1. THE FACTS: Business in Vietnam for EU Companies

**SIZE of Market** (Source: DG Trade):
- EU exports in goods to Vietnam in 2015: EUR 8,449 million
- EU imports in goods from Vietnam in 2015: EUR 29,977 million
- Total trade in goods in 2015: EUR 38,426 million
- EU exports in services to Vietnam in 2014: EUR 1,733 million
- EU imports in services from Vietnam in 2014: EUR 1,779 million
- Total trade in services in 2014: EUR 3,512 million

**Vietnam GDP in 2015:** EUR 172.6 billion (Source: DG Trade)
**Vietnam GDP growth in 2015:** 6.7% (Source: DG Trade)

> In 2015, Vietnam ranked 21st among EU's trading partners and the EU was Vietnam's 3rd largest trading partner (10.7%) after China (25.1%) and the USA (11.2%) (Source: DG Trade).

> Free Trade Agreement (FTA) negotiations between the EU and Vietnam were concluded in 2015, covering tariffs and non-tariff barriers to trade and other trade-related aspects including public procurement, regulatory issues, competition, services, intellectual property rights and sustainable development.

> While Hanoi in the north is considered the political centre, Ho Chi Minh City in the south is deemed as the country's economic hub and commercial centre. Therefore, European SMEs usually choose to manage their trade and investment activities from there.

**Key INDUSTRY SECTORS - 2015** (Source: DG Trade):
- The goods EU exports to Vietnam include (i) Machinery and appliances (27.4%), (ii) Transport equipment (17.7%) and (iii) Products of the chemical and allied industries (16.5%).
- The goods EU imports from Vietnam are primarily (i) Machinery and appliances (50.1%), followed by (ii) Footwear, heads and other headgear (12.1%) and (iii) Textiles and textile articles (10.4%).

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**THE FACTS: Business in Vietnam for EU Companies**

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**2. IPR in Vietnam for SMEs: BACKGROUND**

**Intellectual Property Rights for SMEs: Why is this RELEVANT to you?**

Intellectual Property Rights (IPR), as intangible assets, are a key factor in the competitiveness of all businesses in the global economy. Intellectual Property (IP) is a primary method for securing a return on investment in innovation, and is particularly relevant to Small and Medium-sized Enterprises (SMEs) when they internationalise their business to areas such as South-East Asia. IP assets not only offer protection to your innovations from competitors, it can also be an important source of cash flow for SMEs through licensing deals or selling IP, as well as a significant pull-factor when attracting investors.

Although SMEs often have limited time and resources, it is important to be aware of the importance of IP to businesses. IPR infringement is one of the most common concerns for international businesses in ASEAN countries, and could lead to damage to business, revenue, reputation and competitive advantage, both in South-East Asia and in core domestic markets, unless proactive steps are taken to protect your IP and deter potential infringers.

In fact, there are certain IPR-related issues which could deter SMEs from doing business in Vietnam. The most burning one is the poor IPR awareness among the general public. This leads to the fact that infringements of IPR are not considered wrong and people often do not recognize that they are illegal. Another issue is that although the IP legislation in Vietnam is comprehensive and generally consistent with international standards, there is still a lack of guidelines on certain IP issues. Also, the enforcement of IP law generally does not live up to the expectations of IPR holders. This is because administrative officials and even judges in Vietnam still have limited expertise on IPR-related matters and sometimes cannot keep up with the rapidly changing laws.

**How does VIETNAM’s IP legal framework compare to INTERNATIONAL STANDARDS?**

Generally speaking, Vietnam’s IP legislation is now relatively comprehensive, covering most aspects of protection of IP in accordance with international standards required by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and its relevant implementing regulations.

Prior to Vietnam’s accession to the World Trade Organization (WTO) in 2007, the country issued many new laws and regulations to strengthen the protection and enforcement of IP rights, and to upgrade these laws to meet the TRIPS Agreement.

Although a sounder legal framework is now in place, the enforcement mechanisms still need to be strengthened, fines must be increased for it to truly become an effective deterrent, and awareness of the importance of protecting IPR among Vietnamese consumers needs to be raised.

In addition to the TRIPS Agreement, Vietnam is a member of the following international conventions regulating IP matters: the Paris Convention for the Protection of Industrial Property; 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 Patent Cooperation Treaty; the International Convention for the Protection of New Varieties of Plants; and the Berne Convention for the Protection of Literary and Artistic Works (visit the WIPO website for more information - http://www.wipo.int/wipolex/en/profile.jsp?code=VN). These international agreements may be used by EU SMEs to protect their intellectual property assets in Vietnam.

On 2nd December, 2015, the EU and Vietnam announced the conclusion of the negotiations for an EU-Vietnam Free Trade Agreement (FTA). The FTA will be undergoing legal review and translated into the EU’s official languages and Vietnamese before its ratification from the relevant governmental institutions of both sides. In addition to eliminating tariffs and non-tariff barriers, negotiators tackled other issues concerning trade, regulation, competition, and the protection and enforcement of Intellectual Property Rights, including Geographical Indications. From 1st January, 2017, Vietnam will be an official contracting party to the United Nations Convention on Contracts for the International Sale of Goods which also contains provisions on Copyright and Related Rights (Neighbouring Rights), Industrial Designs and Industrial Property.

On 4th February, 2016, Vietnam signed the Trans Pacific Partnership Agreement (TPPA), a trade agreement among twelve of the Pacific Rim countries. The Trans Pacific Partnership Agreement is currently awaiting ratification to enter into force. The TPPA concerns trade in goods, rules of origin, trade remedies, sanitary and phytosanitary measures, technical barriers to trade, trade in services, intellectual property, government procurement and competition policy. The benefits under this agreement will be also extended to EU SMEs.

**Intellectual Property (IP) is a primary method for securing a return on investment in innovation, and is particularly relevant to Small and Medium-sized Enterprises (SMEs) when they internationalise their business to areas such as South-East Asia.**
Copyrights in VIETNAM: What you need to know

Vietnam is a member of the Berne Convention and thus any copyrights conferred in other state parties to the convention, including all EU member states, are automatically granted in Vietnam without the need for official registration (for more information, please visit www.wipo.int/treaties/en/ip/berne). However, it is still advisable to register copyrights in Vietnam because this will make court proceedings easier, if you ever need to enforce these rights before a Vietnamese court. Copyright certificates shall be presented in certain enforcement procedures (see section on ‘Enforcement’).

Having been granted copyright to a work generally means that the copyright owner holds both the moral and economic rights to the work, unless ‘the author has been assigned the task of creating the work by an organisation to which the author belongs, or the author enters into a contract with an organisation or individual pursuant to which the author creates the work’. Owning the moral rights means SMEs can attach their name to the work, publish or authorise somebody else to publish the work, and prevent others from editing the work. Owning the economic rights means that SMEs have the exclusive right to edit, reproduce and distribute the work.

The copyright owners will have the right to assign their exclusive rights, with the exception of the moral rights, and to transfer the right to publish the work. In this case a contract for assignment of copyrights must be made in writing, and include grounds for the assignment, price and method for payment, rights and obligations of the parties, and liability for contractual breach.

How LONG does legal protection last?

A copyright owner’s moral rights (except for the moral right to publish or authorise others to publish the work) are protected for an indefinite term. In line with the minimum requirements set out in the Berne Convention, the exclusive right to publish the work and authorise somebody else to do so, and the economic rights, last in Vietnam for the lifetime of the author plus 50 years, with the exception of cinematographic works, photographs, plays, applied art works, and anonymous works, which are protected for fifty years from the date of first publication, with no possibilities for extension.

HOW do I register?

Registration of copyrights can be done with the National Copyright Office of Vietnam (COV), or the Department of Culture in the locality where the SME’s office is located, should the SME have established a legal presence in Vietnam. Foreign copyright owners, however, can authorise the Copyright Service Consulting Organisation to file the registration on their behalf. The registration will be valid throughout the term of copyright protection and cannot be renewed.

The application must comprise the following:

1) Declaration for registration of copyright signed by the copyright owner (including information of the applicant; summarised content of the work; performance etc.; the name
of the author and title of work used to make the derivative work, in case of registration of derivative works; date, place and form of publication; and undertaking accepting liability for the information set out in the application);

2) Two copies of the work (for works such as paintings, a 3D photo is sufficient);
3) Receipt of paid application fee;
4) Power of attorney, if the applicant is an authorised person and not the copyright owner;
5) Document proving the right to file the application, if the right was acquired through inheritance, succession or assignment;
6) Written consent of co-authors, in cases of joint authorship and/or ownership.

The COV is required by law to notify you in writing whether or not the copyright registration has been granted within fifteen (15) working days from the date of receipt of a valid application. Copyright registrations should be filed at the below address:

**National Copyright Office of Vietnam (COV)**
51 Ngo Quyen Street, Hoan Kiem District, Hanoi
+84 (0) 4 38236908

**National Copyright Office’s Representative Office in Ho Chi Minh City**
170 Nguyen Dinh Chieu Street, District 3, Ho Chi Minh City
+84 (0) 8 39308086

**National Copyright Office’s Representative Office in Da Nang**
1 An Nhơn 7 Street, An Hai Bac Ward, Son Tra District, Da Nang
+84 (0) 511 3606967

**WHO can register?**
Authors, copyright holders and related rights holders may directly file for copyright registration, or may authorise other organisations or individuals to file for them. ‘Copyright holders’ are defined by Vietnamese law as organisations or individuals who ‘hold one, several or all of the economic rights’ in the work. ‘Authors’ are those who ‘originally create the work’ (moral right owners). ‘Related rights holders’ include organisations and individuals who ‘use their time, make a financial investment in, or use their materials and technical facilities’ to give a performance or to produce an audio and visual fixation.

**Which LANGUAGES can I use?**
The declaration for registration of copyright (point 1 in the list of required documents under the ‘How do I register’ section above) must be made in Vietnamese. Vietnamese translations are also required for the power of attorney, document proving acquired right, and consent letters from co-authors and co-owners (points 4-6 above).

**How much does it COST?**
The typical cost of copyright registration in Vietnam is from VND 100,000 to VND 600,000 (approximately EUR 4 to EUR 24) per certificate exclusive of legal fees, depending on the type of copyright applied for. More details can be found on the COV website (see Section 6 ‘Related Links’).

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**Copyrights TIPS and WATCH-OUTS in Vietnam**

- Contracts for the assignment of copyright or “related rights” must be in writing and include certain mandatory provisions and comply in other respects with relevant provisions of the Civil Code. Be aware of limitations on the rights that can be assigned under the Vietnamese law;
- Software piracy and book piracy are still rife in Vietnam. The Business Software Alliance found that 78% of all PC software installations in Vietnam were still unlicensed in 2015, compared to an average of 61% in the Asia Pacific region as a whole. To fight piracy, you should pursue the applicable enforcement actions. You should also register your copyrights because having a copyright certificate can greatly facilitate the enforcement process;
- Certain objects, such as logos, can be protected both as a copyright AND a trade mark. To qualify for this dual protection, an ‘object’ must meet the criteria of being ‘created originally’ for copyright protection, and be ‘used in the course of trade’ for trade mark protection. When possible, it is advisable to register such objects for both types of IP protection, as this will give you an extra avenue to enforce your rights.

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For more information on copyright protection in Vietnam, check out our South-East Asia IPR SME Helpdesk Guide to Copyright Protection in South-East Asia, which is available to download from our website - [http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/Copyright_english.pdf](http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/Copyright_english.pdf)

Registration of copyrights can be done with the National Copyright Office of Vietnam (COV), or the Department of Culture in the locality where the SME’s office is located, should the SME have established a legal presence in Vietnam.
B. Patents

WHAT are Patents?
A patent is a right granted to the owner of an invention to prevent others from making, using, importing or selling the invention without the owner’s permission. A patent may be obtained for a product or a process that gives a new technical solution to a problem or a new method of doing things, the composition of a new product, or a technical improvement as to how certain objects work.

There are two types of patents available under Vietnamese law: Invention Patents and Utility Solution Patents (known as ‘Utility Model Patents’ in China and several EU countries such as Austria, Belgium, Denmark, Finland, France, Germany, Italy, and the Netherlands, among others). Invention patents are granted for inventions that are novel, involve an inventive step, and have an industrial application. Utility solution patents do not require an inventive step (novelty and capability of industrial application are enough). However, the law still requires the utility solution to be something more than common general knowledge.

An invention is deemed ‘novel’ if it has never been publicly disclosed inside or outside Vietnam prior to the filing date (or ‘priority date’ if you are claiming this – see explanation in the ‘Patents in Vietnam: What you need to know’ section), either by means of use, written description, or in any other way.

The only exceptions are:
1) If the person who previously disclosed the invention did not have the right to register the patent;
2) If the invention was disclosed by the applicant in the form of a scientific report; and
3) If the applicant displayed the invention at a national exhibition in Vietnam or another officially recognised international exhibition.

An invention is not considered publicly disclosed if it is known to only a limited number of people who are obliged to keep it a secret. An invention is deemed as involving an ‘inventive step’ if the invention constitutes an inventive process, and cannot be easily created by a person with average knowledge in the relevant field. The assessment is made by taking into account of technical solutions that have already been publicly disclosed inside or outside Vietnam prior to the filing date or priority date (if priority is claimed). An invention is considered to bear ‘industrial applicability’ if it allows mass manufacture/production of the product or repeating application of the inventive process, and to achieve stable results.

Patents in VIETNAM: What you need to know
A distinction is made between invention patents and utility solution patents, which is that utility solution patents are not required to have the same level of ‘inventiveness’ as the invention patent, and thus the registration process is different. There are also differences in the length of protection, as shown below.

In line with most Asian and EU countries, Vietnam operates under a ‘first-to-file’ system, meaning that the first person to file a patent in the Vietnamese jurisdiction will own that right once the application is granted, regardless of whether another party was the inventor or the first to use the patented creation. This means that if a potential partner or other third party files for a patent in Vietnam before you do, that party will be the legal right owner. Therefore, it is essential for EU SMEs to make IP registrations in Vietnam before commencing business dealings in Vietnam, and remain cautious about the information disclosed to third parties. In the case that two or more applications are submitted for the same invention or industrial design, the applicants must agree to proceed with only one application. If an agreement is not reached between the involved parties, all applications will be refused.

Because Vietnam is party to the Paris Convention for the Protection of Industrial Property (see more details and a full list of members by visiting www.wipo.int/treaties/en/ip/paris/index.html) (‘Paris Convention’), applicants for invention patents and utility solution patents are entitled to a ‘right of priority’ if the same filing has been made within the last twelve (12) months in any other country also party to the convention. This is very useful to patent owners because after filing the first application in their home country, they then have twelve (12) months of leeway to decide which other countries they want to register in, before having to commence international filings. The eventual protection granted in Vietnam (or other countries) within the time limit will be measured from the original filing date in the first country, and will overrule any other filings made in Vietnam in the interim period.

Vietnam has also been a member of the Patent Cooperation Treaty (PCT) since 1993, which means that if EU SMEs already have a patent granted in another PCT Contracting State, the application requirements and approval time may be reduced when applying for an invention patent or utility solution patent in Vietnam. The application should be done via the National Office of Intellectual Property (NOIP).

How LONG does legal protection last?
Invention patents registered in Vietnam last for twenty (20) years from the filing date, with no possibilities for extension/renewal. The registration process typically takes at least up to twenty (20) months.

Utility solution patent protection in Vietnam lasts for ten (10) years from the filing date, with no possibilities for extension/renewal. The registration process typically takes up to eighteen (18) months.

A patent may be obtained for a product or a process that gives a new technical solution to a problem or a new method of doing things, the composition of a new product, or a technical improvement as to how certain objects work.
HOW do I register?
To obtain a patent, an application must be filed with the National Office of Intellectual Property of Vietnam (NOIP). The application dossier must contain the following:

1) A request made in the standard form provided by the NOIP;
2) Documents, samples, and information identifying the invention/utility solution;
3) Receipt of fees and charges;
4) Power of attorney, if a representative is making the filing on your behalf;
5) Documents demonstrating that you own the right to registration, if the invention has been acquired from another person;
6) Documents demonstrating the priority right (if you are claiming it).

Patent applications should be filed at the below address:
National Office of Intellectual Property of Vietnam (NOIP)
384-386 Nguyen Trai Street, Thanh Xuan District, Hanoi
+84 (0) 4 3858 30 69 / +84 (0) 4 3558 82 17

Patent registrations for plant varieties should be filed at the Department of Cultivation at the below address:
Department of Cultivation
2 Ngoc Ha Street, Ba Dinh District, Hanoi

WHO can register?
Any individuals that have created inventions by their own labour and at their own expense may register for patents. In addition, anyone who has supplied funds and materials which facilitated the creator to create the invention can also register for a patent, including employers or those who commissioned the work (unless otherwise agreed between the parties).

Which LANGUAGES can I use?
All documents of the application must be made in Vietnamese, except for the power of attorney and the evidence documents for right to register and priority right (points 4-6 above). Other documents supporting the application can be made in another language, but must be translated into Vietnamese at the request of the NOIP.

How much does it COST?
The basic filing fee for patent registration in Vietnam is VND 150,000 (approximately EUR 6.3) exclusive of legal fees and VND 180,000 (approximately EUR 7.2) for the first independent claim. However, in the time between the patent application and the granting of the patent, which may include claiming priority, substantive examination, and publication the applicant will have to pay more depending on the work undertaken for each application. Currently, the average official fee charged for a basic patent application containing one independent claim, a fifty-pages specification and one priority claim, from the beginning of the application to the end, is VND 2,730,000 (approximately EUR 115) excluding legal fees. For an up-to-date fee list, please see the ‘Patents Fees and Charges’ section of the NOIP website www.noip.gov.vn/web/noip/home/en.

For more information on patent protection in Vietnam, check out our South-East Asia IPR SME Helpdesk Guide to Patent Protection in South-East Asia, which is available to download from our website - http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/EN_patent.pdf.
C. Industrial Designs

WHAT are Industrial Designs?
A registered design is a right granted to the owner of a design to stop others from making, importing or selling, without their permission, an article to which that design – or a design not substantially different from it – has been applied.

An industrial design protects a specific appearance of a product embodied by three-dimensional configurations, lines, colours, or a combination of these elements.

In order for an industrial design to be granted, the design must be new, creative and have an industrial application.

An industrial design is considered ‘new’ if it differs substantially from industrial designs that are already disclosed to the public inside or outside Vietnam. An industrial design is deemed ‘creative’ if it cannot easily be created by a person with average knowledge in the relevant field. The assessment is made taking into account industrial designs that have already been publicly disclosed inside or outside Vietnam, prior to the filing date or priority date (if priority is claimed). An industrial design is considered ‘capable of industrial application’ if it can be used as a model for mass manufacture of products with the ‘outward appearance embodying such industrial design by industrial or handcraft methods’.

Industrial Designs in VIETNAM: What you need to know
Industrial designs cover products with a distinctive shape, pattern or colour, which still maintain novelty and industrial applicability.

In line with most ASEAN and EU countries, Vietnam operates under a ‘first-to-file’ system, meaning that the first person to file an industrial design in the Vietnamese jurisdiction will own that right once the application is granted, regardless of whether another party was the designer or the first to use the creation. This means that if a potential partner or other third party files your industrial design in Vietnam before you do, that party will be the legal owner of your IP.

Because Vietnam is party to the Paris Convention for the Protection of Industrial Property (see more details and a full list of members at www.wipo.int/treaties/en/ip/paris/index.html), applicants for industrial designs are entitled to a ‘right of priority’ if the same filing has been made within the last six (6) months in any other country also belonging to the convention. This is very useful to design owners because after first filing the application in their home country, they then have six (6) months of leeway to decide which other countries they want to register in, before having to commence international filings. The eventual protection granted in Vietnam (or other countries) within the time limit will be measured from the original filing date in the first country, and will overrule any other filings made in Vietnam in the interim period.

The following subject matters will not be protected as industrial designs in Vietnam:
1) Appearance of a product which is dictated by the technical features of the product;
2) Appearance of a civil or an industrial construction work;
3) Shape of a product which is not visible during the use of the product.

How LONG does legal protection last?
Industrial Designs last five (5) years from the filing date in Vietnam, with the option to extend two more times for consecutive five-year periods (fifteen (15) years maximum protection). The registration process typically takes up to fifteen (15) months.

HOW do I register?
To obtain an industrial design, an application must be filed with the National Office of Intellectual Property of Vietnam (NOIP). The application dossier must contain the following:
1) Request made in prescribed form (as prescribed in Circular No. 01/2007/TT-BKHCN);
2) Documents, samples, information identifying the design as provided for in Article 103 of the IP Law 2005 of Vietnam (e.g., a set of photos, a set of drawings and a description of the industrial design);
3) Power of attorney, if the application is filed through a representative;
4) Documents evidencing the right to registration, if acquired by the applicant from another person;
5) Documents evidencing the priority right, if claimed;
6) Receipt of fees and charges.

Design registrations should be filed on site or by mail at the National Office of Intellectual Property of Vietnam (NOIP), or its branch offices in Ho Chi Minh City or Da Nang:

National Office of Intellectual Property of Vietnam (NOIP)
384-386 Nguyen Trai Street, Thanh Xuan District, Hanoi
+84 (0) 4 3858 30 69 / +84 (0) 4 3558 82 17

WHO can register?
Organisations and individuals of Vietnam, foreign individuals permanently residing in Vietnam and foreign organisations
D. Trade Marks

WHAT are Trade Marks?
A trade mark is a sign that allows consumers to distinguish goods or services of one producer from those of another. Trade marks are eligible for protection under Vietnamese law provided that these are visible signs in the form of letters, words, drawings or images including holograms, or a combination of these, represented in one or more colours. A mark is distinctive if it consists of one or more easily noticeable and memorable elements, or of many elements forming an easily noticeable and memorable combination. In Vietnam three-dimensional signs (shapes) can be registered as trade marks, but so called ‘unconventional trade marks’ based on sound and smell are not yet recognised.

The law provides a number of circumstances under which a mark is not eligible for protection, such as when it is identical or confusingly similar to national flags, names of political organisations and real names, or would cause misunderstanding or confusion as to the origin, properties, quality, or other characteristics of the goods or services. It also cannot be identical or confusingly similar to another person’s mark already registered or used for identical goods or services.

Trade Marks in VIETNAM: What you need to know
While becoming a member of the Madrid Protocol (see more details and a full list of members at www.wipo.int/treaties/en/registration/madrid_protocol/) is a requirement of the ASEAN Economic Community (AEC), so far only Vietnam, Singapore, the Philippines, Cambodia and Laos are currently official members of this international treaty.

Trade mark applications made in other Madrid Protocol member countries can therefore be extended to Vietnam via the World Intellectual Property Organisation (WIPO), meaning that application requirements and approval time may be reduced. Because Vietnam is a contracting party to the Paris Convention for the Protection of Industrial Property (see more details and a full list of members at www.wipo.int/treaties/en/ip/paris/index.html), local registration of a trade mark enjoys a ‘right of priority’ if the same filing has already been made in any other country also belonging to the convention within a six-month period prior to registration in Vietnam. As with patents, this is very useful to trade mark owners because after first filing the application in their home country, they then have six months of leeway to decide which other countries they want to register in, before having to commence international filings. The eventual protection granted in Vietnam (or other countries) within
the time limit, will be measured from the first original filing date, and will overrule any other filings made in Vietnam in the interim period.

Vietnam operates under a ‘first-to-file’ system for trade mark registration. It is therefore very important to register as early as possible, before entering into the market, so as to diminish the risk of trade marks being registered by someone else first, or in other words being registered in ‘bad faith’ or ‘hijacked’.

How LONG does legal protection last?
Trade mark protection lasts for ten (10) years from the filing date in Vietnam, with the option to extend for consecutive ten (10)-year periods an unlimited number of times. The registration process typically takes between twelve (12) up to fifteen (15) months.

HOW do I register?
Trade mark registrations should be filed at the National Office of Intellectual Property (NOIP), and the preliminary examination of applications will be completed within three months upon receiving the applications. Following this, there will be further evaluations in the next nine (9) to twelve (12) months.

The application dossier must contain the following:
1) A request made in a standard form provided by the NOIP;
2) Documents, samples, and information identifying the trade mark;
3) Receipt of fees and charges;
4) Power of attorney, if a representative is making the filing on your behalf;
5) Documents demonstrating that you own the right to registration, if the trade mark has been acquired from another person;
6) Documents demonstrating the priority right (if you are claiming it).

Trade mark registrations should be made at the below address:
National Office of Intellectual Property of Vietnam (NOIP)
384-386 Nguyen Trai Street, Thanh Xuan District, Hanoi
+84 (0) 4 3858 30 69 / +84 (0) 4 3558 82 17

WHO can register?
Any organisation or individual has the right to register marks for goods that they produce or for the services they provide. This includes products you put on the market that are manufactured by others (provided that the manufacturer does not already use the trade mark for their own products, and does not object to the registration).

Which LANGUAGES can I use?
All documents of the application must be made in Vietnamese, except for the power of attorney and the evidence documents for right to register and priority right (points 4-6 above). Other documents supporting the application can be made in another language, but must be translated into Vietnamese at the request of NOIP.

How much does it COST?
The basic filing fee for trade mark registration in Vietnam is approximately VND 1,000,000 (approximately EUR 42), exclusive of legal fees, for each trade mark class with no more than six items of goods or services. For each additional item, there is a charge of VND 150,000 (approximately EUR 6.2). This basic fee above includes: filing fee, publication fee, examination fee and searching fee. However, between the application and the granting of the trade mark, the applicant may have to pay additional costs depending on the work undertaken for each application. For example, if SMEs are claiming priority, the fee will be VND 600,000 (approximately EUR 25) for each claim. The fee for granting is VND 360,000 (approximately EUR 15), including granting fee, fee for publication of the registration, and recordal fee. There is also an additional granting fee of VND 730,000 (approximately EUR 30) for each class of goods/services from the second. For an up-to-date fee list, please see the ‘Trade Marks Fees and Charges’ section of the NOIP website - http://www.noip.gov.vn/web/noip/home/en.

Trade Marks TIPS and WATCH-OUTS in Vietnam

Because Vietnam is a ‘first-to-file’ system for trade mark registration rather than ‘first-to-use’, third parties that register your trade mark before you will become the legal owners of that mark. These ‘bad-faith’ registrations are not uncommon, and in many cases the original trade mark owner is required to buy back the trade mark at an inflated price.

In Vietnam there is some protection for ‘well-known trade marks’, however, in practice it can be difficult to prove that this applies to your trade mark in court. Another way to cancel a bad-faith registration is by proving that the mark was unused for over five years after registration, in which case you can file on the grounds of ‘non-use’.

For more information on trade mark protection in Vietnam, check out our South-East Asia IPR SME Helpdesk Guide to Trade Mark Protection in South-East Asia, which is available to download from our website - http://www.southeastasia-iphelpdesk.eu/?q=en/helpdesk-guides
E. Geographical Indications

WHAT are Geographical Indications?
A product’s quality, reputation or other characteristics can be determined by where it comes from. For example, agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil.

A geographical indication (GI) is a name or a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin. In other words, a geographical indication informs consumers that a product comes from a certain place and has special qualities due to that place of origin.

Unlike a trade mark, a GI may be used by any producer who makes its products in the place designated by the GI and whose products comply with specified qualities as defined in the relevant technical specifications.

Geographical Indications in VIETNAM: What you need to know
Since the new IP laws took effect in 2006 (as amended in 2009), geographical indications are recognised and can be registered in Vietnam.

According to Paragraph 22, Article 4 of the IP Law, “A geographical indication means a sign which identifies a product as originating from a specific region, locality, territory or country”. Following the definition, geographical indications include geographical names, signs, symbols and images.

The following subject matters will not be protected as geographical indications:
- Names or indications which have become generic names of goods in Vietnam;
- Geographical indications of foreign countries where they are not or no longer protected or no longer used;
- Geographical indications identical or similar to a protected mark, where the use of such geographical indications is likely to cause a confusion as to the origin of products;
- Geographical indications which mislead consumers as to the true geographical origin of products bearing such geographical indications.

GeIs can not only be protected in Vietnam 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 (Art. 87 of the IP Law). To further explain the two legal tools:
- Certification mark: a mark licensed by its owner to other organizations or individuals to use for their goods in order to certify the origin, materials, raw materials, methods of production, quality, accuracy and safety (function of control and certification);
- Collective mark: a mark that distinguishes goods or services of members from those of non-members of a legally registered collective organization that is the owner of the mark and according to rules on using collective marks.

In addition, the IP Law of Vietnam also sets out that any 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, business activities, commercial source of goods or services, the origin, production method, feature, quality or other characteristics of goods or services will be considered an act of unfair competition.

How LONG does legal protection last?
Once obtained, GI protection is offered on an unlimited term bases without any need to renew the registration.

HOW do I register for Geographical Indications recognition?
The application for a GI registration must be filed on site or by mail at the National Office of Intellectual Property of Vietnam (NOIP) or at its branch offices in Ho Chi Minh City or Da Nang.

The GI application consists of the following documents:
- A registration request made in a standard form provided by NOIP;
- Documents, samples, and information identifying the GI (e.g., a description of particular characteristics and quality of products bearing the geographical indication and a map of the geographical area);
- Power of attorney, if the application is filed through a representative;
- Documents evidencing the right to registration, if acquired by the applicant from another person;
- Receipt of fees and charges.

WHO can register?
Vietnamese authorities allow organisations and individuals producing products bearing geographical indications, collective organisations representing such organisations, or individuals or
administrative management agencies of localities to which such geographical indications pertain to exercise the right to register such geographical indications. Subjects who exercise the right to register geographical indications do not become owners of such geographical indications.

Foreign individuals not permanently residing in Vietnam and foreign organisations and individuals not having a production or trading establishment in Vietnam may file applications for a GI registration through a legal representative in Vietnam.

Which LANGUAGES can I use?
All documents of the application must be in Vietnamese, except for the power of attorney and documents evidencing the right to registration. Other documents supporting the application can be made in another language, but must be translated into Vietnamese at the request of NOIP.

How much does it COST?
The filing fee for geographical indication registration in Vietnam is VND 180,000 (approximately EUR 7). The fee for publication of application is VND 120,000 (approximately EUR 4). The charge for substantive examination of the application is VND 420,000 (approximately EUR 15). The fees for obtaining a certificate of geographical indication registration, for registering a certificate of geographical indication and for the publication of a decision on granting a certificate of geographical indication registration is VND 120,000 (approximately EUR 4) each.

For an up-to-date fee list, please see the ‘Geographical Indications - Fees and charges’ section of the NOIP website www.noip.gov.vn/web/noip/home/en.

GIs can not only be protected in Vietnam 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-fair competition (Art. 87 of the IP Law).

F. Trade Secrets

WHAT are Trade Secrets?
Trade Secrets are defined by Vietnamese law as ‘information obtained from financial or intellectual investment activities, which has not been disclosed and is applicable in business’. A piece of information falls under the definition of a ‘trade secret’ when the information:
1) Has not been made public, and is not common knowledge
2) Gives its owner a business advantage
3) Remains secret because the owner takes necessary measures to protect the confidentiality of the information

Typically trade secrets could include new products or business models, special techniques, customer and supplier lists, technical know-how, etc.

Trade Secrets in VIETNAM: What you need to know
The following information may not be protected as trade secrets:
i) Personal information;
ii) State management secrets; and
iii) Other confidential information that is not relevant to business.

Trade secrets are protected upon creation without any registration, provided that reasonable measures have been taken to keep the information secret. A trade secret that has been acquired by an employee or other party carrying out their assigned duties in the job belongs to the employer/duty assignor, unless it has been agreed otherwise. It is worth noting that, as trade secrets are a relatively new addition to Vietnamese IP law, the Vietnamese authorities have not yet dealt with any infringement cases relating to trade secrets.

How LONG does legal protection last?
Because there is no formal registration process for trade secrets, they are often referred to as ‘unregistered rights’, meaning that they can theoretically last forever – as long as they remain secret.

Wong Trade Secrets TIPS and WATCH-OUTS in Vietnam

Despite being defined as the unregistered rights, trade secrets are now recognised in Vietnam and can therefore be enforced, provided they can be proven to be non-public carry commercial value, and certain measures have been taken to protect their confidentiality, such as by limiting employee access to information, marking documents confidential, including confidentiality clauses in employment agreements, etc. (see points 1–3 above).

For more information on trade secret protection in Vietnam, check out our South-East Asia IPR SME Helpdesk Guide to Trade Secret Protection in South-East Asia, which is available to download from our website - http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/Trade-Secrets-English.pdf
4. Using CUSTOMS to block counterfeits

HOW can Customs help in protecting IP?
Vietnamese customs laws prohibit the importation of goods that infringe IP Rights, and Vietnamese customs has the authority to impose fines on infringers and confiscate infringing goods for import. However, infringing goods for export are not subject to any penalties imposed by the Vietnamese authorities so far. If the infringement of IP Rights exceeds a certain threshold, the customs authorities can also arrange criminal proceedings to be brought against the infringing party.

Customs in VIETNAM: What you need to know
To seek customs recordal, you must file an application with the Department of Customs Control and Supervision under the General Department of Customs. No later than 20 days from the receipt of the request, the Department of Customs Control and Supervision should notify you whether the application is accepted or not. The effective period of the recordal is two years from the date of the acceptance notice by the Department. The period may be extended for two more years upon request. After the extension period expires, you must re-file a new application if you wish to pursue the customs recordal.

Although registering with Vietnamese Customs is not mandatory, it is advisable to be included to their database, as it will help the customs authorities to recognise counterfeit versions of your product, and improve the chances of such suspect items being blocked at the border. If you are aware of a suspected illegal shipment of your products, you can also work together with Vietnamese customs to detain such shipments.

On 15 March 2015, the Ministry of Finance enacted Circular No. 13/2015/TT-BTC, which details the inspection, supervision, and temporary suspension of customs procedures for exported and imported goods that are subject to intellectual property rights, and the control of counterfeit goods and goods that infringe intellectual property rights. This Circular sets out the rights and obligations of related organizations and individuals as well as of customs authorities, and includes additional provisions on applications and actions for inspection and supervision of exported or imported goods that are subject to intellectual property rights. It also strengthens customs officials’ inspections powers in relation to actions against counterfeit goods or goods suspected of being counterfeit, and actions against goods with signs of infringing intellectual property rights. In fact, the Circular has provided significant transparency in the procedures of customs seizure.

WHAT can be registered?
Although Vietnamese Customs is legally obliged to monitor all types of intellectual property, in practice this usually only applies to trade marks, geographical indications, and copyrights and related rights.

How LONG does legal protection last?
The effective period of the recordal is one year from the date of the acceptance notice by the customs office and may be extended for one more year upon request. After that, IP holders must re-file a new application if they wish to pursue the monitoring.

HOW do I register?
In order to monitor the flow of infringing goods crossing Vietnam’s borders, SMEs will need to initiate customs recordal by filing a request with the General Department of Customs. A request for recordal must contain the following mandatory documents:

- Certified copies of IP certificates of registration, e.g., trade mark registration certificates;
- Documents relevant to the goods that you wish to register with customs, including: a list of authorised importers/exporters, mode of importation/exportation of genuine goods, description of how to distinguish the genuine goods from infringing ones, documents on the origin of genuine goods, and pictures of genuine goods;
- A notarised and legalised power of attorney (if filing through a local IP agent).

In addition, the applicant should submit the following supporting documents (if available):

- Information on estimated time and venue of import and export;
- Expert opinions on infringing goods; and
- Sanctioning decisions made by enforcement agencies in previous cases of infringement of the goods you are registering (if applicable).

The customs office should give notification regarding if the submitted application is accepted no later than 20 days from the receipt of the request. More details can be found on the Customs of Vietnam website at www.customs.gov.vn/Lists/EnglishProcedures/Default.aspx?language=en-US.

Requests should be filed at the below address:

**General Department of Vietnam Customs**
Area E, Duong Dinh Nghe Street, Cau Giay District, Hanoi, Vietnam
Tel: +84-4 44520606 - ext. 8624
Email: webmaster@customs.gov.vn

WHO can register?
Vietnamese IP right holders may file the request with the General Department of Customs directly. Foreign IP right holders must file the request via an IP Agent.

Which LANGUAGES can I use?
The application must be in Vietnamese. However, the standard forms provided by the General Department of Customs are issued in both English and Vietnamese.
How much does it COST?
There is no official cost for filing a request for registration with the Vietnamese customs.

<table>
<thead>
<tr>
<th>Customs TIPS and WATCH-OUTS in Vietnam</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Border control can be an effective mean for enforcing your IP rights in Vietnam, and serves the purpose of pre-empting and supressing IP counterfeits of your products at Vietnam’s borders. Border control has gained more attention over the past few years from business owners wishing to protect their IP in Vietnam.</td>
</tr>
<tr>
<td>• Infringers are demonstrating increasingly sophisticated counterfeiting methods, and are finding new ways to try to outwit customs and other IP enforcement authorities such as ‘transhipment’ whereby goods are first shipped to an intermediate location in order to hide the point of origin. In turn, customs agencies in Asia and globally are improving their enforcement methods, such as creating a more comprehensive databanks of information about products and trade marks filed by companies, and sharing such information between international customs authorities to a larger extent. Piracy and counterfeiting are still widespread in Vietnam, and the customs registration process is relatively simple but can be very effective. It is therefore recommended that European business owners register with the Vietnamese customs.</td>
</tr>
<tr>
<td>• Infringing goods for export are not subject to any penalties imposed by the Vietnamese authorities. To fight that infringement, you should start an enforcement action within the territory of Vietnam at the production site.</td>
</tr>
</tbody>
</table>

Vietnamese customs laws prohibit the import of goods that infringe IP Rights, and Vietnamese customs has the authority to impose fines on infringers and confiscate infringing goods for import.

5. ENFORCING your IP

In the case of IP assets being infringed in Vietnam, besides using customs to block counterfeits (customs are described separately in Part 4 above), there are three main avenues of enforcement: administrative actions, civil litigation, and criminal prosecution. In many cases, however, private mediation via legal professionals is more effective and should be considered a viable option.

Administrative actions

Administrative actions are both cost-effective and time-efficient, and this is certainly the most common route for most companies when infringement is discovered. It is a good way to deal with small-scale infringers and to gather evidence for larger-scale infringers, and is the best option if the IP right holder’s main priority is to immediately stop ongoing IP infringement.

Depending on the value and nature of the case, different governmental bodies may be involved in the action, such as the Inspectorate of Science and Technology, the police, the market control force, Vietnam Customs, the Vietnam Competition Authority, etc., and will be able to issue different penalties, such as issuing cease and desist orders, revoking business licences, issuing monetary fines, or the confiscation and destruction of infringing goods.

While such penalties are generally not as harsh as penalties that can theoretically be awarded under civil litigation or criminal prosecution, in practice administrative actions may offer a more realistic chance of stopping infringers quickly, and in some cases obtaining damages.

A request to apply administrative measures against IPR infringement should be filed with a relevant enforcement authority and include:

• Documented evidence of ownership of the infringed IP
• Proof of damages caused by the infringement (however, in practice, if infringement has been committed this is already considered as proof of damages)
• Evidence of infringement (e.g., samples or photographs of the counterfeit/infringing goods)
• Expert opinions (if available)
• Power of attorney, if the request is filed by an IP agent

The authority will examine the request within one month from the filing date. When the request and accompanying documents are found to be satisfactory, the relevant authority will then raid and seize infringing goods without prior notice to the infringer. If infringement is found, the relevant authority will impose sanctions upon the infringer.

Consequences of administrative cases may include the following:

• Primary sanctions, which include either a warning or a fine up to VND 500 million (approximately EUR 18,000). This fine must be paid to the State Treasury;
• Additional sanctions, which include confiscation and/
or destruction of infringing goods, as well as means for producing the infringing goods, and suspension of business license;

- Other consequences include: the removal of infringing elements from a product; revocation of domain name and/or company's name containing infringing elements; recall of infringing goods already on the market; recovery of illegal profit that the infringers make from the infringement; and compulsory distribution or putting to use of infringing goods (as well as the means of production such as the machinery used) for non-commercial purposes, as long as it does not influence the IP right holder’s commercial activities.

Illegal profits recovered will go to the State Treasury. For IP holders to claim damages, they must pursue civil litigation against the infringer.

Civil Litigation
Civil litigation is more suited to addressing larger-scale infringements; however, very few civil litigation cases are brought to the court in Vietnam. This is due to several reasons such as the amount of time required to bring a case to court, and because there is a lack of proper IP training and human resources within the judicial system, meaning that case outcomes can be somewhat unpredictable. Damages are often calculated based on the amount of lost sales or the infringer's profits. However, if the actual amount of damages owed cannot be determined, the maximum amount the court can award in damages is VND 500 million (approximately EUR 18,000). The Vietnamese authorities are still working towards improving training for court officials, judges, customs authorities, and other IP enforcement agencies by cooperating with other international organisations and government agencies.

By taking civil actions, IP right holders can request provisional measures (preliminary injunctions) and claim remedies available under law, especially claims for damages. To initiate a lawsuit, you will need to file a petition and necessary documents to the court within two years from the date on which you discover that your rights have been infringed.

Criminal Prosecution
IP infringement can be criminalised. However, due to lack of guidance and the inconsistency in the legal system, criminal action is not usually feasible in practice.

While relatively rare, criminal prosecutions have the power to award the harshest penalties for IP infringement. Criminal charges in Vietnam can be brought against copyright or related rights infringers for the reproduction or distribution of the relevant work to the public, and this infringement must be deemed to be on a ‘commercial scale’ (see below ‘Enforcement Watch-Outs’ box). So far the term ‘on a commercial scale’, a requirement for commencing criminal action, has not been officially defined in Vietnamese law, which complicates criminal actions in Vietnam.

Furthermore, the Penal Code provides that criminal charges should be brought only on the request of the victim, i.e., the IP right holder. However, Vietnamese law states that only individuals can be defined as ‘victims’ in legal cases. Thus, IP rights held by an SME or a corporation cannot be defended via criminal prosecution, and instead only civil litigation or administrative actions can be pursued.

Criminal charges can also be brought against industrial property rights infringers, where the object in question is counterfeit trade mark goods, provided that the infringement is i) intentional, and ii) on a ‘commercial scale’. Penalties for copyright and industrial property right infringement include a monetary fine up to EUR 38,000 and imprisonment up to three (3) years.

The new Penal Code which should have addressed the above issues was expected to take effect on 1st July, 2016. The new code will no longer require “commercial scale” as a condition for criminal prosecution. Rather, the code sets forth a monetary threshold for the action. The new code should also provide for a regime in which the courts can impose criminal penalties upon juristic persons (i.e., companies). However, the implementation of the new Penal Code has been postponed due a number of technical errors and inconsistencies. The National Assembly of Vietnam is currently reviewing the Code and the new effective date has not been communicated to the public. The cost of criminal prosecution is borne by the authorities, and a favourable ruling could be a valuable deterrent to potential future infringers. It usually takes twelve (12) months for a criminal trial proceeding and another twelve (12) months for an appeal proceeding to be completed.

Enforcement TIPS and WATCH-OUTS in Vietnam

- Although the legal framework in Vietnam is relatively sound, the main IP issue remains the enforcement of these laws, as is the case across the majority of Asian countries. Piracy and counterfeiting are widespread, however, relatively few IP cases are brought to court because often the amount of damages awarded does not warrant the investment necessary to engage in litigation.

- The success of an administrative action greatly depends on the choice of enforcement authority. For large-scale and complicated infringement, you should send complaints to the high-level administrative authorities, such as the inspectorates of competent ministries, or the Inspectorate of the Ministry of Science and Technology. As to small-scale infringement, you might seek enforcement actions from lower-level administrative authorities, such as the Market Control Department because it is more cost-effective and less time-consuming than pursuing the case at the inspectorates.

- Criminal action can be taken against copyright infringement and trade mark counterfeiting only.
6. RELATED LINKS and Additional Information


> European Chamber of Commerce in Vietnam - www.eurochamvn.org/


> General Department of Vietnam Customs - http://www.customs.gov.vn/English/Lists/CustomsFormalities/Exporter.aspx

> ASEAN IP Portal - http://www.aseanip.org/
7. TEAR-OUT Supplement

In the case of IP assets being infringed in Vietnam, there are three (3) main avenues of enforcement: administrative actions, civil litigation, and criminal prosecution. In many cases, however, private mediation via legal professionals is more effective and should be considered a viable option.

**Administrative Actions**

Depending on the value and nature of the case, different governmental bodies may be involved in the action, such as the Inspectorate of Science and Technology, the Police, the Market Control Force, Vietnam Customs, the Vietnam Competition Authority, etc., and will be able to issue different penalties, such as issuing cease and desist orders, revoking business licenses, issuing monetary fines, or the confiscation and destruction of infringing goods. Illegal profits recovered will go to the State Treasury.

Upon receipt of a complaint, the authority will determine whether the complaint suffices or not. When they find the complaint and its accompanying documents satisfactory, they will then carry out raids and seize infringing goods without prior notice to the infringer. If they expressly find infringement and/or counterfeiting, the competent authority will impose sanctions upon the infringer.

There are no official forms issued by the competent authorities. If the IPR holders want to take the administrative action to deal with the infringement, they will prepare a complaint then submit it to the competent authorities. Under the Article 24 of the Decree No. 99/2013/ND-CP and the Article 22 of the Decree No. 105/2006/ND-CP, a complaint must include at least a standard minimum content.

A general template of the Complaint for administrative actions is listed below (file 1). The document is provided to serve as a general example.

**Civil Litigation**

The relevant documents to initiate a civil lawsuit in Vietnam would need to be drafted on an ‘ad hoc’ basis by lawyers licensed to represent clients in the country. The forms of “Complaint for the Court” (file 2.1) and “Request for application of injunction” (file 2.2) are available below. These forms are addressed to People’s Court at the district or provincial level. The documents are provided to serve as a general example.
**Criminal Prosecution**

Criminal action can be taken against copyright infringement and trade mark counterfeiting only. So far, Vietnam law has not set forth any regulations regarding the request form of handling violation through criminal measure.

The form for the "Petition" (file 3) is listed below and attached. This form is addressed to Economic Police or Prosecutor to propose to open criminal case against act of violating intellectual property right. The document is provided to serve as a general example.

**Customs Enforcement**

During Customs monitoring, Customs will temporarily suspend suspicious shipments and notify the IPR holder of the suspension. In the notification letter, Customs will require the IP holder to decide whether or not to officially call for seizure of the products. At this step, Customs may provide the holder with certain information about the shipments for the trade mark owner to make up its mind.

If the holder decides to call for an official seizure of the products, the holder must lodge a written request for the same and post a bond to secure the request. If the trade mark owner does not decide on the seizure, Customs will release the products.

Form 4.1 listed below is addressed to Customs Management Supervision Department of General Department of Customs to request the Customs to inspect and supervise the import and export of goods to detect goods having signs of infringing intellectual property right.

Form 4.2 listed below is addressed to Sub-department of Customs where the customs procedures are carried out for the batches of exported/imported goods to request the customs to suspend the customs procedures of a certain consignment suspected to infringe intellectual property right.

**FORMS ATTACHED:**

1. Administrative actions - Complaint for administrative actions (Vietnamese & English);
2. 1. VIPRI – Assessment for infringing upon industrial property rights – Sample Declaration Form (Vietnamese & English);
3. 2.1 Civil actions - Complaint to Court (Vietnamese & English);
4. 2.2. Civil actions - Request for application of injunction (Vietnamese & English);
5. 3. Criminal Prosecution - Petition to the Economic Police or Prosecutor (Vietnamese & English);
6. 4.1 Customs - Application of request for control and supervision on import - export goods requested to protection on intellectual property;
7. 4.2 Customs - Application of request for temporary suspension of doing customs procedure (Vietnamese & English).
CÔNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM
Độc lập - Tự do - Hạnh phúc
SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

Ngày/Date .... Tháng/Month .... Năm/Year ...

DON YÊU CẦU XỬ LÝ VI PHẠM
(Dối với hành vi vi phạm quyền sở hữu tri thức)
COMPLAINT
(Against infringement upon intellectual property rights)

Kính gửi/To: .................................................................

I. BÊN YÊU CẦU XỬ LÝ VI PHẠM/ COMPLAINANT
Bên yêu cầu/ Name: .................................................................
Trụ sở tại/ Address: ....................................................................
Đại diện bởi/ Representative: ...........................................................
Trụ sở tại/ Address: ....................................................................
Diễn thoại/ Tel.: ................................................................................

II. BÊN XÂM PHẠM QUYỀN/ INFRINGING PARTY
Bên xâm phạm quyền/ Name: ..........................................................
Địa chỉ/ Address: ............................................................................

III. ĐỐI TƯỢNG SỞ HỮU CÔNG NGHIỆP LIÊN QUAN/ INDUSTRIAL PROPERTY OBJECTS:

<table>
<thead>
<tr>
<th>STT No</th>
<th>Đối tượng SHCN Object</th>
<th>Số Giấy Chứng Nhận Registration No.</th>
<th>Ngày cấp bằng Registration Date</th>
<th>Ngày hết hạn Expiry Date</th>
</tr>
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</table>

IV. HÀNH VI XÂM PHẠM/ INFRINGEMENT:

.................................................................................................................................
.................................................................................................................................
.................................................................................................................................

V. KIẾN NGHIỆP/ REQUEST

Trên cơ sở các thông tin nêu trên, chúng tôi xin kính đề nghị Quý Cơ quan xem xét vụ việc và có hình thức xử lý thích đáng đối với các hành vi vi phạm của Bên xâm phạm quyền nêu trên. Cụ thể, chúng tôi xin được đề nghị Quý Cơ quan tiến hành các hoạt động sau/ Based on the information stated above, we would like to request your Agency to consider the case and apply following measures to handle the infringement of the above-mentioned infringing party:

.................................................................................................................................
.................................................................................................................................
.................................................................................................................................

Trân trọng/ Regards. ........................................................................................................

Người yêu cầu/ Complainant

Tài liệu kèm theo/ The attached documents include:

.................................................................................................................................
.................................................................................................................................
### GIÁM ĐỊNH SỞ HỮU CÔNG NGHIỆP – MẪU TÔ KHAI

**INDUSTRIAL PROPERTY ASSESSMENT – SAMPLE DECLARATION FORM**

<table>
<thead>
<tr>
<th>TÔ KHAI</th>
<th>ĐẦU NHẬN DON/ FILING RECEIPT</th>
</tr>
</thead>
<tbody>
<tr>
<td>YÊU CẦU GIÁM ĐỊNH SỞ HỮU CÔNG NGHIỆP</td>
<td>(Đành cho Viện Khoa học sở hữu trí tuệ/ For Vietnam Intellectual Property Research Institute)</td>
</tr>
<tr>
<td>DECLARATION FORM</td>
<td></td>
</tr>
</tbody>
</table>

**Kính gửi: Viện Khoa học sở hữu trí tuệ**
Số 21, ngõ 67, phố Đỗ Quang, quận Cầu Giấy, Hà Nội

**To: Vietnam Intellectual Property Research Institute**
No. 21, Lane 67, Do Quang street, Cau Giay, Hanoi

---

**NGƯỜI YÊU CẦU GIÁM ĐỊNH/ REQUESTER**

- Tên (Họ tên)/ Name (Full name):
- Địa chỉ (Trụ sở)/ Address:
- Yêu cầu giám định với tư cách là/ Request for assessment in the position of:
  - Chủ thể quyền sở hữu công nghiệp/ Owner of industrial property rights
  - Người bị xử lý/ bị khiếu nại, tố cáo vì xâm phạm quyền sở hữu công nghiệp/ Persons who are handled/ complained against or denounced for infringing upon industrial property rights
  - Người có quyền, lợi ích liên quan/ Persons with related rights and interests
- Người đại diện/ Representative:
  - Tên đầy đủ/ Full name:
  - Địa chỉ/ Address:
  - Điện thoại/ Tel.:
  - Fax:/ Fax:
  - Email:/ Email:

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**ĐỐI TƯỢNG GIÁM ĐỊNH/ ASSESSMENT OBJECT**

- Tên đối tượng giám định/ Name of assessment object:
- Đối tượng được bảo hộ tương ứng/ Type of assessment object:
  - Sáng chế/ Patent
  - Giáo pháp hữu ích/ Utility model
  - Thiết kế bố trí mạch tích hợp/ Integrated Circuits Layout-Design
  - Kiểu dáng công nghiệp/ Industrial design
  - Thương hiệu/ Trade mark
  - Chí đánh giá/ Geographical Indication
  - Thương hiệu/ Trade name
  - Khác, cụ thể là/ Others, specifically:

- Đang thể hiện của đối tượng giám định/ Form of the assessment object:
  - Tài liệu đăng giấy/ Paper document
  - Ảnh chụp/ Photograph
  - Video, CD, DVD/ Video, CD, DVD
  - Mẫu vật/ Sample
  - Đang khác, cụ thể là/ Others, specifically:
<table>
<thead>
<tr>
<th>Tải liệu, mẫu vặt kèm theo/ Attached documents and samples</th>
<th>......, ngày/ date ... tháng/ month ... năm/ year</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Tổ khai yêu cầu giám định/ Assessment request</td>
<td>Người yêu cầu giám định/ Requester</td>
</tr>
<tr>
<td>☐ Giấy ủy quyền/ Power of attorney</td>
<td>Họ tên, chữ ký, dấu nếu có</td>
</tr>
<tr>
<td>☐ Tài liệu thể hiện căn cứ xác lập quyền sở hữu công nghiệp (Văn bằng bảo hộ, Giấy chứng nhận lì-xăng,...)/ Documents showing grounds for establishment of industrial property rights (protection certificates, license certificates, etc.)</td>
<td>Full name, signature, stamp (if any)</td>
</tr>
</tbody>
</table>
| ☐ Tài liệu thể hiện đối tượng giám định (tài liệu mô tả, ảnh chụp, bản vẽ,...)/ Documents showing the assessment object (descriptive documents, photographs, drawings, ...)
| ☐ Phi nộp đơn giám định/ Fee for submitting assessment request
| ☐ Tài liệu khác, cụ thể là/ Other documents, specifically: |
| ☐ Mẫu vặt, số lượng/ Samples, quantity                   |                                               |
ĐƠN KHỞI KIÊN

COMPLAINT

Kính gửi/ To: Toà án nhân dân/ People’s Court of ......................................

Họ và tên người khởi kiện/ Complainant: ......................................................................

Họ và tên người bị kiện/ Respondent: ......................................................................

Địa chỉ đăng ký/ Registered Address: ......................................................................

Địa chỉ kinh doanh/ Trading Address: ......................................................................

Yêu cầu Toà án giải quyết những vấn đề sau đây đối với Bị đơn/ Respectfully ask the Court to address the following issues concerning the Respondent:

I. Yêu cầu/ Petition requested:

Đề nghị Toà án buộc Bị đơn ......................... do do hành vi này bị xem là hành vi xâm phạm..........................., căn cứ:

The Court is respectfully requested to order the Respondent to .................. as such act constitutes ..................., pursuant to:

a) Điểm... Khoản... Điều... , Luật...

b) Điểm... Khoản... Điều... , Luật...

II. Các tình tiết của vụ việc/ Factual background:

- Giới thiệu về Nguyên đơn/ Introduction to the Complainant -

- Vi phạm của Bị đơn/ Infringement by the Respondent -
III. **Cơ sở khởi kiện cụ thể/ Legal basis:**

- Hành vi xâm phạm .................. –
- Act of infringing .................. –

.........................................................................................................................................
.........................................................................................................................................
.........................................................................................................................................
.........................................................................................................................................

IV. **Kết luận/ Conclusion:**

Các chứng cứ và lập luận trên đã chứng minh rõ hành vi ...... của Bị đồn là hành vi xâm phạm quyền của Nguyên đơn đối với ...... đã được đăng ký bảo hộ theo quy định tại Điểm ...., Khoản ...., Điều ....., Luật ....;

It is sufficiently proved that the act of ........ constitutes an act of infringing the Complainant’s ........ which has been registered and protected, pursuant to Article .... of the ..... Law;

Vì vậy, Nguyên đơn kính đề nghị Quý Tòa ........ theo quy định tại Điểm ..., Khoản ..., Điều ..., Luật....;

Therefore, we respectfully request the Court to ............ pursuant to Article .... of the ..... Law.

Họ và tên người làm chứng/ Name of the witness:

.........................................................................................................................................
.........................................................................................................................................
.........................................................................................................................................
.........................................................................................................................................

Những tài liệu, chứng kèm theo đơn khởi kiện gồm có/ Documents attached to this Complaint include:

.........................................................................................................................................
.........................................................................................................................................
.........................................................................................................................................
.........................................................................................................................................

Người khởi kiện/ Complainant
CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM
Độc lập - Tự do - Hạnh phúc
SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

....., ngày/ date .... tháng/ month .... năm/ year ....

ĐƠN YÊU CẦU
ÁP DỤNG BIỆN PHÁP KHẨN CẤP TẠM THỜI
REQUEST FOR
APPLICATION OF PRELIMINARY INJUNCTION

Kính gửi/ To: Toà án nhân dân/ People’s Court of

(1) Người yêu cầu áp dụng biện pháp tạm thời/ Applicants for preliminary injunction:

[Tên/ Name] …………..
Địa chỉ/ Address: ..............................................
Người đại diện theo pháp luật/ Legal Representative: ..............................................
Người đại diện theo ủy quyền/ Authorized Representative: ..............................................

(2) Họ và tên người bị yêu cầu áp dụng/ Respondent:

[Tên/ Name] …………..
Địa chỉ đăng ký/ Registered Address: .................................................................
Địa chỉ kinh doanh/ Trading Address: .................................................................

(3) Nội dung của vụ việc/ Summary of the dispute:
..............................................................................................................................................
..............................................................................................................................................
..............................................................................................................................................
Tình tiết liên quan đến vi phạm của Bị đơn/ Background
..............................................................................................................................................
..............................................................................................................................................
..............................................................................................................................................
Quyền và lợi ích hợp pháp của Nguyên đơn bị xâm hại/ Infringement of the rights and legitimate interests of the Applicant
..............................................................................................................................................
..............................................................................................................................................
..............................................................................................................................................

(4) Quyền SHCN của Nguyên đơn được công nhận/ Recognition of the Applicant’s rights
..............................................................................................................................................
(5) Lý do cần phải áp dụng biện pháp khẩn cấp tạm thời/ Reasons for application of preliminary injunction

Các chứng cứ và lập luận nêu trên đã chứng minh rõ việc sử dụng dấu hiệu ..... của Bị đơn là hành vi xâm phạm quyền SHCN của Nguyên đơn đối với ....... đã được đăng ký bảo hộ theo quy định tại Điểm ..., Khoản ..., Điều ..., Luật Sở hữu trí tuệ.

The above mentioned evidence is sufficient to prove that the act of ..... by the Respondent constitutes an act of infringing the Applicant’s .... pursuant to Article ... of the Intellectual Property Law.

Như vậy, nếu Bị đơn vẫn tiếp tục thực hiện hành vi vi phạm trong khi không có bất kỳ biện pháp khẩn cấp tạm thời nào được áp dụng, thì không những Nguyên đơn sẽ có nguy cơ gánh chịu hậu quả khôn lường mà trình tự tố tụng (quá trình xét xử) của vụ án sẽ không thể được diễn ra được bình thường./ Therefore, if the Respondent continues its infringing acts without being applied any preliminary injunction, not only will the Applicant suffer irreparable harm, but the proceedings to settle the dispute will also be adversely affected.

(6) Thiệt hại/ Damage

(7) Các biện pháp khẩn cấp tạm thời cần áp dụng/ Applicable preliminary injunction

(8) Cam kết/ Cross undertakings

Người yêu cầu/ Applicant

Các tài liệu và chứng cứ nộp kèm/ The attached documents include:
Kính gửi/ To: ..........................................

Chúng tôi xin được gửi lời chào trân trọng tới Quý cơ quan.

Chúng tôi, đại diện theo ủy quyền của ……………[Chủ thể quyền], xin được trình bày với Quý Cơ quan việc như sau:

Chúng tôi được biết …………….

[Chủ thể quyền] đã phát hiện và thu giữ các hàng hóa sau của ……… [Tổ chức/Cá nhân]:
1. ...................................................................................................................................
2. ...................................................................................................................................
3. ...................................................................................................................................

Sau khi xem xét số vật phẩm, chúng tôi xin được xác nhận toàn bộ các mẫu vật phẩm đều không phải là hàng hóa do ……… [Chủ thể quyền] sản xuất hoặc ủy quyền sản xuất. Chúng tôi xin khẳng định tất cả các mẫu vật phẩm đều là hàng hóa giả mạo nhãn hiệu./

Dựa vào các chứng cứ nêu trên, có thể kết luận rằng ……… [Tổ chức/Cá nhân] đã thực hiện hành vi sản xuất và buôn bán hàng hóa giả mạo nhãn hiệu, xâm phạm nghiêm trọng tới quyền sở hữu trí tuệ của ……… [Chủ thể quyền] đã được bảo hộ tại Việt Nam, có dấu hiệu của tội: "............" theo Điểm ..., Khoản ..., Điều ... Bộ luật Hình sự.

Hành vi của ……… [Tổ chức/Cá nhân] không những ảnh hưởng đến danh tiếng và lợi ích hợp pháp của ……… [Chủ thể quyền] mà còn ảnh hưởng đến quyền lợi của người tiêu dùng./ The behavior of ……… [Organization/Individual] not only affects the reputation and benefit of ……… [Right holder] but also customers’ right and the transparency of the market.

Bằng công văn này, đại diện cho ……… [Chủ thể quyền], chúng tôi kính đề nghị Quý Cơ quan tiến hành điều tra và khởi tố hành vi "............" theo Điểm ..., Khoản ..., Điều ... Bộ luật Hình sự để bảo vệ quyền và lợi ích hợp pháp của ……… [Chủ thể quyền] và người tiêu dùng./ By this official letter, for and on behalf of ……… [Right holder], we would like to request that you carry out the criminal investigation and prosecution against the criminal offence "............" under Article ......... of the Criminal Code to protect the right and benefit of ……… [Right holder] and customers.

Trân trọng/ Yours sincerely.

Đại diện của/ Representative of .................
ĐƠN ĐỀ NGHỊ KIỂM TRA, GIÁM SÁT HÀNG HÓA XUẤT KHẨU, NHẬP KHẨU CÓ YÊU CẦU BẢO HỘ QUYỀN SỞ HỮU TRÍ TUỆ

(APPLICATION OF REQUEST FOR CONTROL AND SUPERVISION ON IMPORT - EXPORT GOODS REQUESTED TO PROTECTION ON INTELLECTUAL PROPERTY)

Kính gửi/To: …………………………………………….


Căn cứ quy định tại Điều 73, Điều 74, Luật Hải quan số 54/2014/QH13 ngày 23 tháng 06 năm 2014 /Pursuant to regulation at Articles 73 and 74 of Law 54/2014/QH13 on Customs dated 23 June 2005;

Căn cứ Thông tư số 13/2015/TT-BTC ngày 30 tháng 01 năm 2015 của Bộ Tài chính Quy định về kiểm tra, giám sát, tạm dừng làm thủ tục hải quan đối với hàng hóa xuất khẩu, nhập khẩu có yêu cầu bảo vệ quyền sở hữu trí tuệ; kiểm soát hàng giả và hàng hóa xâm phạm quyền sở hữu trí tuệ/ Pursuant to Circular N° 13/2015/TT-BTC dated 30/01/2015 of Ministry of Finance promulgating control, supervision and temporary suspension of doing customs procedures for export and import goods already requested for IP Protection; anti-counterfeit and goods violating IP Rights;

Người ký tên dưới đây đề nghị cơ quan Hải quan tiến hành các biện pháp kiểm tra, giám sát hàng hóa xuất khẩu, nhập khẩu theo quy định của Luật Sở hữu trí tuệ đối với lô hàng bị nghi ngờ xâm phạm quyền sở hữu trí tuệ theo các nội dung sau:/The undersigned requests Customs Administration to, under the Law on Intellectual Property, implement the measures of examining and supervising import goods and export goods of the shipment being suspected of violating Intellectual Property Rights including the following content:

1. Người nộp đơn/Applicant:

- Tên/Full name:

- Số chứng minh thư/hộ chiếu (nếu là cá nhân)/ID/passport No. (in case of individual)

- Địa chỉ/Address:

- Điện thoại/Telephone: Fax: - E-mail/Website:
2. Chủ sở hữu quyền/IP owner:

- Tên/Full name:
- Số chứng minh thư/hộ chiếu (nếu là cá nhân): ID/passport No. (in case of individual)
- Địa chỉ/Address:
- Điện thoại/Telephone: Fax: - E-mail/Website:

3. Quyền Sở hữu trí tuệ có yêu cầu bảo hộ (ghi rõ là: quyền tác giả/quyền liên quan đến quyền tác giả/nhãn hiệu/chỉ dẫn địa lý...):

   **IP rights for protection** (clearly indicate: copyrights/related rights/trademarks/geographic indicators, etc):

   - Tên văn bằng bảo hộ/Name of IP Right Certificate:
   - Số/No: Ngày cấp văn bằng bảo hộ/Date of issue:
   - Cơ quan cấp văn bằng bảo hộ/Office of issue:
   - Thời hạn có hiệu lực của văn bằng bảo hộ/Expiration:

4. Phạm vi yêu cầu bảo hộ (ghi rõ là trong phạm vi toàn quốc hay tại đơn vị Hải quan cụ thể) Area for IP protection (clearly indicate: throughout the country or at specific Customs Administration):

5. Danh mục hàng hóa có yêu cầu bảo hộ (người nộp đơn xác định và cung cấp để hỗ trợ cơ quan Hải quan trong quá trình phối hợp. Lưu ý: Đây là yêu cầu không bắt buộc):

   **List of goods for IP protection** (applicant himself to identify and provide in order to assist Customs Administration in the process of co-operation. Note: not obligatory):

   - Tên hàng/Name of goods:
   - Mã HS (8 số)/HS code (08 digits):

6. Tài liệu gửi kèm (Đánh dấu x vào loại giấy tờ nộp kèm): Accompanied documents (mark x at the accompanied document submitted)

   □ Văn bằng bảo hộ/Intellectual Property Right Certificate;
   □ Danh sách người xuất khẩu, nhập khẩu hợp pháp hàng hóa/List of legal goods importer(s) and/or export(s);
   □ Phương thức xuất khẩu, nhập khẩu; bán phân biệt hàng thật - hàng giả/Mode of import and/or export; the differences between the genuine and the counterfeit;
   □ Tài liệu chứng minh xuất xứ của hàng thật/ Document to prove the origin of the genuine;
- Power of Attorney or Contract of Attorney;

- Contract of Transfer/Using Intellectual Property Rights or relevant document to prove the rights of inheritance;

- Information of forecast on when and where related shipment(s) going to be done Customs procedure;

- The assess result made by Intellectual Property assess unit.

Họ tên, chữ ký của người nộp đơn và đóng dấu (nếu có)
Full name, signature of the applicant and seal (if any)
ĐƠN ĐỀ NGHỊ TẠM DỪNG LÀM THỦ TỤC HẢI QUAN
APPLICATION OF REQUEST FOR TEMPORARY SUSPENSION OF DOING CUSTOMS PROCEDURE

Kính gửi/To: …………………………………..
(Cơ quan Hải quan nơi ra thông báo tạm thời dừng làm thủ tục hải quan)/(Customs Administration issued the Announcement on temporary suspension of doing Customs procedure)


Căn cứ quy định tại Điều 73, Điều 74, Luật Hải quan số 54/2014/QH13 ngày 23 tháng 06 năm 2014 /Pursuant to regulation at Articles 73 and 74 of Law 54/2014/QH13 on Customs dated 23 June 2005;

Căn cứ văn bản (số/ngày) của (cơ quan Hải quan) về việc chấp nhận bảo hộ hàng hóa xuất khẩu, nhập khẩu liên quan đến sở hữu trí tuệ theo Đơn đề nghị kiểm tra, giám sát hàng hóa xuất khẩu, nhập khẩu liên quan đến sở hữu trí tuệ (số/ngày) do (tên của người nộp đơn) (nếu có)/Pursuant to the document (number/date) issued by (Customs Administration) about the acceptance on intellectual property protection for import and export goods with regard to the Application of Request for Control on import, export goods relating to Intellectual Property (number/date) submitted by (name of the applicant) (if any).

Trên cơ sở Chứng thư bảo lãnh (số/ngày) của (tổ chức tín dụng) hoặc khoản bảo đảm đã nộp cho cơ quan Hải quan theo (giấy nộp tiền số/ngày/tại Ngân hàng...)/With the guarantee deposited at Customs Administration (Number of Cash Deposit Note/date/Bank...)

Người ký tên dưới đây yêu cầu cơ quan Hải quan tạm dừng làm thủ tục hải quan đối với lô hàng theo (thông báo số: ... ngày... tháng... năm... của cơ quan Hải quan)/The undersigned kindly requests Customs Administration to temporarily suspend Customs procedure for the shipment (regarding the Announcement Number... dated ... issued by the Customs Administration).

Trường hợp xác định hàng hóa bị tạm dừng làm thủ tục hải quan là hàng xâm phạm quyền sở hữu trí tuệ, chúng tôi đề nghị cơ quan Hải quan tiến hành việc xử lý hành vi vi phạm đối với (người vi phạm) theo thẩm quyền quy định của pháp luật /In case the suspended goods are defined to violate intellectual property rights, we kindly request Customs Administration to handle the infringement in accordance with relevant laws and regulation.
Chúng tôi cam kết bồi thường thiệt hại và các chi phí phát sinh theo quy định của pháp luật cho chủ hàng hóa xuất khẩu, nhập khẩu do việc đề nghị tạm dừng làm thủ tục hải quan không đúng gây ra. *We commit to pay compensation for any damages and other costs arising from wrong temporary suspension of doing Customs procedure to the good owner in accordance with relevant laws and regulation.*

Họ tên, chữ ký của người nộp đơn và đóng dấu (nếu có)
Full name, signature of the applicant and seal (if any)
The South-East Asia IPR SME Helpdesk provides free, business-focused advice relating to South-East Asia IPR to European Small and Medium Enterprises (SMEs).

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For more information please contact the Helpdesk:

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