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IP Law

Organizations for IP verification to take shape in Vietnam

By Nguyen Thi Xuyen

A new type of organizations called “organizations for intellectual property verification” shall be allowed to verify intellectual property (IP) matters instead of the state authorities including the National Office of Intellectual Property of Vietnam (NOIP) under the Ministry of Science and Technology and the Copyright Office of Vietnam under the Ministry of Culture - Information, who are also in charge of granting certificates of registration for industrial property matters and copyright as ever before. This is one of the main provisions stipulated in Decree 105/2006/ND-CP dated September 22, 2006 by the Government guiding the implementation of several provisions of the Law on Intellectual Property on protecting intellectual property rights and governmental control of intellectual property.

According to the new decree which takes effect after 15 days from the date of being published in the Official Gazette, the verification of IP matters includes verifying legal status, registrability and scope of protection; verifying evidences for calculating loss caused by the infringement; identifying elements and products/services which are considered as infringing rights; verifying evidences in infringements or disputes; and other circumstances of disputes or infringements which should be clarified in the fields of copyrights and relevant rights, industrial property rights and rights for new plant varieties.

In addition, the decree prescribes conditions for establishing an organization for IP verification, which should meet the following requirements: (i) at least two of its members have IP verifier cards granted by a competent authority; (ii) has Certificate of Registration of Science and Technology Activities, Certificate of Business Registration, Licence for providing verification services as stipulated in applicable laws. The person who is granted IP verifier card must (i) have bachelor’s degree on IP verification; (ii) have virtuous qualification; (iii) have sufficient civil behavior; and (iv) have passed the examination on IP verification organized by a competent authority. The IP verifier is allowed to practise either in an organization for IP verification or independently.

Apart from issues related to organizations for IP verification and the scope of activities to be practiced by these organizations, the decree also stipulates competence of requests for IP verification, rights and obligations of organizations/individuals who request for IP verification and other relevant regulations.

The appearance of organizations for IP verification will help reduce the overloaded work solved by the state authorities, especially by the NOIP where the number of dispute and infringement cases requested for solution has been increasing rapidly. The new organizations also help the verification of IP matters more objective as the authorities who are in charge of establishing rights will not involve in verifying their own decisions. The existence of these organizations will make a contribution to the success of enforcement of IP rights which is currently considered ineffective in Vietnam, creating a healthy investment environment to attract foreign investors into Vietnam.

However, the lack of persons who are experienced in the field of intellectual property in general and in verification of IP matters in particular in Vietnam is a very noticeable difficulty that the organizations for IP verification will face in the near future. The enforcement of IP rights will be actually effective only when the verification of IP matters is performed properly, ensuring the best exactitude. For this purpose, the grant of IP verifier cards as well as licences for providing services of IP verification should be extremely strict, impartial and explicit and the examinations on IP verification should be organized publicly to encourage all eligible persons to attend. The government should have appropriate sanctions to avoid the inexact result of IP verification caused by the chase of profits of the organizations for IP verification.

Although the existence of organizations for IP verification will meet demands of a great deal of enterprises operating in Vietnam, it promises to cause not few problems in the enforcement of IP rights in Vietnam. As a result of various opinions of different IP verifiers when they practice IP verification, different conclusions on whether the infringement occurs may be given for the same case by them. The problem here is which of various conclusions will be legally valid for execution and who will be responsible and/or allowed to make the final decision. The execution of the decree will be very difficult if at least the solutions for the above problems are not given clearly in the guiding legal documents to be issued hereafter.

One of the important regulations in the decree should be clarified by the ongoing circular is fees for IP verification. As stated in the decree, the fees for IP verification will be negotiated by the individuals/organizations who request for IP verification and the organizations in charge of verifying IP matters. Without a frame of fees for services of IP verification, it is difficult for the service providers and the requesters for the services to negotiate a specific level of fees, especially in the context that this is a very new activity in Vietnam. For better execution of the new decree, the circular therefore should not ignore this issue.

From the foregoing which is outlined from the new decree, we think whether the execution of the new decree will be effective or not depends partly on the guiding circular(s) to be issued by the Ministry of Science and Technology, Ministry of Culture – Information and the Ministry of Agriculture and Rural Development and the time of issuing the circular(s). However, the appearance of such new type of IP verifying organizations in the legal system of Vietnam is a remarkable progress in the efforts by the Vietnamese government to improve Vietnam legal environment for better competitiveness of Vietnamese enterprises in the context of international integration. It is especially meaningful when Vietnam is an official member of the World Trade Organization (WTO)

Other Sectors

Finance

- Circular 103/2006/TT-BTC, dated November 02, 2006, of the Ministry of Finance, on amendment of and supplementation to Circular 88/2003/TT-BTC, dated September 16, 2003, guiding the implementation of Decision 182/2003/QD-TTg, dated September 05, 2003, of the Prime Minister, on the distribution of Government bond for the purpose of investment in some transportation and irrigational projects.

Trading

- On November 07, 2006, the Prime Minister issued Decision 254/2006/QD-TTg, on the management of bordering commercial activities with countries having common borders.

Investment

- Circular 03/2006/TT-BKH, dated October 19, 2006, of the Ministry of Planning and Investment, guiding the documentation, order and procedure of business registration, according to Government's Decree 88/2006/ND-CP, dated August 29, 2006, on business registration.

Healthcare

- On November 10, 2006, the Ministry of Health issued Decision 35/2006/QD-BYT, on issuing the Regulation on cosmetics management.

Construction

- The Ministry of Construction issued Circular 05/2006/TT-BXD, on November 01, 2006, guiding the implementation of a number of articles of Decree 90/2006/ND-CP, with detailed regulation and guiding the implementation of Residential Housing Law.
- Circular 07/2006/TT-BXD, dated November 10, 2006, of the Ministry of Construction, guiding the adjustment of the expenses for the construction estimation.

Post & Telecommunication

- On November 02, 2006, the Ministry of Post & Telecommunication issued Decision 43/2006/QD-BBCVT, on the List of telecommunication services for public benefit.

Fishery

- On October 25, 2006, the Prime Minister promulgated Decision 242/2006/QD-TTg, on the approval of program on the development of fishery export to 2010 and orientation to 2020.

Miscellaneous

- On October 31, 2006, the Prime Minister issued Decision 250/2006/QD-TTg, on amendment of and supplementation to a number of articles of Decision 253/2003/QD-TTg, dated November 25, 2003, on the approval of Project on building and development of national marks to 2010 and Decision 259/2005/QD-TTg, dated October 21, 2005, on the setting up of national consulting council on national marks campaign.
- On November 09, 2006, the Government issued Decree 131/2006/ND-CP, on issuing the Regulation on management and using of official development assistance source.
- The Government issued Decree 136/2006/ND-CP, on November 14, 2006, providing in details and guiding the implementation of a number of articles of the Law on complaint and denouncement and the Law on amendment of and supplementation to a number of articles of the Law on complaint and denouncement.
- Decision 260/2006/QD-TTg, dated November 14, 2006, of the Prime Minister, on amendment of and supplementation to Decision 147/1999/QD-TTg, regulating the standard and norm of office for State authorities, professional units.
- On November 15, 2006, the Government promulgated Decree 138/2006/ND-CP, with detailed regulation on the implementation of the Civil Code's provisions on civil relationship having foreign factors.

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