

Vietnam: IP Developments

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TECHNOLOGY IN FOCUS: PATENT FILING TRENDS

by Nguyen Duc Thang and Thomas J. Treutler



Left: Nguyen Duc Thang, Patent Executive
Right: Thomas J. Treutler, Registered Foreign Lawyer

According to a recent study on Vietnamese patent trends by Tilleke & Gibbins, since the formation and development of the Vietnamese patent system as well as the development of a free market in Vietnam, the number of domestic patent applications has been increasing exponentially. From 1989 to 2007 (the most recent years for which complete data is available), the number of domestic patent applications increased by 435%. In 1989, only 78 domestic patent applications were filed, in contrast to the 339 applications that were filed in 2007.

The gap between the quantity of filings by foreign and domestic applicants is relatively high, according to the study. For example, in 2007, for every domestic application there were eight foreign applications (339 to 2741). The difference in fees between domestic and foreign applications was eliminated in 2005 when Vietnam joined the WTO (previously, fees for domestic applicants were lower). To create a dataset of domestic patent applications for its study, Tilleke & Gibbins conducted an in-depth analysis of 178 domestic patent applications published in the *Industrial Property Gazette* from January to December 2008. Of these applications, one-third were patent applications for utility solutions (petty patents) and two-thirds were applications for inventions.

Among these domestic applications, 51% were filed by individual inventors, 40% were filed by Vietnamese enterprises, and 9% were filed by Vietnamese research institutes or universities. Accordingly, individual inventors represent the largest proportion of applicants, which shows that most Vietnamese corporations still have not developed strong in-house research and development units and intellectual property programs. Based on patent application filings, one might also conclude that research institutes and universities in Vietnam do not seem to be playing a major

role in Vietnam's technological innovations. This conclusion is consistent with the fact that relationships between the research institutes or universities and business enterprises has traditionally not been strong in Vietnam, although some recent conferences have discussed the establishment of "technology incubators" in universities that would collaborate with industry.

Fields requiring large investment, such as the pharmaceutical and biotech sectors, occupy only 4% and 1% respectively of the 178 domestic patent applications studied by Tilleke & Gibbins. Mechanical devices represent a far greater proportion of the applications. Although Vietnam is largely an agricultural country, the proportion of applicants in the agriculture field was only 2.3%. The percentages of patent applications in waste treatment, microbiology, fuel, and electronic fields stand at 4.5%, 3.4%, 1.7%, and 5% of all applications, respectively. These figures indicate that Vietnam is still not filing a significant number of patent applications in cutting-edge technological sectors, despite increased investment in these fields.

The regional distribution of these applications is also noteworthy. Although southern Vietnam is regarded as the economic center of the country, more patent applications originate from the northern regions of Vietnam. The northern, southern, and central regions filed 49%, 46%, and 5% of the total applications respectively.

As Vietnam's technological sector develops—especially in the area of software and computer arts where Vietnam has seen considerable investment by domestic computer and software giants such as FPT Corporation, as well as major multinationals such as Intel—it is likely that more domestic patent applications will be filed in Vietnam in those fields in the next few years. ❖

ASIAN LEGAL BUSINESS NAMES TILLEKE & GIBBINS AS A LEADING IP FIRM IN VIETNAM

In its July 2009 issue, featuring a report on intellectual property law firms in Asia based on a survey of in-house counsel throughout the Asia-Pacific Region, the major legal industry publication *Asian Legal Business* named Tilleke & Gibbins as one of the Leading IP Law Firms in Vietnam. The magazine also cited Tilleke & Gibbins' USPTO-qualified patent lawyer Thomas J. Treutler as a "highly recommended" attorney in Vietnam. ❖

NEW DECISION RELATING TO TOBACCO LABELING IN VIETNAM

Decision Will Affect Trademarks; Calls for Further Action to Fight Counterfeits and Contraband

On August 21, 2009, the Prime Minister of Vietnam issued Decision No. 1315/QĐ-TTg on the Approval of the Plan for Implementing the Framework Convention on Tobacco Control. Decision No. 1315 contains a number of provisions related to the labeling of tobacco products that may affect the presentation of trademarks on tobacco products. For example, in regard to warnings, Decision No. 1315 provides for "printing health warnings with pictures on the damaging effects of tobacco to health" on packaging. Prohibitions against certain wordings on labels that may cause consumers to believe that cigarettes have a lesser effect on health are also set forth (examples of prohibited wordings include "low tar," "light," "mild," etc.). Decision No. 1315 also calls for strengthening measures to combat counterfeit cigarettes and knock-off brands, as well as contraband products. ❖

TREATMENT OF USE CLAIMS IN VIETNAM

by Vu Thi Kim Dung and Thomas J. Treutler



Left: Vu Thi Kim Dung, Patent Executive
Right: Thomas J. Treutler, Registered Foreign Lawyer

Vietnam's National Office of Intellectual Property (NOIP) recently vowed to clarify various ambiguities regarding the patentability of use claims in Vietnam. Under the current law, the NOIP prohibits use claims. Certain patent examiners in the NOIP allow use claims to be rewritten as a product or process claim, but this practice is not applied uniformly throughout the NOIP and has caused much consternation to practitioners.

Article 4.12 of the IP Law provides that "invention" means a technical solution in the form of a product or process which is intended to solve a problem by application of natural laws." Article 25.3.a of Circular No. 01 of the

Ministry of Science and Technology further prescribes that "the subject matter stated in the application for registration of an invention shall be deemed not to be a technical solution if it is not a product or process." It is based on these provisions that the NOIP maintains its position that use claims are not patentable because they are not a product or process per se.

Many practitioners and IP stakeholders in Vietnam believe that a use claim should be regarded as a type of process. As a result, the Vietnamese Intellectual Property Association (VIPA) petitioned the NOIP to (1) issue an official announcement to clarify this matter and

and allow IP agents to submit comments; and (2) temporarily accept use claims at the formality examination stage and allow applicants to have the option to preserve such use claims during substantive examination until a final decision is made.

One NOIP official recently allayed concerns by remarking that the issue of whether Vietnam protects or refuses use claims will be further discussed within the NOIP and an official announcement on this matter will be issued soon. ❖

PATENT CLAIM INTERPRETATION – GLOBAL EDITION

Tilleke & Gibbins Once Again Authors Vietnam Chapter

The Patent Practice Group of Tilleke & Gibbins' Vietnam offices has once again authored the Vietnam chapter of *Patent Claim Interpretation – Global Edition* (2008 – 2009 Ed.). This publication by West LegalWorks is considered the "bible" of international patent interpretation and provides an in-depth understanding of international patent claims and the varying interpretations that exist among different cultures. It is a useful resource for those who have or seek patents in multiple countries, are involved in multinational licensing, or are exposed to claims of patent infringement in any of the world's leading economic markets. The chapter was authored by Tilleke & Gibbins' patent professionals including Vu Thi Kim Dung, Nguyen Thi Phi Nga, and Thomas J. Treutler.

PRIME MINISTERIAL NOTICE ON COPYRIGHT IN VIETNAM

Statutory Royalty Rates On the Way?

On August 13, 2009, the Office of the Government issued Notification No. 249/TB-CP Providing the Conclusion of the Prime Minister of the Government at the Meeting on the Appraisal of the Implementation of the Laws on Copyright and Related Rights. Notification No. 249 announces the conclusions made at a meeting between various state agencies to address conflicts between domestic rightsholders' associations and Vietnamese television and radio stations regarding royalty rates and the use of copyrighted musical works.

While emphasizing that Vietnam's policy is to protect copyrights and the interests of authors, Notification No. 249 notes that at the same time it is necessary to respect "the rights of the public to enjoy music to make the spiritual life of the people." In this regard, the relevant Ministries were assigned the task of developing principles for determining royalty rates to serve as a basis for rightsholders and users of works to agree on royalty rates so as to ensure harmony among various relevant interests. Based on this plan by the government, it will be interesting to see the extent to which Vietnam develops new regulations on mechanical licenses and statutory royalty rates, and to which types of rights such licenses will apply.

NGUYEN DUY DZUNG

PROMOTED TO PATENT EXECUTIVE

Nguyen Duy Dzung of Tilleke & Gibbins' Hanoi office was promoted to patent executive in August 2009. Mr. Nguyen holds a B.Sc. Degree in Chemistry from Hanoi National University and an M.Sc. Degree in Materials Science from the International Training Institute for Materials Science. He specializes in pharmaceutical and chemical patents, and has a strong industry background in materials science, ceramics, and magnetics. Mr. Dzung bolsters T&G's strong pharmaceutical/biotech/chemical patent group, which features several practitioners with strong academic and industry backgrounds in these arts.



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