

# INTELLECTUAL PROPERTY RIGHTS AND TRADE DEVELOPMENT

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## 1. Basic concepts

Intellectual property could be defined as creative works over which the law allows individuals monopolistic control in a specific period with a view to preventing illegal exploitation of these subjects. In the U.S.-Vietnam Trade Agreement, the intellectual property includes copyright and related rights, trademark, patent, topographies of integrated circuit, encrypted program-carrying satellite signal, confidential information, industrial designs and rights to new plant varieties. In Vietnamese law system, the intellectual property doesn't include rights to topographies of integrated circuit, encrypted program-carrying satellite signal and new plant varieties. These subject matters are under consideration of the legislative body.

The intellectual property in the Vietnamese laws includes patent, useful solution, industrial design, trademark and trade name of origin. Besides these five subjects that have legal protection at the request of the right holder, there are four subjects relating to the intellectual property (trade secret, geographical indicator, trade name and protection against unfair competition) automatically have legal protection when requirements set by law are met without request of the right holder. The nature of the intellectual property rights is to protect content of creative ideas against illegal use of them for commercial purposes.

The copyright under Vietnamese laws aims at protecting rights of creators or owners of literary, musical or artistic works. These works under protection of law must be fixed in tangible forms and created by creators' labor. The nature of the copyright is to prevent any other person from copying those works.

## 2. Role of intellectual property rights in business

The intellectual property rights are usually recognized by laws but in fact they relate a lot to business aspects and they are indispensable part of business development. The intellectual property rights help promote competition and creativity. Unlike tangible assets, the intellectual property is an intangible asset connecting to prestige of producers. When a product has certain characteristics and prestige, everything relating to this product is usually exploited or imitated with the aim of deceiving consumers. Then the protection by law is needed to prevent unfair competition and counterfeiting.

The intellectual property rights lead to monopolistic control over the market for a certain commodity or service. The protection by law allows the right holder to hold the sole and exclusive privilege to use these protected subjects for commercial purposes and at the same time, prevents other persons from exploiting unfairly results of investment and creativity of the right holder.

The intellectual property rights are also connected to technology transfer. New technologies are usually creative technical solutions for which patent are granted. To obtain the right to apply the patented solutions, one should pay money for the license to apply them for a specified period. The transfer of technology is usually linked with the transfer of rights to use trademark because the transferor always wants to ensure the product quality and at the same time increase the sales.

The intellectual property rights are important to export and import business. Documents protecting intellectual property rights are valid in a specified territory, a nation for example. So exporters when selling licensed products to other territories, should make sure that their exports won't violate rights held by other right holders in those territories. Bi-

lateral or multilateral trade agreements will help solve problems or disputes arising from the use of intellectual property rights.

In short, the protection of intellectual property rights has great effects on international trade and all countries that want to integrate into it should observe.

## 3. Protection of intellectual property rights in Vietnam

In Vietnam, the protection of intellectual property rights has been ruled by different laws made in the 1980s and become part of the Civil Law of 1997. Two governmental bodies responsible for protecting intellectual property rights are the Industrial Property Agency under the Ministry of Science, Technology and Environment and the Copyright Agency under the Ministry of Culture and Information. The former has its branches in all provinces and cities (included in Services of Science, Technology and Environment) while the latter has only a branch in HCMC. Vietnam has also engaged in many intellectual property treaties. In Hà Nội, HCMC and Đà Nẵng, data about intellectual property rights held by many developed and regional countries are available for reference.

As for the protection of copyright, the number of applications is on the increase but this activity is still new to most authors and the system of laws relating to the copyright is still lacking.

Mechanism for protecting creative works has just come into being in Vietnam recently, therefore many people still think they can use these works for free because these works are under the state ownership. Relations between research institutes, universities and companies aren't close. Most researches are financed by the state. Many of them are costly but fail to produce intended results. Data about Vietnamese and foreign

inventions have just been gathered and to get access to these sources is difficult because of the lack of necessary facilities.

In Vietnam, there is no organization that connects companies with universities and research institutes to exploit trade-related aspects of the intellectual property rights. In HCMC, the Service of Science, Technology and Environment has tried to undertake this role by organizing technical innovation contests and technological fairs every year since the early 1990s. These contests and fairs have succeeded in introducing many useful technical solutions and increasing sales of technical innovations. At present, there are many programs to help companies produce capital goods of high quality and low cost. However, this effort could only be seen as an initiative or orientation that encourages fair competition between companies and improvements in their performance because local authorities couldn't do everything for companies.

Vietnam also lacks organizations specializing in evaluating intellectual property to help with negotiations between companies and inventors, especially with foreign parties. At present, there are some 20 companies being allowed to supply services relating to intellectual property rights and they have contributed a lot to the observance of intellectual property rights in the past ten years.

To deal with this situation, the HCMC Service of Science, Technology and Environment has decided to take the following measures:

a. Coordination program: This is a program to coordinate activities of local authorities (courts, police, customs, inspection, people's committees, market control agencies, etc.) in an effort to promote fair exploitation of trade-related aspects of intellectual property rights, and prevent and punish all violations.

Main contents of the program are:

- Exchanging experience and techniques of handling violation of intellectual property rights: A list of measures in order of priority to handle violations will be made. Responsibility of each governmental body relating to handling of violation will be asserted in order to avoid duplication of functions and handling. In short, these bodies will work according to a process including the following stages: discovering violation; investigating evidence; asserting violation; making report; seizing materials; deciding on punishment; and carrying out this decision.

- Gathering information about the handling of violations: This work aims at establishing precedents for future cases and discovering loopholes in regulations.

- Disseminating knowledge of laws and violations of intellectual property rights: This effort aims at preventing violations of intellectual property rights because this issue is still new to the public. Different information about these violations should be supplied to different groups (businesspersons, traders, consumers and governmental bodies).

- b. A system supporting intellectual property activities: A system

connecting trade associations, consultant groups and research institutes should be formed to help with protection of intellectual property rights. Trade associations can help companies work out competition program without violating IP rights and coordinate efforts to struggle against violation of IP rights. IP consultant groups can help companies discover potentials for IP rights and do things to protect and exploit them. In other words, they are intermediaries between companies and research results. Main suppliers of technical innovations and inventions are universities and research institutes. IP laws will provide them with a motivation for their efforts. Combining their researches with demand from companies with help avoid waste of money and energy.

#### 4. Conclusion

- IP rights could be used as instruments for improving company competitiveness on the condition that the legal system is effective enough to protect those rights.

- Technology transfer has close relations with IP rights, therefore the transfer should be controlled strictly by experienced agencies in order to save companies from violation of IP rights.

- The IP has great effects on the economy, especially in the process of integrating into the world market. To learn how to protect and take advantage of IP rights is a way for companies to compete successfully on the world market and contribute to the national economic development.■

