations and individuals;
- d) Preventing, eliminating out-of-date technologies or technologies causing adverse impacts on the society – economy, national defense, security, environment, and human health.

Article 8 of the New TT Law specifies that for those investment projects funded by the State capital, the technology that is used for making capital contribution to the projects must be appraised according to the regulations in Laws.

Regime of voluntary registration of technology transfer agreement is amended to regime of compulsory registration for organizations and individuals who performs transfer of technology from a foreign country to Vietnam, from Vietnam to a foreign country and domestic technology transfer funded by the state budget, except for those cases which is granted Certificate of registration of science and technology findings in compliance with Clause 1 Article 31 of the New TT Law.

To enhance the efficiency of State management in technology transfer, commercialization, application and innovation, Articles 53-56 of the New TT Law stipulating the responsibility of each agency, level, ministry, sector and locality to ensure that every stage of the technology transfer process is undertaken by the person in charge.

5. Transitional provision

In case technology transfer agreements have been concluded by parties before the effective date of this Law and require an extension after the date of entry into force of this Law, procedures for registration of extension shall be conducted in accordance with this Law. For applications for registration of technology transfer agreements which have been received before the effective date of this Law but not yet resolved, the said applications will be processed in accordance with the regulations of the Old TT Law.

DECREE 43/2017/ND-CP: NEW REGULATIONS ON GOODS LABELLING

D on April 14, 2017, the Government issued Decree No. 43/2017/ND-CP on goods labelling (“**Decree 43**”) replacing Decree No. 89/2006/ND-CP of the Government dated August 30th, 2006 (“**Decree 89**”). Decree 43 takes effect as of June 1st, 2017.

Compared with Decree 89, Decree 43 has some new features as follows:

1. Governing scope

Decree 43 provides details on objects which are out of its governing scope. Compared with previous Decree 89, the following goods are out of governing scope of Decree 43, though they were regulated by Decree 89: Exported goods not for domestic use, transit commodities, petrol and oil, gas (LPG, CNG, LNG), liquid, bulk cement without commercial packaging in containers, tankers; and used goods.

2. A number of provisions aiming at dealing with difficulties faced by enterprises

In order to deal with difficulties faced by, facilitate

activities of and cut down the expense for enterprises in relation to goods labelling, Decree 43 provides that:

- (i) Imported spare parts for repair and warranty services, not for sale; imported raw materials for use in domestic manufacturing, not for sale in the market, are exempted from additional labeling;
- (ii) Goods for export which are eventually not exported and put into domestic circulation are not required to change their entire labels, but only subject to additional labelling;
- (iii) Enterprises are allowed to determine and label themselves the origin of goods in compliance with legal provisions on origin of goods and international treaties to which Vietnam is a party;
- (iv) Enterprises manufacturing goods of the same quality standards in different locations are allowed to indicate only the name and address of the organization or individual responsible for such goods, and no longer required to indicate addresses of all manufacturing locations as under the previous regulations;

3. A number of provisions to protect consumers

Decree 43 also contains provisions to protect consumers’ interests against smuggled and counterfeit goods, particularly:

- (i) Regulations on labelling of manufacture and expiry dates with respect to portioned and extracted goods to avoid fraud on expiry date thereof;
- (ii) For goods imported into Vietnam on which mandatory information in Vietnamese are not presented or presented insufficiently, additional labels containing mandatory information in Vietnamese are required in addition to original labels which must be kept unchanged; and the Vietnamese content must be consistent with that of the original label...
- (iii) Additional labels must also be used for goods which cannot be exported or goods returned and put into circulation in the domestic market. In addition, such goods must be marked with the phrase “Được sản xuất tại Việt Nam” (meaning “Made in Vietnam”) in bold letters.

4. Transitional provision

The transitional provision of Decree 43 provides that those goods labeled in accordance with Decree 89 which had been produced, imported, circulated, or used before the effective date of Decree 43 shall be allowed to continue to be circulated or used until its expiry date.

Goods labels, commercial packaging bearing labels in accordance with Decree 89 which has been manufactured or printed before the effective date of Decree 43 shall continue to be used, but not exceeding 02 years after the effective date of Decree 43.

5. Supplement and change of Appendices

Decree 43 supplements and changes content of a number of Appendices, namely: Mandatory content of labels by nature of goods (Appendix I); Regulation on goods labelling with respect to quantities (Appendix II); Regulation on labelling of manufacture, expiry and other dates of goods (Appendix III); Regulation on labelling of ingredients, ingredient quantities of goods (Appendix IV) and Regulation on other labelling of specifications, information, warnings about hygiene and safety of goods (Appendix V).



RESPONSE TO THE NOIP'S PROVISIONAL REFUSAL AGAINST THE APPLICATION FOR TRADEMARK "10-FLEX": PROTECTION OF A TRADEMARK CREATED BY A SIMPLE NUMERAL AND A DESCRIPTIVE ELEMENT

Recently, D&N International has been successful in responding to the NOIP's provisional refusal against the trademark "10-FLEX". Significantly, in this case, the trademark is a simple combination of an indistinctive numeral and a descriptive element presented in a normal font which was considered lack of inherent distinctiveness.

Facts

TOZEN Corporation (a Japanese company) filed an application for registration of the trademark "10-FLEX" for the goods "Pipe joints [not of metal]; flexible joints [not of metal] in class 17 ("Trademark") in Vietnam. The NOIP provisionally refused for registration of this Trademark for the reason that the trademark is just a combination of a numeral (number 10) and a descriptive element (the word FLEX, which is the abbreviation of the word FLEXIBLE), accordingly, it lacked inherent distinctiveness as provided for in Article 74.2a and Article 74.2c of the IP Law.

Having disagreed with the NOIP's provisional refusal, on June 23, 2016, TOZEN Corporation, through D&N International, filed a response to the NOIP's provisional refusal against the Trademark basing on the grounds that the Trademark is inherently distinguishable even though it is a combination of a numeral and an indistinctive or less distinctive element, details of which are as follows:

- The Trademark is a combination of the number 10 and an English word FLEX connected by a dash (-) between two

elements which as a whole is not separated;

- The Trademark is a coined word having no obvious meaning;
- The Trademark has been considered inherently registrable and protected in many Asian countries including Japan;
- A similar case in which the trademark had been granted protection upon result of an appeal in Japan is cited for the NOIP's reference.

In addition, to put more weight on chance of success, as advised by D&N International, TOZEN Corporation provided the NOIP with documentary evidences proving that the Trademark has been widely used and recognized in the market, thus, has achieved distinctiveness through use in commerce for the designated goods.

After reviewing the arguments and documentary evidences submitted by D&N International, on May 10, 2017, the NOIP issued the Notification No. 16245/SHTT-NH2 accepting the response filed by D&N International and accept to protect the Trademark for the designated goods accordingly.

Comments

Under the current regulations and in practice, a trademark which is a simple combination of a numeral and an indistinctive or less distinctive element can still be accepted for protection if the application is accompanied by documentary evidences proving that such applied mark has been widely used and recognized in the market, thus, has achieved distinctiveness through use in commerce before its filing date. Accordingly, in this case, the documentary evidences proving the wide use of the Trademark is very important as it plays a decisive role leading to success in the registration of this kind of marks.

D&N INTERNATIONAL CO., LTD (D&N International)

D&N International is a Vietnam's leading firm providing professional legal services in the field of Intellectual property, investment consultancy and business law.

As a representative for a large number of reputable clients from over 50 countries, each year, D&N International settles thousands of cases relating to establishment and enforcement of IP rights, as well as provides consultancy services for various investment projects, both domestic and foreign.

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