

# Appellation of Origin

## 4.1 GEOGRAPHICAL INDICATIONS

### Definition of Geographical Indications

The term “geographical indications” in IP Law 50/2005 henceforth replaces both the term “geographical indications”, which is stipulated in the Government’s Decree No. 54, and “appellation of origins”, which is used in the previous Civil Code 1996 and the Government’s Decree No. 63. In the IP Law 50/2005, “geographical indications” are defined as “signs that are used to identify products as originating from an area, locality or country”. Such definition is rather broad to the extent that it could cover the two previous concepts of “geographical indications” and “appellation of origins”.

### Protection conditions

Geographical indications shall be protected if the following conditions are met:

- (i) products bearing geographical indication geographically originate from the area, locality or country indicated by such geographical indications; and
- (ii) products bearing geographical indication have reputation, quality or characteristics that are essentially attributable to the geographical conditions of the area, locality or country indicated by the geographical indication.

“Reputation” of products bearing geographical indication is determined by the level of its prestige among consumers that calculated by the level of awareness of and level of frequency of choosing the products made by consumers. Meanwhile, “quality or characteristics” of products bearing geographical indication are measured by one or several indicators such as quantitative, qualitative norms or physical, chemical, microbiological sensations and these indicators can be by examined by technical means or experts using appropriate

testing methods. The “geographical conditions” of the territory indicated by geographical indications shall include the natural factors (climate, hydrograph, geology, terrain, ecological system and other natural factors) and human factors (skills, expertise of manufacturers, process and traditional mode of manufacture) that essentially determine the reputation, quality or characteristics of products bearing geographical indications.

### **Exceptions**

The following subject matters shall not be protected as geographical indications:

- (i) Designations, indications having become generic names of goods in Vietnam;
- (ii) Geographical indications of a foreign country where it is not or no longer protected or no longer used;
- (iii) Geographical indications identical with or similar to a mark having been protected if their use will cause confusion as to the origin of the products;
- (iv) Geographical indications misleading consumers as to the true geographical origin of products bearing such geographical indications.

### **Regime of protection**

Geographical indications can be protected not only by a sui generis system under the registration procedures for acquisition of right but also by alternative legal tools of certification mark/collective mark and anti-unfair competition. In particular, the IP Law 50/2005 states that a trademark shall not be considered as distinctive if it is a sign indicating the geographical origin of goods or services, except for those, which have been, registered as collective marks or certification marks. In addition, the IP Law also prescribes the act of using commercial indications (including marks, trade names, business symbols, business slogans, geographical indications, package designs, label designs,

etc.) that cause confusion as to the business entities or business activities or commercial source of goods or services or the origin, production method, feature, quality, quantity or other characteristics of goods or services shall be considered as an act of unfair competition.

### **Who May File and Where to File Geographical Indication Applications**

The right to register geographical indications shall belong to the State of Vietnam. However, the State permits individuals/organizations manufacturing products bearing the geographical or their representative association or the local administrative authority to exercise the right.

Geographical indication applications can be filed with the NOIP in Hanoi or the NOIP's branch in Ho Chi Minh City or Da Nang City.

### **Geographical Indication Application**

Each application can be filed for one geographical indication that used for one product only.

Applications for registration of geographical indications shall be subject to two-step examination. The formality examination shall be conducted within one month from the filing date while the corresponding time limit for substantive examination is 6 months from the date of publication of the application. Applications for registration of geographical indications, after duly accepted as to form, shall be published in IP Gazette for opposition.

For documents/information required for geographical indication filing in Vietnam, please see Filing Requirements in Vietnam.

### **Protection Term**

A certificate of geographical indication registration shall have indefinite validity from the granting date.

## **Cancellation and Invalidation of Certificate of Geographical Indication Registration**

A certificate of geographical indication registration may be cancelled by any third party's request, in the following cases:

- (i) The application for registration neither has right to registration; or
- (ii) The geographical indication under the certificate does not meet the protection criteria as stipulated.

The validity of the certificate of geographical indication registration may be also suspended on the grounds that the geographical conditions attributable to the reputation, quality or characteristics of the product bearing a geographical indication have changed resulting in a loss of the reputation, quality or characteristics of the product.

### **Geographical indication infringement**

The following acts shall be considered as infringement of the rights to a protected geographical indication:

- (a) Using the protected geographical indication for products that do not satisfy the peculiar characteristics and quality of the product having the geographical indications although such products originate from a geographical area bearing such geographical indication;
- (b) Using the protected geographical indication for products similar to the product having the geographical indication for the purposes of taking advantage of reputation and goodwill of such geographical indication;
- (c) Using a sign identical with or similar to the protected geographical indication for products not originating from the geographical area bearing the geographical indication and therefore causing consumers mislead about the products originating from that geographical area;
- (d) Using a protected geographical indications of wines or spirits for the wines or spirits that are not originating in the territories corresponding to the geographical indication,

even where the true origin of goods is indicated or the geographical indication is used in translation or transcription or accompanied by such words as “kind”, “type”, “style”, “imitation” or the like.

## **4.2 LAYOUT DESIGNS OF SEMICONDUCTOR INTERGRATED CIRCUITS**

### **Definition of Layout Designs of Semiconductor Integrated Circuits**

Layout Designs of Semiconductor Integrated Circuits (hereinafter referred to as “Layout Designs”) are defined as “three-dimensional disposition of circuitry elements and interconnections of such elements in a semiconductor integrated circuit” in which the integrated circuits are prescribed as product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of semiconductor material and which is intended to perform an electronic function. “Integrated circuit” is synonymous with “IC”, “chip” and “microelectronic circuit”.

### **Requirements for protection**

A layout-design shall be eligible for protection if it is originality and commercial novelty.

These criteria are specifically defined as follows:

#### ***Originality***

A layout design shall be considered as original if it is resulted from its author’s own creative effort and not to be widely known among creators of layout-designs or manufacturers of semiconductor integrated circuits at the time of its creation. In addition, a layout design that is a combination of common general elements and interconnections shall be considered as original if such a combination as a whole is

original.

### ***Commercial novelty***

The commercial novelty of layout design is understood as the layout design has not been commercially exploited anywhere in the world prior to the filing date of the application for registration.

A layout-design shall not be considered as lacking of commercial novelty if the layout design registration application is filed within 2 years from the date such layout design was commercially exploited for the first time anywhere in the world by the person who has the right to registration or his/her licensee.

Commercial exploitation of a layout-design means any act of public distribution for commercial purposes of a semiconductor integrated circuit produced by incorporation of the layout-design, or an article incorporating such a semiconductor integrated circuit.

The following subject-matters shall not be protected as layout designs:

- (a) Principles, processes, systems or methods operated by semiconductor integrated circuits
- (b) Information or software contained in semiconductor integrated circuits.

### **Who May File and Where to File Layout Design Applications**

The right to file a layout design application belongs to inventors who have created the layout design by his/her own efforts and expenses. In case a layout design is created by the inventors during the course of employment or hire, the entitlement to file layout design applications for such layout design shall belong to the entities or individuals who have invested finance and material facilities to the inventors through employing or hiring. In addition, persons entitled to

file an application may assign that right to other organizations or individuals through written contract or inheritance in accordance with the law.

The right to file layout design applications for layout design made by using the State budget belongs to the State.

All applications must be lodged with the NOIP, which has been entrusted to be the State administrative authority under the jurisdiction of the Ministry of Science and Technology. Vietnamese entities and individuals, foreign individuals permanently residing in Vietnam, and foreign entities having an industrial or commercial establishment in Vietnam may file patent applications directly or through an IP agency licensed to practice before the NOIP. Foreign individuals not permanently residing in Vietnam and foreign entities having no industrial or commercial establishment in Vietnam shall file applications for patent rights through a licensed IP agency. As of July 2006 there are forty-three local IP agencies licensed to practice in Vietnam before the NOIP.

### **Layout Design Applications**

Each application can be filed for one layout design only.

Applications for registration of layout design shall be subject to the formality examination within one month from the filing date. After duly accepted as to form, applications for registration of layout designs shall be published in IP Gazette for opposition within three months in the manner of allowing direct access at the NOIP without reproduction of such published layout design. The certificate of layout design of semiconductor integrated circuit registration shall be granted to the applicant if no opposition is filed within the duration of publication of the application.

For documents required for filing applications of layout designs, of domestically filed applications for inventions, please see Filing Requirements in Vietnam.

### **Protection Term**

A certificate of layout design of semiconductor integrated circuit registration shall have validity from the granting date and expiring at the earliest date among the following:

- (a) The end of 10 years as from the filing date;
- (b) The end of 10 years as from the date the layout-designs were first commercially exploited anywhere in the world by the person having the right to registration or his or her licensee;
- (c) The end of 15 years as from the date of creation of the layout-designs.

### **Rights of owner of a layout-design**

The owner of a layout-design has the right to exploit the layout-design or prevent any person from performing the following acts: (i) reproducing the layout-design; or making a semi-conductor integrated circuit in accordance with the protected layout-design; (ii) distributing, leasing, advertising, offering or storing a copy of the protected layout-design; (iii) importing a copy of the protected layout design, a semi-conductor integrated circuit manufactured in accordance with the protected layout or goods manufactured in accordance with such a semi-conductor integrated circuit.

### **Cancellation or Suspension of layout designs**

At any time after a layout design is granted, any party may file a written request with the NOIP to cancel such patent. The grounds for cancellation may be:

1. The applicant was not entitled to apply for the layout design, nor assigned that right from the entitled person; or
2. The layout design did not meet the protection conditions at the time the certificate of layout design registration was issued.

The certificate of layout design semiconductor integrated circuit registration may be suspended at the request of any party, based on the grounds that (a) the owner fails to pay



the prescribed annuity or renewal fee as prescribed; (b) the owner declares a disclaimer of the rights conferred by the layout design; or (c) the layout design owner no longer exists, and there is no lawful successor.