

Vietnam-IPR Toolkit

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VIETNAM – IPR TOOLKIT

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NOTE: The United States Government thanks you for your interest and concern regarding the protection of intellectual property rights. This toolkit is meant to be a helpful resource for basic information gathering with respect to Vietnam's intellectual property laws. This toolkit is not to be used to guide legal decisions, and does not qualify as any type of legal advice. Always seek legal counsel within the jurisdiction in which protection is sought before making any decisions concerning your intellectual property rights protection. A list of lawyers and legal aid is available on the United States Ambassador's website.

VIETNAM - IPR TOOLKIT

I. INTRODUCTION TO VIETNAMESE IP LAW

The Vietnamese intellectual property law divides intellectual property rights (IPR) into the following categories:

- Copyright and related rights;
- Industrial property rights; and
- Rights in plant varieties.

Copyright protects literary, artistic or scientific works, while copyright related rights (“related rights”) protects the rights of performers, phonogram producers (sound recordings), film producers, and broadcasting organizations.

Industrial property rights protect trademarks, trade names, patents, geographical indications, industrial designs, trade secrets, integrated circuit layout designs, and the rights of owners of industrial property rights to prevent acts of unfair competition.

II. VIETNAMESE LAW AS IT IS TODAY

As a member of the WTO in 2007, Vietnam has acceded to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). In 2005, the National Assembly of Vietnam passed the Law on Intellectual Property (“IP Law”) which took effect on 1 July, 2006. Following this IP Law, the government issued implementing decrees to detail and guide the implementation of IP regulations with respect to registration procedures and enforcement proceedings. In addition to the IP Law, the Competition Law and the Civil Procedure Code provide substantial regulations on IP-related unfair competition and IP litigation. In 2009, Vietnam revised the IP Law and IP-related provisions in the Penal Code.

Vietnam is also a state member in numerous international conventions, including the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Patent Cooperation Treaty, the Madrid Agreement Concerning the International Registration of Marks, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, and the International Convention for the Protection of New Varieties of Plants (UPOV).

Although Vietnam has a substantial IP legislative regime, enforcement agencies have found it difficult to keep up with recent rapid changes to the law, and administrative enforcement is complicated by the large number of bodies involved. IPR enforcement

in Vietnam remains the exception rather than the rule. Copyright infringement is common, and counterfeit goods remain widely available in both physical and online markets.

A. Copyright

Vietnam’s legal framework for copyright protection and enforcement includes the IP Law 2005 (as amended in 2009), the Penal Code 1999 (as amended in 2009) and their implementing regulations, including Decree No. 131/2013/ND-CP on administrative sanctions for violations of copyright and related rights and Joint Circular No. 07/2012/TTLT-BTTTT-BVHTTDL, which stipulates the responsibilities for intermediary service providers for the protection of copyright and related rights on the Internet and telecommunications networks.

The country is a party to major international copyright treaties as well. Vietnam has entered into negotiations and signed bilateral copyright agreements with major countries including the United States of America and Switzerland. However, Vietnam has not acceded to the WIPO Copyright Treaty or the WIPO Performances and Phonograms Treaty.

B. Trademark

Trademark protection and enforcement in Vietnam is governed by the IP Law 2005 (as amended in 2009), the Penal Code 1999 (as amended in 2009) and their implementing regulations, including Decree No. 99/2013/ND-CP on administrative sanctions for violations of industrial property rights and its guiding circular, *i.e.*, Circular No. 11/2015/TT-BKHCN.

Vietnam has joined the Paris Convention for the Protection of Industrial Property, the Madrid Agreement Concerning the International Registration of Marks (Madrid Agreement) and the

Protocol Relating to the Madrid Agreement. Vietnam is deliberating whether it will accede to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration and the Trademark Law Treaty.

Vietnam is neither a party to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Agreement) nor the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks. However, the National Office of Intellectual Property (“NOIP”) is, in practice, applying both the Nice Classification and Vienna Classification standards.

Vietnam’s current IP regulations only protect trademarks that are visible in the form of letters, words, drawings or images or a combination thereof, representing one or more colors.

C. Trade Secrets

Trade secrets are governed by both the IP and unfair competition regulations. Vietnam’s trade secret provisions are found in the IP Law 2005 (as amended in 2009), the Competition Law 2004 and their implementing regulations, including Decree No. 71/2014/ND-CP on sanctions for violations of the competition law and corresponding regulations.

D. Patents

Vietnam’s legal framework for patent protection and enforcement includes the IP Law 2005 (as amended in 2009), and their implementing regulations.

Vietnam is a member of the Patent Cooperation Treaty and is planning to accede to the Hague Agreement Concerning the International Registration of Industrial Designs.

Under Vietnam’s patent law, patents for inventions are valid for 20 years from the effective filing date of the application. Unreasonable delays, however, can sometimes cut into patent-protected time, thus shortening the effectiveness of the patent.

E. Plant Variety Protection (PVP)

Vietnam has been a member of the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV) since 2006. The national law governing the PVP protection is the IP Law 2005 (as amended in 2009). Decree No. 88/2010/ND-CP of 2010 provides details and guidance for IP rights including rights to plant varieties. Applications for registration of new plant varieties must be filed with the Plant Variety Protection Office of Vietnam (PVPOV), Ministry of Agriculture and Rural Development (MARD). MARD will issue a registration certificate when it is

satisfied that the variety meets the protection requirements. The plant variety protection certificate takes effect from the date of the grant of rights for a period of 25 years for trees and grapes; 20 years for other species.

F. Enforcement

The national laws governing IP enforcement issues are the IP Law 2005 (as amended in 2009), the Competition Law 2004, the Law on Handling Administrative Violations 2012, the Penal Code 1999 (as amended in 2009) and their implementing regulations.

In recent years, Vietnam has made considerable efforts in improving the legal framework for IP protection. However, counterfeiting remains a pressing issue in Vietnam due to several reasons, including primarily public habits and misconceptions regarding IPR, and the current state of IP legal enforcement in Vietnam.

The local enforcement authorities have made efforts to combat IP infringement, including piracy and counterfeit goods. Local IP protection and enforcement nonetheless remains a challenge and Vietnam is still on U.S. Special 301 “Watch List” of countries that deny adequate and effective protection for IP rights. With the growth of internet marketing and increasingly sophisticated counterfeiting operations throughout the region, infringement is becoming easier and more frequent.

Counterfeiting, particularly of foodstuff and medicines, is widely considered a crime in Vietnam. The Penal Code has allowed for criminal proceedings against those who commit acts of infringement with regard to copyright and related rights, trademark and geographic indications on a commercial scale. However, the criminalization of IP infringement has confronted a number of difficulties, especially the difficulty in defining the term “commercial scale” from case to case.

Administrative action is the usual route for dealing with infringement, which offers a low-cost option with generally quick results. However, the deterrent effect of this option is limited because of the low level of penalties and lack of compensation to the rights holder.

Vietnamese judges and court officials lack sufficient IP knowledge and skills to handle IP disputes. The lack of knowledge, coupled with Vietnam’s lack of detailed regulations that criminalize IP infringement, creates an environment where IPR enforcement is often the exception, not the norm.

III. PATENTS and CERTIFICATES

There are three types of patents in Vietnam: Invention Patents, Utility Solution Patents and Industrial Design Patents. A certificate is issued for protected layout designs of integrated circuits.

A. Registration

Vietnam's patent registration system functions on a first-to-file basis. The filing date is the date that the NOIP receives the application. An applicant may claim priority to a corresponding application filed earlier in another country pursuant to treaty obligations.

B. Procedures

A patent application is examined for both formality and substance. The details of the examination, publication and registration procedure are as follows:

- i. *Formality Examination*: The examination as to formality will be carried out and concluded within one month upon the receipt of all required documents, including the priority document, by the NOIP. During this examination process, the NOIP verifies that the submission is complete and complies with all legal formalities.
- ii. *Publication*: If the industrial design application meets the formality criteria, it will be published in the *Industrial Property Gazette* within two months of the date of formal acceptance. For invention application, it will be published in the *Industrial Property Gazette* in the 19th month from the date of filing or the date of priority (if applicable) or within two months of the date of formal acceptance, whichever is later.
- iii. *Substantive Examination*: The application will be substantively examined within seven to 18 months of the publication date. During this entire examination process, a third party may lodge an opposition against the application.
- iv. *Registration*: Upon a successful substantive examination, the NOIP will issue a notice of acceptance for registration. The applicant will then be required to pay a registration fee. Generally, the patent will be issued within one to two months from the date of registration fee payment.

C. What Can Be Registered

- Inventions;
- Industrial designs; and
- Layout designs of integrated circuits.

Inventions

An invention means a technical solution, in the form of a product or a process, to resolve a specific problem by utilizing laws of nature. There are two subcategories of patents for which an invention might be eligible: (1) Invention Patent; or (2) a Utility Solution Patent.

An invention will be eligible for protection under an *Invention Patent* if it meets the following conditions:

- Is novel;
- Involves an inventive step; and
- Is susceptible to industrial application.

An invention will be eligible to receive a *Utility Solution Patent* if it is not common knowledge and meets the following conditions:

- Is novel; and
- Is susceptible to industrial application.

Invention Patents are valid for 20 years from the date of filing. *Utility Solution Patents* are valid for 10 years from the date of filing.

Industrial designs

An industrial design means a specific appearance of a product embodied by three-dimensional configurations, lines, colors, or a combination of these elements. All applications for industrial design protection undergo both formality and substantive examination procedures.

An industrial design will be eligible for protection under *Industrial Design Patents* if it meets the following conditions:

- Is novel;
- Is creative; and
- Is susceptible to industrial application.

Patents for industrial designs are valid for five years from the grant date and are renewable for up to two successive five-year periods.

Layout designs of integrated circuits

A layout design of an integrated circuit means a three-dimensional disposition of circuitry elements and interconnections of such elements in a semiconductor integrated circuit.

A circuit design will be protected if it is original and has not been commercially exploited anywhere in the world prior to the filing date of application. If the circuit design has been used, the statute of limitation for filing an application is two years from the date of exploitation.

A certificate of registered layout-design becomes valid from the grant date and expires at the earliest

date among the following: (1) 10 years from the date of filing; (2) 10 years from the date the layout-design was first commercially exploited anywhere in the world by an authorized party; or, (3) 15 years from the date of creation.

D. What Cannot Be Registered

Subject matters that is eligible for neither invention patents nor utility solution patents:

- Discoveries, scientific theories and mathematical methods;
- Schemes, plans, rules or methods for performing mental acts, training domestic animals, playing games, doing business;
- Prevention, diagnostic, or therapeutic methods for treatment of humans and animals' diseases;
- Computer software per se. (Note that "computer implemented inventions" may be eligible for a patent in Vietnam);
- Presentations of information;
- Solutions of only aesthetic characteristics;
- Plant or animal varieties; nor
- Processes of an essentially biological nature for the production of plants and animals other than microbiological processes.

Subject matters that are not eligible for industrial design patents

- Products' appearance that is dictated by the technical features of the product;
- Appearance of civil or industrial construction work; and,
- Product's appearance that is invisible during use of the product.

Subject matters that are not eligible for certificates of registered lay-out designs

- Principles, processes, systems or methods operated by semiconductor integrated circuits; and
- Information or software contained in semiconductor integrated circuits.

E. Where to Register

The National Office of Intellectual Property

No. 386 Nguyen Trai Street, Thanh Xuan District,
Ha Noi, Vietnam.

Phone: (84-4) 3858 3069 / 3858 3425 / 3858 3973

Fax: (84-4) 3858 4002 / 3858 8449

Website: www.noip.gov.vn

F. Patent Infringement and Enforcement

1. Infringement

A patent owner has the exclusive right to use and exploit the patent during its term of validity. A third party's unauthorized use of a registered patent constitutes infringement.

The following acts are not considered infringement:

- *Fair use*: the other party uses the patent for their individual non-commercial purposes, or for the purpose of evaluation, analysis, research, teaching, testing, pilot production, or for collecting information to carry out procedures to obtain a production license, or import or product marketing permit;
- *Parallel importation* of patented product;
- *Transit*: use of the patent only for the purpose of maintaining the operation of a means of transportation of a foreign entity in transit or only temporarily entering into the territory of Vietnam;
- *Prior use*: the third party has a prior use right; and
- *Compulsory license*: the other party has the right to use the patent based on a compulsory license.

2. Enforcement

The patent owner may request the alleged infringer to cease infringing, or in the alternative, seek assistance from authorities for damages and other remedies as follows:

(a) Administrative Procedure

The patent owner may seek enforcement from the relevant executive authority.

Enforcement authorities

The five authorities below are responsible for enforcement:

- The Ministry of Science and Technology Inspectorate ("MOST Inspectorate") or the provincial Department of Science and Technology Inspectorate ("DOST Inspectorate");
- The Market Management Bureau ("MMB");
- Police;
- People's Committees; and
- Customs offices

Penalties

These authorities can impose fines of up to VND250 million (approx. US\$12,500) per an individual infringer, or up to VND500 million (approx. US\$25,000) per infringing entity.

Other remedies include the following:

- Suspension of relevant business activities for 1 - 3 months;
- Delivery of the transiting goods that infringe patent out of the territory of Vietnam;
- Removal of infringing elements;
- Destruction of infringing products and materials, if removal of infringing elements from products are not applicable; and
- Confiscation of income earned through committing the act of infringement.

(b) Civil Procedure

The patent owner may file a civil case based on patent infringement before a Vietnamese court.

Remedies

The following remedies would be available:

- Termination of the infringement;
- Public rectification and apology by the infringing party;
- Performance of civil obligations;
- Compensation for damages; and
- Destruction or distribution or putting to use for non-commercial purposes of goods, materials and implements, the predominant use of which is for the production and trade of goods infringing IPR, provided that such distribution and use does not influence the exploitation of rights by the right holder.

The patent owner may apply for emergency preliminary measures during a civil proceeding when:

- A demonstrable risk of irreparable damage to the patent owner exists; or
- A demonstrable risk exists that the infringing party will remove or destroy the alleged infringing goods or evidence thereof if the court does not intervene.

(c) Customs

The patent owner may choose to enlist the power of the Customs authority to confiscate infringing goods. Two options currently exist for patent owners to enforce their rights at the border:

- Request Customs officials to enforce long-term protection. Owners may do this when they do not have information on any specific infringing exporters or importers or any specific infringing products; or
- Request Customs officials to inspect goods on a case-by-case basis (“ad hoc protection”), when

owners suspect an instance of infringement to their intellectual property.

When making a request for ad hoc protection with Customs, a deposit or bank documents must be submitted to compensate for damages that the goods’ owner may incur if the patent owner was incorrect in his suspicion.

Local Customs law provides a substantive and procedural basis to seize and detain goods at Vietnamese ports of entry. Moreover, in theory, Customs can initiate a request unilaterally on an urgent basis if they become aware of suspected infringing goods. Yet, in practice, absent a valid request by the patent owner, the authorities generally may not do anything with the suspected goods.

IV. TRADE SECRETS

A. What Can Be Protected

A trade secret is defined as information obtained from activities that involve financial or intellectual investment that has been used in business but has not been disclosed. A trade secret must satisfy specific criteria for protection, namely, that the trade secret is not commonly known or easily ascertainable, it gives the holder a commercial advantage over others, and the owner takes necessary steps to keep the trade secret confidential and not easily accessible.

A trade secret is protected upon creation without any registration as long as it fulfils the above standards.

B. What Cannot Be Protected

The following information cannot be protected as trade secret:

- Personal status secret;
- Secret concerning state management;
- Secrets concerning defense or security; and,
- Other confidential information that is not related to business activity.

C. Infringement and Enforcement of Trade Secrets

1. Infringement

The following acts would qualify as infringement:

- Accessing or obtaining a trade secret by circumventing measures taken by the legal owner of the trade secret to prevent disclosure;
- Divulging or using a trade secret without consent of the owner;
- Breaching a confidential obligation or taking advantage of the trust of a person whose duty is to safeguard a trade secret in order to access, obtain

or divulge the trade secret; and

- Accessing and obtaining a trade secret that is the subject of an application for a business license (e.g., for investment), or a license to circulate a product on the Vietnamese market by circumventing confidentiality measures taken by the competent authorities.

Third parties that use or divulge trade secrets which they know or should have known were illegally obtained will also be deemed to be infringers.

2. Enforcement

The trade secret owner may request the party who has misappropriated the trade secret to cease doing so or seek assistance from authorities for damages and other remedies as follows:

(a) Administrative Procedures

Enforcement Authority

Under the local competition law, the Vietnam Competition Authority (“VCA”) under the Ministry of Industry and Trade of Vietnam handles acts of trade secret infringement.

Penalties

The VCA can impose fines of up to VND15 million (approx. US\$670) per individual, or up to VND30 million (approx. US\$1,340) per entity. Other remedies include the following:

- Confiscation of material evidence or facilities used to commit the act of infringement; and
- Disgorgement of all profits earned from the illegal act.

(b) Civil Procedures

The owner may also file a civil case for trade secret infringement before a Vietnamese court.

Remedies

The following remedies are available:

- Termination of the infringement;
- Public rectification and apology;
- Performance of civil obligations; and
- Compensation for damages.

The trade secret owner may apply for emergency preliminary measures during the civil case when:

- A demonstrable risk of irreparable damage to the trademark owner exists; or
- A demonstrable risk exists that the infringing party will remove or destroy relevant evidence if the court does not intervene.

V. TRADEMARKS

A. Registration

Vietnam’s trademark system functions on a first-to-file basis. The filing date is the date that the NOIP receives the application. However, an applicant may be able to assert an earlier priority date if they have filed for protection of the same mark earlier in another country pursuant to the Paris Convention for the Protection of Industrial Property. Although Vietnam is not a contracting party to the Nice Agreement, it applies the Nice Agreement’s international classification system, and allows for multi-class applications.

Procedures

A trademark application is examined for both formality and for substance. The details of the examination, publication and registration procedure are as follows:

- Formality Examination:* The examination as to formality will be carried out and concluded within one month upon the receipt of all required documents, including the priority document, by the NOIP. During this examination process, the NOIP verifies that the submission is complete and complies with all legal formalities.
- Publication:* If the application meets the formality criteria, it will be published in the *Industrial Property Gazette* within two months of the date of formal acceptance.
- Substantive Examination:* The application will be substantively examined within nine months of the publication date. During this entire examination process, a third party may lodge an opposition against the application.
- Registration:* If no substantive refusals are successfully raised during the course of the substantive examination, the NOIP will issue a notice of acceptance for registration. The applicant will then be required to pay a registration fee. Generally, a registration certificate will be issued within one to two months from the date of registration fee payment.

Protection Term and Renewal

A trademark certificate of registration shall be effective from the date of registration and protection will last for 10 years from the filing date, and may be renewed indefinitely for each consecutive 10-year term.

To renew a trademark, the registrant must file a renewal application to the NOIP within six months before the expiration of the registration. If a

trademark owner is late in renewing, they are entitled to a six-month grace period, subject to a fine of 10 percent of the renewal fee for each month overdue.

B. What Can Be Registered

Vietnam's current law allows for registration of visible signs in the form of letters, words, drawings, or images, including holograms, or a combination of the aforementioned, represented in one or more colors that are capable of distinguishing goods or services of the mark owner from those of other subjects.

The following are substantive grounds for refusing protection as a trademark in Vietnam:

- Signs that are identical with or confusingly similar to national flags and emblems;
- Signs that are identical with or confusingly similar to emblems, flags, armorial bearings, abbreviations, full names of State agencies, political organizations, socio-political organizations, socio-political professional organizations, social organizations or socio-professional organizations of Vietnam or international organizations, unless permitted by such agencies or organizations;
- Signs that are identical with or confusingly similar to real names, aliases, pen names or images of leaders, national heroes or famous persons from Vietnam or foreign countries;
- Signs that are identical with or confusingly similar to certification seals, control seals, or warranty seals of international organizations, unless they are registered as certification marks by those organizations; and
- Signs liable to mislead, confuse or deceive consumers as to the origin, functional parameters, intended purposes, quality, value or other characteristics of the goods or services.

C. Geographical Indications

Definition

Vietnam defines a Geographical Indication (GI) to be a sign used to indicate a product originating from a specific area, locality, territory or country. Only the legitimate user (*i.e.*, entity producing goods that possess the distinctive characters attributed to the location indicated in the GI) may enjoy protection.

The right to register a GI belongs to the State of Vietnam. However, the State permits individuals and organizations manufacturing products bearing the GI or their representative association or the local administrative authority to exercise the right.

Requirements for a GI

A GI shall be eligible for protection if it meets the following conditions:

- The product bearing the geographic indication originates from the area, locality, territory or country corresponding to that GI; and
- The product bearing the GI has a reputation, quality or characteristics mainly attributable to the geographic conditions of the area, locality, territory or country corresponding to such GI.

What Cannot Be Registered as a GI

- Names or indications that have become generic names of goods in Vietnam;
- GI of foreign countries where the indication is no longer protected or no longer used;
- GI identical with or similar to a protected mark that is likely to cause confusion as to the origin of the products; and
- GI which mislead consumers as to the true geographic origin of the products bearing such a GI.

D. Where to Register

The National Office of Intellectual Property of Vietnam
No. 386 Nguyen Trai Street, Thanh Xuan District, Ha Noi, Vietnam.

Phone: (84-4) 3858 3069 / 3858 3425 / 3858 3973

Fax: (84-4) 3858 4002 / 3858 8449

Website: www.noip.gov.vn

E. Infringement and Enforcement of Trademarks and Geographical Indications

1. Infringement

Once a trademark is registered, the owner possesses the exclusive right to use, authorize others to use or prohibit a third party from using the mark.

The following acts, if performed without the permission of the trademark owner, constitute trademark infringement:

- Use of a sign which is identical to a registered mark for identical goods/services;
- Use of a sign which is identical to a registered mark for similar goods/services, if such use is likely to cause confusion as to the origin of the goods or services;
- Use of a sign which is similar to a registered mark for similar goods/services, if such use is likely to cause confusion as to the origin of the goods or services; and
- Use of a sign which is identical with, or similar to,

a well-known mark, or signs in the form of a translation or transcription of a well-known mark for any goods or services, including those which are not identical, similar or related to the goods or services bearing the well-known mark, if such use is likely to cause confusion as to the origin of the goods or services or mislead consumers as to the relationship between the alleged infringer and the trademark owner.

To note, parallel importation does not constitute a trademark infringement.

2. Enforcement

The trademark owner may request the alleged infringer to cease infringement or seek assistance from authorities for damages and other remedies as follows:

(a) Administrative Procedures

Enforcement authorities

The five authorities below are responsible for enforcement:

- MOST Inspectorate or DOST Inspectorate;
- MMB;
- Police;
- People's Committees; and
- Customs offices.

Penalties

Authorities can impose fines of up to VND250 million (approx. US\$12,500) per individual infringing party, or up to VND500 million (approx. U.S. \$25,000) per infringing entity. Other remedies include the following:

- Suspension of relevant business activities for one to three months;
- Compelling delivery of the transiting goods that infringe the trademark out of Vietnamese territory;
- Removal of infringing elements from the products;
- Destruction or distribution or putting to use for non-commercial purposes of goods, materials and implements, the predominant use of which is for the production and trade of goods infringing IPR, provided that such distribution and use does not influence the exploitation of rights by the right holder; and
- Confiscation of the income earned through committing the act of infringement.

(b) Civil Procedures

The trademark owner may also file a civil case based on trademark infringement before a Vietnamese court.

Remedies

The following remedies are available:

- Termination of the infringement;
- Public rectification and apology;
- Performance of civil obligations;
- Compensation for damages; and
- Destruction or distribution or putting to use for non-commercial purposes of goods, materials and implements, the predominant use of which is for the production and trade of goods infringing IPR, provided that such distribution and use does not influence the exploitation of rights by the right holder.

The trademark owner may apply for emergency preliminary measures during a civil case when:

- A demonstrable risk of irreparable damage to the trademark owner exists; or
- A demonstrable risk exists that the infringing party will remove or destroy the alleged infringing goods or evidence thereof if the court does not intervene.

(c) Criminal Procedures

The Vietnamese Penal Code allows for criminal proceedings against a party that has infringed on one's trademark or GI, provided that the infringement was wilful and on a commercial scale.

An individual who commits trademark or GI infringement may be fined up to VND1 billion (approx. US\$44,464), non-custodial reform of up to two years or imprisonment of up to three years. Other remedies include fines up to VND200 million (approx. U.S.\$8,929) and prohibition from holding a position or conducting the business up to five years.

(d) Customs

The trademark owner may choose to enlist the power of the Customs authority to confiscate infringing goods. Two options currently exist for trademark owners to enforce their rights at the border:

- Request Customs officials to enforce long-term protection. Owners may do this when they do not have information on any specific infringing exporters or importers or any specific infringing products; or
- Request Customs officials to inspect goods on a case-by-case basis ("ad hoc protection"), when owners suspect an instance of infringement to

their intellectual property.

When making a request for ad hoc protection with Customs, a deposit or bank documents must be submitted to compensate for damages that the goods' owner may incur if the trademark owner was incorrect in his suspicion.

Local Customs law provides a substantive and procedural basis to seize and detain goods at Vietnamese ports of entry. Moreover, in theory, Customs can initiate a request unilaterally on an urgent basis if they become aware of suspected infringing goods. Yet, in practice, absent a valid request by the trademark owner, the authorities generally may not do anything with the suspected goods.

VI. Copyright

A. Registration

Copyright is automatic upon fixation. Thus, the copyright owner is not required to file an application to register their copyright in order to receive a copyright in Vietnam. However, in a legal proceeding, those who do register and possess a certificate of registered copyright or related rights shall not bear the burden of proving the validity of the copyright, unless contrary proof is offered by the opposing party.

Vietnamese citizens or foreign citizens whose works were created or published first in Vietnam or foreign citizens under an applicable copyright treaty may enjoy copyright protection in Vietnam.

Ownership of Copyright

Copyright ownership belongs to the author, except when developed under an employment contract, a service contract or other similar arrangement, with or without reimbursement. In the latter case (which is similar to a “work for hire” concept in the United States), all rights under copyright (except moral rights) will be conferred upon the employer, or the person who hired the individual to create the work. Copyright to anonymous works belong to the State.

Moral and Economic Rights

Vietnamese law distinguishes between moral and economic rights for copyright.

Moral rights include the author's right to be identified as the author of the work, have his/her name acknowledged when his/her work is published and/or used, publish the work and allowing others to publish the work, and prevent others from adulterating the work. If the author is also the owner of the work, he/she will have the additional right to permit or enjoin others from using the work.

Economic rights include the right to exploit the work and obtain benefits from such use, as well as the right to receive royalties, “rents” and other material benefits. These factors will vary depending on whether the author and the owner are the same person.

Duration of Copyright

If a cinematographic work, a photographic work, a work of applied art or an anonymous work, the term is 75 years from the date the work is published. If such works (excluding anonymous works) have not been published within 25 years from the date of fixation, the term is 100 years from the date of fixation. For other works, copyright protection lasts for the life of the author, plus 50 years.

Moral rights, except for the right to publish the work or control others who may publish the work, shall be protected indefinitely.

B. What Can Be Protected By Copyright Law

An original work that is created by an author through their own intellectual labor and that is the following type of work will be copyrightable:

- Literary and scientific works, textbooks, teaching courses and other works expressed in written form or other characters;
- Lectures, addresses and other sermons;
- Press works;
- Musical works;
- Dramatic works;
- Cinematographic works and works created by a process analogous to cinematography (collectively referred to as cinematographic works);
- Plastic-art works and works of applied art;
- Photographic works;
- Architectural works;
- Sketches, plans, maps and drawings related to topography, architecture or scientific works;
- Folklore and folk art works of folk culture; and
- Computer programs and data compilations.

C. Where to Register

Copyright Office of Vietnam

51 Ngo Quyen, Hoan Kiem District, Hanoi, Vietnam.

Phone: 84.4.3823 6908

Fax: +84.4.3843 2630

Website: www.cov.gov.vn

D. Infringement and Enforcement of Copyrights

1. Infringement

The following acts are considered to be copyright infringement:

- Appropriating a copyright in a literary, artistic or scientific work;
- Impersonating an author;
- Publishing or distributing a work without the author's permission;
- Publishing or distributing a work of joint authors without permission from the co-authors;
- Modifying, editing or distorting a work in any way which prejudices the honor and reputation of the author;
- Copying a work without permission from the author or copyright holder;
- Making a derivative work without permission from the author or copyright holder of the work used for making such derivative work;
- Using a work without permission from the copyright holder and without paying royalties, remuneration or other material benefits in accordance with law;
- Leasing out a work without paying royalties, remuneration or other material benefits to the author or copyright holder;
- Duplicating, producing copies of, distributing, displaying or communicating a work to the public via a communications network or digital means without permission from the copyright holder;
- Publishing a work without permission from the copyright holder;
- Deliberately destroying or de-activating the technical solutions applied by the copyright holder to protect copyright in his or her work;
- Deliberately deleting or modifying electronic information in a work regarding management of the rights to such work;
- Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing out equipment when knowing, or having grounds to know, that such equipment may deactivate technical solutions applied by the copyright holder to protect copyright in his or her work;
- Making and selling a work with a forged signature of the author of such work; and
- Importing, exporting or distributing copies of a

work without permission from the copyright holder.

The following acts are considered to be related-rights infringement:

- Appropriating the rights of a performer, producer of audio and visual fixation, or of a broadcasting organization;
- Impersonating a performer, producer of audio and visual fixation, or a broadcasting organization;
- Publishing, producing and distributing a formulated performance, audio and visual fixation or a broadcast without permission from the performer, producer of the audio and visual fixation or from the broadcasting organization;
- Modifying, editing or distorting a performance in any way which prejudices the honor and reputation of the performer;
- Copying or reciting from a formulated performance, audio and visual fixation or a broadcast without permission from the performer, producer of the audio and visual fixation or from the broadcasting organization;
- Deliberately deleting or modifying electronic information regarding management of rights without permission from the related right holder;
- Deliberately destroying or de-activating the technical solutions applied by the related right holder to protect his or her rights;
- Publishing, distributing or importing for public distribution performances, copies of a fixed performance or audio and visual fixation knowing, or having grounds to know, that electronic information regarding management of rights has been deleted or modified without permission from the related right holder;
- Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing out equipment knowing, or having grounds to know, that such equipment helps to illegally decode satellite signals carrying coded programs; and
- Deliberately receiving or relaying satellite signals carrying coded programs without permission from the legal distributor.

2. Enforcement

The copyright owner may request the alleged infringer to cease infringement or seek assistance from authorities for damages and other remedies as follows:

(a) Administrative Procedures

Enforcement Authorities

The eight authorities below are responsible for enforcement:

- Inspectorate under the Ministry of Culture, Sport and Tourism and provincial Department of Culture, Sport and Tourism;
- Inspectorate under the Ministry of Information and Communication and provincial Department of Information and Communication;
- MMB;
- Police;
- People's Committees;
- Customs offices;
- Coast Guard; and
- Border Defense Force.

Penalties

Authorities can impose fines of up to VND250 million (approx. U.S.\$12,500) upon individual infringer, or up to VND500 million (approx. US\$25,000) upon infringing entity. Other remedies include the following:

- Compelling delivery of the transiting goods that infringe the copyright out of the territory of Vietnam;
- Removal or destruction of the infringing products; and
- Public rectification.

(b) Civil Procedures

The copyright owner may also file a civil case for copyright infringement before a Vietnamese court.

Remedies

The following remedies are available:

- Termination of the infringement;
- Public rectification and apology;
- Performance of civil obligations;
- Compensation for damages; and
- Destruction of infringing products.

The copyright owner may apply for emergency preliminary measures during the civil case when:

- A demonstrable risk of irreparable damage to the copyright owner exists; or
- A demonstrable risk exists that the infringing party will remove or destroy the alleged infringing goods or evidence thereof if the court does not intervene.

(c) Criminal Procedures

The Vietnamese Penal Code allows for criminal proceedings against individuals engaged in the following acts of copyright infringement, provided that the infringement is wilful and on a commercial scale:

- Reproduction of works, audio recordings and video recordings without the permission of the copyright owner; or
- Distribution of copies of works, audio recordings and video recordings to the public without the permission of the copyright owner.

Penalties

An individual who commits copyright infringement may be fined up to VND1 billion (approx. US\$44,464), and receive non-custodial reform of up to two years or imprisonment of up to three years. Other remedies include fines up to VND200 million (approx. US\$8,929) and prohibition from holding a position or conducting the business up to five years.

(d) Customs

The copyright owner may choose to enlist the power of the Customs authority to confiscate infringing goods. Two options currently exist for copyright owners to enforce their rights at the border:

- Request Customs officials to enforce long-term protection. Owners may do this when they do not have information on any specific infringing exporters or importers or any specific infringing products; or
- Request Customs officials to inspect goods on a case-by-case basis ("ad hoc protection"), when owners suspect an instance of infringement to their intellectual property.

When making a request for ad hoc protection with Customs, a deposit or bank documents must be submitted to compensate for damages that the goods' owner may incur if the copyright owner was incorrect in his suspicion.

Local Customs law provides a substantive and procedural basis to seize and detain goods at Vietnamese ports of entry. Moreover, in theory, Customs can initiate a request unilaterally on an urgent basis if they become aware of suspected infringing goods. Yet, in practice, absent a valid request by the copyright owner, the authorities generally may not do anything with the suspected goods.

VII. Plant Variety Protection (PVP)

A. What Can Be Registered:

Plant breeders (applicants), who may be organizations or individuals, may apply for PVP registration. Applicants may submit the applications, which must be in Vietnamese language, in person, by post, or via computer networks to the Plant Variety Protection Office, MADR. Each application will receive formality examination and substantive examination.

Conditions for Registration:

A variety eligible for protection has to be: new, distinct, uniform, stable and have a proper denomination.

- **Novelty:** The variety is deemed to have novelty if the propagating or harvested material of the variety has not been sold or distributed for the purpose of exploitation by or with the consent of the breeder for one year in Vietnam before the filing date of the application or outside Vietnam more than six years before the filing date of application for trees or grape and 4 years for other species.
- **Distinctness:** A plant variety will be considered distinct if it is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the time of filing the application or the priority date, as the case may be.
- **Uniformity:** The variety is considered to have uniformity in the propagation if there is the same expression of the relevant phenotype unless the variation is permitted for certain characteristic in its propagation process.
- **Stability:** The variety is considered to be stable if the relevant phenotypic characteristics of that variety retain the same expression as originally described, and remain unchanged after each propagation crop or propagation cycle, as the case may be.
- **Denomination:** The applicant must propose an appropriate name for the plant variety which name must be the same as the denomination registered in any country which has an agreement with Vietnam on the protection of plant varieties (including UPOV members), upon filing of a protection registration application.

Where to Register New Plant Varieties:

Plant Variety Protection Office of Vietnam, Ministry of Agriculture and Rural Development

No 2. Ngoc Ha Str, Ba Dinh District, HANOI, Vietnam.

Phone: (84 4) 8435182

Fax: (84 4) 7342844

E-mail: phamdongquang@gmail.com

Website: <http://pvpo.mard.gov.vn/Default.aspx>

B. Rights and Limitations of the PVP Certificate Holder

A certificate holder has the right to exercise or authorize other persons to exercise the following rights to reproductive materials of the protected plant variety: (a) to conduct production or propagation; (b) to process for the purpose of propagation; (c) to offer for sale; (d) to sell or conduct other marketing activities; (e) to export; (f) to import; and (g) to store for the purpose of (a)-(f).

Provisional rights to a plant variety are rights of a holder of a PVP certificate, and arise from the date of publication of the PVP application to the date of grant of a PVP certificate. Where a plant variety protection certificate is not granted for such plant variety, the applicant does not have these provisional rights.

C. Term of Protection

The plant variety protection certificate will take effect from the date of the grant of rights for a period of 25 years for trees and grapes; 20 years for other species.

D. Infringement and Enforcement of PVP Rights

Infringement

The following acts shall be regarded as infringements of rights of a protection certificate holder:

- Exploiting or using rights of such protection certificate holder without his/her permission;
- Using a plant variety denomination which is identical or similar to a denomination protected for a plant variety of the same species or a species closely linked to the protected plant variety; and
- Using a protected plant variety without paying the remuneration as required under the IP law Article 189 covering provisional PVP rights.

The following acts are not considered infringement of PVP rights:

- Using the variety for personal and non-commercial purposes;
- Using the variety for testing purposes;
- Using the variety to create a new plant variety (certain exceptions applied); and
- Using harvested materials by individual

households for self-propagation and cultivation in the next season on their own land areas.

Enforcement

See Enforcement sections above.

VIII. Current Vietnam Intellectual Property Legislation

A. Legislation

- Civil Code 2005.
- Law on Intellectual Property 2005 (as amended in 2009).
- Civil Procedure Code 2004.
- Penal Code of 1999 (as amended in 2009).
- Criminal Procedure Code 2003.
- Law on Handling of Administrative Violations 2012.
- Law on Competition 2004.
- Customs Law 2001.
- Commercial Law 2005.
- Law on Technology Transfer 2006;
- Decree No. 100/2006/ND-CP dated September 21, 2006 of the Government Providing Guidelines for Implementation of a number of Articles of Civil Code and Law on Intellectual Property with Respect to Copyright and Related Rights, amended by Decree No. 85/2011/ND-CP dated September 20, 2011 and Decree No. 01/2012/ND-CP dated January 4, 2012.
- Decree No. 103/2006/ND-CP dated September 22, 2006 of the Government Providing Guidelines for Implementation of a number of Articles of Law on Intellectual Property with respect to Industrial Property, amended by Decree 122/2011/ND-CP dated December 31, 2010.
- Decree No. 105/2006/ND-CP dated September 22, 2006 of the Government Making detailed provisions and Providing Guidelines for Implementation of a number of Articles of the Law on Intellectual Property regarding Protection of Intellectual Property Rights and State management of Intellectual Property, amended by Decree 119/2010/ND-CP dated December 30, 2010.
- Decree No. 133/2008/ND-CP dated December 31, 2008 of the Government Providing Guidelines for Implementation of a number of Articles of Law on Technology Transfer, amended by Decree No. 103/2011/ND-CP dated November 15, 2011 and Decree No. 120/2014/ND-CP dated December 17, 2014.
- Decree No. 88/2010/ND-CP dated August 16, 2010 of the Government Detailing the Implementation of a number of Articles of the Intellectual Property Law concerning rights on Plant Varieties, amended by Decree No. 98/2011/ND-CP dated October 26, 2011.
- Decree No. 72/2013/ND-CP of July 15, 2013 of the Government on the management, provision and use of Internet services and online information.
- Decree No. 99/2013/ND-CP dated August 29, 2013 of the Government Dealing with Administrative Offences in Relation to Industrial Property.
- Decree No. 114/2013/ND-CP dated October 3, 2013 the Government Dealing with Administrative Violations of Plant Varieties and Plant Protection and Quarantine.
- Decree No. 131/2013/ND-CP dated October 16, 2013 of the Government on sanctioning administrative violations of copyright and related rights.
- Decree No. 185/2013/ND-CP dated October 16, 2013 of the Government on sanctioning administrative violations in relation to commercial activity, production of and trading in counterfeit goods and prohibited goods and protection of consumer's interest.
- Decree No. 71/2014/ND-CP dated July 21, 2014 of the Government on sanctioning violations of competition law.

B. International Treaties

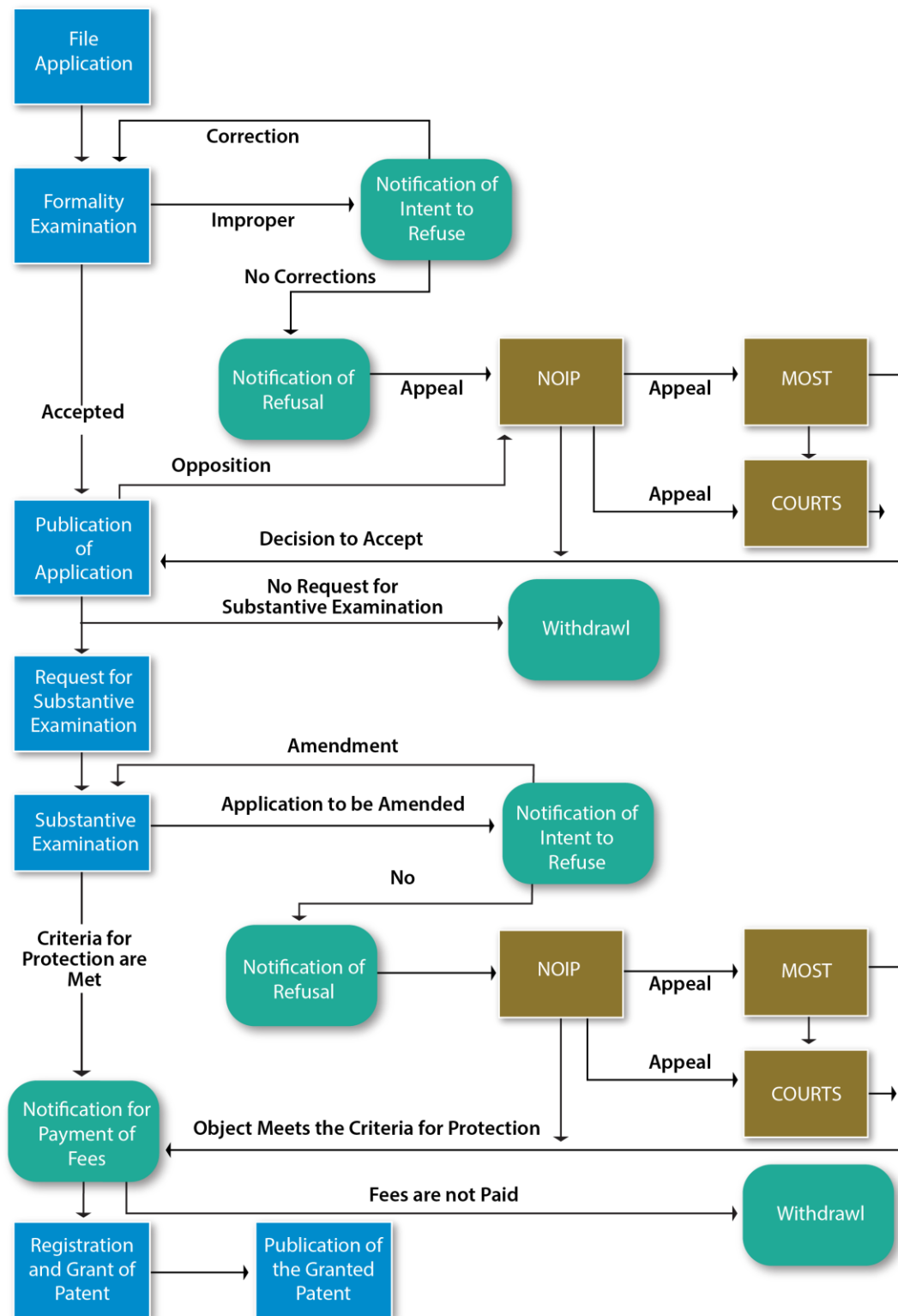
- Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).
- Paris Convention for the Protection of Industrial Property.
- The Patent Cooperation Treaty (PCT).
- Madrid Agreement Concerning the International Registration of Marks.
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.
- Berne Convention for the Protection of Literary and Artistic Works.
- Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms.
- Rome Convention for the Protection of Performers, Producers of Phonograms and

Broadcasting Organizations.

- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms.
- Brussels Convention relating to the Distribution of Encrypted Program-Carrying Satellite Signals.
- International Convention for the Protection of New Varieties of Plants (UPOV)
- Agreement between Vietnam and the Swiss Federal Council on the Protection of Intellectual Property and on Co-operation in the Field of Intellectual Property.
- Agreement between the United States of America and Vietnam on Trade.
- Relations Agreement between Japan and Vietnam for an Economic Partnership.

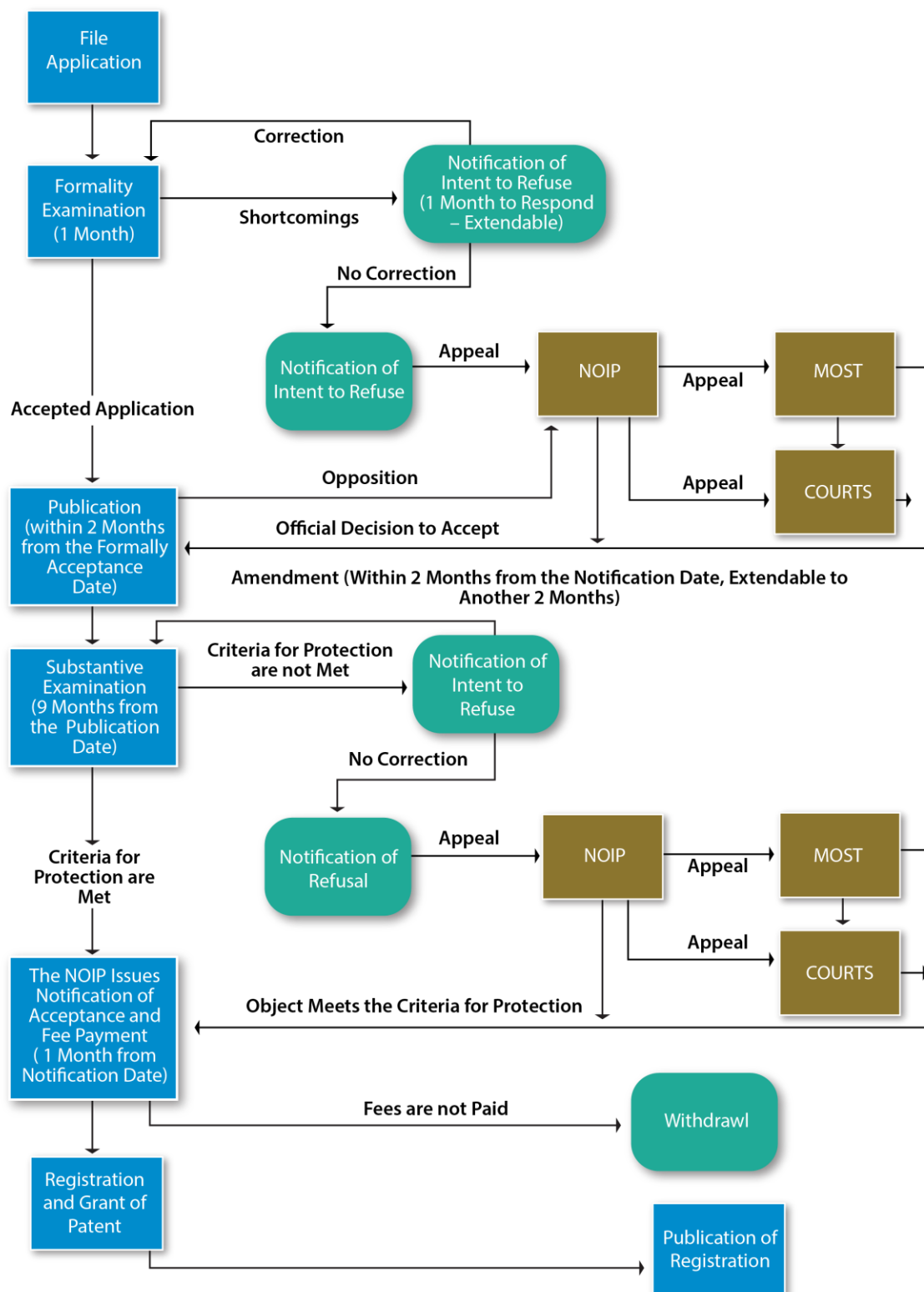
IX. ANNEXES

Figure 1: Patent Application Process



IX. ANNEXES

Figure 2. Trademark Application Process



IX. ANNEXES

Figure 3: Copyright Application Process

