

Legal news

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INTELLECTUAL PROPERTY LAW

Grace period for novelty – a guide for patent examination

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Following the introduction of the amended Intellectual Property (IP) Law in Vietnam that came into effect as of 1 January 2010, the National Office of Intellectual Property of Vietnam (NOIP) just launched the detailed Guidelines for Patent Examination (the Guidelines). In the Guidelines, among a number of significant points, the grace period for novelty matter has been clarified in every detail with reference to some examples.

Firstly, it is widely recognized that the grant of a patent to a subject matter which has already been known to the public is against the public interest. That is why the novelty requirement is a prerequisite of any patent system. However, in some cases, the disclosure of invention by inventor himself before filing his patent application was necessary at scientific level, like he must report the results of his research in a scientific presentation or even publish the experimental results. In other cases, the disclosure may happen without permission of inventor. In both circumstances, it seems unfair to penalize the inventor by depriving him of the right to file his patent application just because the invention has been disclosed unintentionally or for a scientific purpose. Therefore, a grace period has been given in several countries to excuse such a disclosure if it was made within that grace period. This is the law in the United States where the grace period is twelve months. In Cambodia, the grace period is twelve months as well. Two year grace period is provided under Canadian patent system and six months are given in Japan.

According to Vietnam IP Law, there are three circumstances, in which the disclosure of an invention shall not anticipate the invention claimed in a Vietnamese patent application if Vietnamese patent application for such invention has been filed with the NOIP no later than six months computed from the date of disclosure. Specifically, the disclosure of an invention shall not anticipate the invention claimed in a Vietnamese patent application if (i) the disclosure is made by a third person in an abusive way without permission of the authorized applicant; (ii) the applicant him/herself has disclosed the invention in a scientific report; and (iii) the applicant has displayed the invention at a Vietnam national exhibition or an official international exhibition or so-recognized one.

This six month period is called a grace period for novelty, which is different from a priority period. The disclosure of an invention within the grace period for novelty in one of three above-mentioned cases shall not anticipate the invention claimed in a patent application if it has been filed with the NOIP within the grace period. However, the date of disclosure is not the priority date. Therefore, if any third party has independently invented exactly the same invention within the period from the date of disclosure to the filing date of the above-mentioned patent application, and this third party has filed his application prior to it, then according to the first-to-file principle of the IP Law, it shall not be patentable. At the same time, the third party's application is neither patentable because its content has been disclosed in one of

three above-mentioned cases. In brief, no patent shall be granted to either patent application.

There is another case that should be taken into account as outlined below. Within six months counted from the date of disclosure and prior to the filing date, if the invention is disclosed again in a manner which is not included in three above-mentioned cases, such a second time disclosure shall attack the novelty of the invention. If the second time disclosure is included in three above-mentioned cases, then the invention is not regarded as being anticipated by the second time disclosure, however the grace period is still counted from the first time disclosure.

Hereunder is one example to illustrate the above-cited situation. Assuming that the inventor of a newly invented toy presented his research results on 1 March 2007 in a report before the Technical Board specializing in manufacture of toys. Three months later, on 1 June 2007, he dropped by the toy counter at an international exhibition on children's toys and found out that the kind of toy invented by himself has been exhibited there. In that situation, if the inventor files his patent application for the toy after the date of 1 June 2007, then even if the filing is made prior to the date of 1 September 2007 which is the expiration date of the six month grace period, the technical solution claimed in his application shall be regarded as lacking of the novelty. That is because the second time disclosure of his toy invention at the international exhibition was not made by himself, therefore the disclosure does not belong to any of three exclusion cases mentioned above. As a result, the toy invention is not novel since it has been disclosed to the public at that international exhibition.

It should be noted that for the first time in the history of IP development in Vietnam, such detailed provisions on examination of patent applications have ever been seen. Those provisions are regarded as a positive step of the NOIP in struggling with the huge backlog of patent application. From now on, not only the NOIP's examiners have some consistent guidelines to follow, but also applicants can save their time and money during the prosecution process due to certain ambiguous rejections. Inventors now also know what elements of his invention could be disclosed and in what manner in order to save his invention's novelty./.

Other Sectors

Finance

- On September 30, 2010, the Prime Minister issued Decision No. 60/2010/QD-TTg promulgating rules, criteria and norms for allocation of developmental investment capital by State Budget for period from 2011 to 2015.
- Decision No. 2250/QD-BTC dated September 6, 2010 of the Ministry of Finance on publication of the list of expired legal documents, which were issued and jointly issued by the Ministry of Finance.
- On September 28, 2010, the Ministry of Finance stipulated Circular No.153/2010/TT-BTC providing guidelines for the implementation of Decree No. 51/2010/ND-CP dated May 14, 2010 of the Government providing for invoices of sale and service supply.
- Circular No. 138/2010/TT-BTC dated September 17, 2010 of the Ministry of Finance providing guidelines for profit distribution regime applicable to State-owned one member limited liability companies.
- On September 15, 2010, the Ministry of Finance issued Circular No.137/2010/TT-BTC providing for the determination of initial prices of State properties for auction and financial regime of Property Auction Council.
- Circular No. 132/2010/TT-BTC dated September 7, 2010 of the Ministry of Finance providing guidelines for amendment and supplement to Decision No.46/2006/QD-BTC dated September 6, 2006 of the Minister of Finance promulgating Regulation on issuance of government bonds in large batches.
- On September 6, 2010, the Ministry of Finance stipulated Circular No.131/2010/TT-BTC providing guidelines for the implementation of the Regulation on foreign investors' contribution of capital and purchase of shares in Vietnamese enterprises.

Banking

- Decision No. 2281/QD-NHNN dated September 27, 2010 of the State Bank of Vietnam on the basic interest rate in Vietnamese Dong.
- On September 29, 2010, the State Bank of Vietnam issued Circular No.20/2010/TT-NHNN providing guidelines for the implementation of measures for regulating monetary policy instruments to support credit institutions in lending for agricultural and rural development.
- Circular No. 19/2010/TT-NHNN dated September 27, 2010 of the State Bank of Vietnam on amendment and supplement to a number of articles of Circular

No.13/2010/TT-NHNN dated May 20, 2010 of the Governor of the State Bank providing for the prudential ratios in activities of credit institutions.

- On September 16, 2010, the State Bank of Vietnam stipulated Circular No.18/2010/TT-NHNN detailing the implementation of interest rate support for individuals and organizations acquiring medium and long term loans from Vietnam Development Bank.

Taxation

- Circular No. 151/2010/TT-BTC dated September 27, 2010 of the Ministry of Finance providing guidelines for application of taxes and submissions to the State Budget for Land Development Fund stipulated in Article 34 of Decree No.69/2009/ND-CP dated August 13, 2009 of the Government additionally providing for land use planning, land prices, land recovery, compensation, support and resettlement.
- On September 27, 2010, the Ministry of Finance issued Circular No.150/2010/TT-BTC providing guidelines on value-added tax and corporate income tax applicable to press agencies.
- Circular No. 149/2010/TT-BTC dated September 27, 2010 of the Ministry of Finance providing guidelines on value-added tax and custom management for commodities and services sold in isolation section.
- On September 24, 2010, the Ministry of Finance stipulated Circular No.147/2010/TT-BTC on the amendment to export tax rates applicable to a number of items under Group 2601 in the list of tax rates of Export Tariff.
- Circular No. 133/2010/TT-BTC dated September 9, 2010 of the Ministry of Finance on the amendment to preferential import tax rates applicable to a number of items in Preferential Import Tariff.

Trade

- On September 29, 2010, the Ministry of Labour, Invalids and Social Affairs issued Decision No. 1170/QD-LDTBXH on designation of organizations for inspection of products and goods' quality.
- Circular No. 33/2010/TT-BCT dated September 11, 2010 of the Ministry of Industry and Trade providing for the business in temporary import for re-export and transhipment of frozen and unfrozen viscera of cattle and poultry.

Labour

- On September 16, 2010, the Ministry of Labour, Invalids and Social Affairs stipulated Decision No. 1117/QD-LDTBXH on the approval of investment in

perfecting the labour market information system within the supportive project on the development of labour market.

- Circular No. 29/2010/TT-LDTBXH dated September 23, 2010 of the Ministry of Labour, Invalids and Social Affairs providing guidelines for staffing norm of public vocational training centres.
- On September 14, 2010, the Ministry of Labour, Invalids and Social Affairs issued Circular No. 27/2010/TT-LDTBXH providing guidelines for the management of labour, salaries, remunerations and bonuses in State-owned one member limited liability companies.
- Circular No. 26/2010/TT-LDTBXH dated September 13, 2010 of the Ministry of Labour, Invalids and Social Affairs on the amendment and supplement to Circular No. 24/2010/TT-LDTBXH dated November 9, 2010 of the Ministry of Labour, Invalids and Social Affairs providing guidelines on date calculation for enjoyment of social insurance regimes according to Decision No. 107/2007/QĐ-TTg dated July 13, 2010.

Health

- On September 30, 2010, the Government stipulated Decree No. 101/2010/ND-CP providing detailed regulations on the implementation of a number of articles of Law on Infectious Diseases Prevention and Control with respect to application of health quarantine measure, forced health quarantine, and specific epidemic control during epidemic period.
- Inter-ministerial Circular No. 28/2010/TTLT-BLDTBXH-BNV dated September 16, 2010 of the Ministry of Labour, Invalids and Social Affairs and the Ministry of Home Affairs providing guidelines for functions, duties, powers, organizational structure and staffing of Post-Drug Withdrawal Management Centres.
- On September 13, 2010, the Ministry of Finance issued Circular No.136/2010/TT-BTC providing guidelines for the regime of collection, payment and use management of fees and charges in veterinary work.
- Circular No. 39/2010/TT-BTC dated September 10, 2010 of the Ministry of Health providing for standards, functions and duties of health staff in hamlets and mountain villages.
- On September 7, 2010, the Ministry of Health stipulated Circular No.38/2010/TT-BTC providing guidelines for inspecting the implementation of the State's administration regulations on pharmaceuticals and cosmetics.
- Inter-ministerial Circular No. 20/2010/TTLT-BTTTT-BYT dated August 20, 2010 of the Ministry of Information and Communications and the Ministry of Health providing guidelines for the time and duration prioritization of

broadcasting on radio and television; size and location on print newspapers and online newspapers regarding information, education and communication on anti-HIV/AIDS.

Transport

- On September 17, 2010, the People Committee of Ho Chi Minh City issued Decision No. 71/2010/QD-UBND promulgating regulations on management and use of primitive vehicles, motorcycles, two wheeler-motor vehicles, three-wheel motor vehicles and equivalents to transport goods and passengers in the area of Ho Chi Minh City.
- Decision No. 70/2010/QD-UBND dated September 17, 2010 of the People Committee of Ho Chi Minh City promulgating the Regulation on organization and operation of the Department of Transport of Ho Chi Minh City.
- On September 15, 2010, the Prime Minister stipulated Decision No. 1687/QD-TTg approving the Treaty amending the Treaty between Vietnam and the United-States of America on Air Transportation.
- Decision No. 64/2010/QD-UBND dated September 1, 2010 of the People's Committee of Ho Chi Minh City promulgating the schedule of minimum prices for calculating registration charge for transport vehicles in the area of Ho Chi Minh City.
- On September 1, 2010, the Ministry of Transport issued Decision No. 2594/QD-BGTVT promulgating the list of expired legal documents on transport.

Construction – Real Estate

- Decision No. 68/2010/QD-UBND dated September 14, 2010 of the People's Committee of Ho Chi Minh City promulgating the regulations on issuance of construction permit and construction management under permits in the area of Ho Chi Minh City.
- On September 13, 2010, the People's Committee of Hanoi stipulated Decision No. 45/2010/QD-UBND promulgating the regulations on sale, lease, lease - purchase and use management of social residential housing in the area of Hanoi.
- Decision No. 4378/QD-UBND dated September 7, 2010 of the People's Committee of Hanoi on correction and adjustment of land price schedule of a number of roads and streets in Cau Giay District and My Duc District in price schedule of land types attached to Decision No. 124/2009/QD-UBND dated December 29, 2009 of this Committee of the People's Committee of Hanoi City.

Natural Resources - Environment

- On September 24, 2010, the Government issued Decree No. 99/2010/ND-CP on policy on payment for forest environmental services.
- Decision No. 4932/QD-BCT dated September 22, 2010 of the Ministry of Industry and Trade on supplementing zoning plan for exploration, exploitation, processing and use of mineral raw material group comprising white limestone (marble), feldspar, kaolin and magnezite till 2015, with orientation to 2025.

Science - Technology

- On September 21, 2010, the Government stipulated Decree No. 97/2010/ND-CP on sanctioning administrative violations in the field of industrial property.
- Decree No. 96/2010/ND-CP dated September 20, 2010 of the Government on amendment and supplement to a number of articles of Decree No. 115/2005/ND-CP dated September 5, 2005 of the Government providing for autonomy and self-responsibility regime of public scientific and technological organizations and Decree No. 80/2007/ND-CP dated May 19, 2007 of the Government on scientific and technological enterprises.
- On September 20, 2010, the Ministry of Industry and Trade issued Decision No.4872/QD-BCT supplementing the list of domestically-manufactured machineries, equipment, supplies and materials.
- Decision No. 1914/QD-BKHHCN dated September 17, 2010 of the Ministry of Science and Technology on the extension of effective term of Circular No.12/2010/TT-BKHHCN providing guidelines for quality management and metrology in liquefied petroleum gas business.
- On September 10, 2010, the Prime Minister stipulated Decision No. 55/2010/QD-TTg on the authority, order and procedures for certification of organizations and individuals engaging in high-tech applications, certification of organizations and individuals researching and developing high technologies, and recognition of high-tech enterprises.
- Decision No. 44/2010/QD-UBND dated September 10, 2010 of the People's Committee of Hanoi promulgating the regulations on management of industrial clusters in the area of Hanoi.
- On September 14, 2010, the Ministry of Science and Technology issued Circular No. 15/2010/TT-BKHHCN promulgating the national technical codes on radiation safety, declaration exemption, and licensing.

Communications

- Decision No. 1755/QD-TTg dated September 22, 2010 of the Prime Minister on approving project on making Vietnam to soon become a strong country in the field of information technology and communications.
- On August 27, 2010, the Prime Minister stipulated Decision No. 1605/QD-TTg approving a National program on application of information technology in operation of State agencies for period from 2011 to 2015.
- Inter-ministerial Circular No. 142/2010/TTLT-BTC-BTTTT dated September 22, 2010 of the Ministry of Finance and the Ministry of Information and Communications providing guidelines for the management and use of expenditures for development of information technology industry.
- On September 8, 2010, the Ministry of Information and Communications issued Circular No. 21/2010/TT-BTTTT providing for making an outline and detailed estimation regarding information technology application activities funded by State Budget, where no project is required to establish.

Administration - Judiciary

- International Treaty No. 41/2010/SL-LPQT dated September 8, 2010 of the Ministry of Foreign Affairs on the Agreement between the Socialist Republic of Vietnam and the Republic of Korea on transfer of persons sentenced to imprisonment.
- On September 1, 2010, the People's Committee of Ho Chi Minh City stipulated Decision No. 62/2010/QD-UBND on the organization of specialized agencies of District People's Committees.
- Inter-ministerial Circular No. 144/2010/TTLT-BTC-BTP dated September 22, 2010 of the Ministry of Finance and the Ministry of Justice providing guidelines for the collection, payment, management and use regime of civil judgment enforcement fees.
- On September 11, 2010, the Ministry of Home Affairs issued Circular No.09/2010/TT-BNV promulgating the professional standards for public officials specialized in accounting, taxation, customs and reserves.

Agriculture

- Decision No. 1690/QD-TTg dated September 16, 2010 of the Prime Minister approving the development strategy of Vietnamese aquaculture to 2020.
- On September 15, 2010, the Ministry of Agriculture and Rural Development stipulated Circular No. 54/2010/TT-BNNPTNT providing for the inspection and supervision of beta-agonists in animal husbandary.

- Circular No. 51/2010/TT-BNNPTNT dated September 8, 2010 of the Ministry of Agriculture and Rural Development on the amendment and supplement to a number of articles of Circular No. 25/2010/TT-BNNPTNT dated April 8, 2010 and Circular No. 06/2010/TT-BNNPTNT dated February 2, 2010.

Investment

- On September 17, 2010, the People's Committee of Ho Chi Minh City issued Decision No. 69/2010/QD-UBND promulgating the Regulation on organization and operation of the Department of Planning and Investment of Ho Chi Minh City.
- Decision No. 1659/QD-TTg dated September 9, 2010 of the Prime Minister on the establishment of Business Registration Management Bureau under the Ministry of Planning and Investment.
- On September 21, 2010, the Ministry of Planning and Investment and the Ministry of Finance jointly stipulated Circular No. 20/2010/TTLT-BKH-BTC detailing the provision of information on tendering to be published on Tender newspaper.

Culture - Tourism

- Decree No. 98/2010/ND-CP dated September 21, 2010 of the Government detailing the implementation of a number of articles of Law on Cultural Heritage and Law amending and supplementing Law on Culture Heritage.
- On September 9, 2010, the Ministry of Culture, Sports and Tourism issued Circular No. 10/2010/TT-BVHTTDL detailing Article 20 of Decree No.71/2009/ND-CP dated August 28, 2009 of the Government on the organization and operation of culture, sports and tourism inspectorate.

Miscellaneous

- Decree No. 100/2010/ND-CP dated September 28, 2010 of the Government on the Public Gazette.
- On September 16, 2010, the Government stipulated Decree No. 95/2010/ND-CP providing for the licensing for and activity coordination with foreign search and rescue forces in Vietnam.
- Decision No. 58/2010/QD-TTg dated September 22, 2010 of the Prime Minister promulgating the universities' charter.

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