

Intellectual
Property
Benchbook
Series

IP Adjudication in Viet Nam



Intellectual Property Benchbook Series

Series editor: Justice Stephen Burley

**Introduction to the International Intellectual
Property Legal Framework**

ISBN: 978-92-805-3495-5

**Intellectual Property Adjudication in
the Philippines**

ISBN: 978-92-805-3497-9

Intellectual Property Adjudication in Viet Nam

ISBN: 978-92-805-3499-3



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Intellectual Property Adjudication in Viet Nam

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First published 2023

World Intellectual Property Organization
34, chemin des Colombettes, P.O. Box 18
CH-1211 Geneva 20, Switzerland

Suggested citation: World Intellectual Property Organization (WIPO) (2023). *Intellectual Property Adjudication in Viet Nam*, Intellectual Property Benchbook Series. Geneva: WIPO.
DOI: [10.34667/tind.47182](https://doi.org/10.34667/tind.47182)

ISBN: 978-92-805-3498-6 (print)
ISBN: 978-92-805-3499-3 (online)



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Foreword

The World Intellectual Property Organization (WIPO) is delighted to present this volume in the *Intellectual Property Benchbook Series*.

The Benchbook series is a unique new resource for judges seeking specialized support as they deal with IP cases appearing before them in their own courts, as well as for readers interested in learning about judicial adjudication of IP disputes across jurisdictions.

Judges play a vital role in ensuring that innovation and creative ecosystems are balanced and effective, and deliver benefits to all. Indeed, in the domain of IP, the forces of technological change are positioning courts as arbiters of technical questions with significant legal, social and economic implications. Courts across the world are increasingly faced with both technical and case management challenges arising from evolving types of IP disputes. Our globalized societies and the transnational nature of IP transactions ensure that this momentum will continue.

Conceived by the WIPO Judicial Institute in response to requests for resources tailored for national judiciaries, particularly on the procedural aspects of IP adjudication, the Benchbook series combines WIPO's global perspective and expert knowledge of the international legal framework for IP, with the insight of experienced members of national judiciaries. As such, it is an unequalled public reference source, both in its scope and focus, and in the authoritative perspectives offered by its authors.

Importantly, each country-specific Benchbook volume is drafted by judges, for judges, of each relevant jurisdiction, filling a gap in practical guides to assist judges at each stage of the IP adjudication life cycle within their specific legal and judicial context. Experienced members of each national judiciary have generously shared their insight and expertise, enabling colleagues who may have had less exposure to IP adjudication to date to benefit from the communal wisdom of their judicial peers.

These volumes are primarily intended to serve as an immediate resource available in court and chambers, for use by judges and other judicial officers in the course of adjudication. Where required, country-specific volumes will be made available in the relevant national language. In addition, they can serve as a general reference, providing comparative information on judicial procedure to inform a broader global audience. Significant laws, regulations and jurisprudence referenced in the volumes are made available in the WIPO Lex database, providing free and open global access to the key legal and jurisprudential developments in IP.

The Benchbook series is a part of the WIPO Judicial Institute's work to build sustainable judicial education programs and to provide more integrated support to Member States. As such, it will be a living and growing set of titles, with further volumes covering other jurisdictions already under preparation. It is our hope that the value of the Benchbook series as a resource for national and regional judiciaries will also continue to grow, both within the jurisdictions addressed and beyond.

Marco M. Alemán
Assistant Director General
IP and Innovation Ecosystems Sector
WIPO

Editor's introduction to the series

This Benchbook series has been designed to help judges in preparing to hear, hearing and then determining intellectual property cases involving the infringement or revocation of trademarks, patents or copyright and related rights.

It is important to start with a confession. These are not substantive textbooks concerning the law of intellectual property, nor is the series a comprehensive work on practice and procedure. In those senses, it is neither fish nor fowl. Rather, each volume is intended to provide practical information that may be useful to judges in the conduct of cases about intellectual property rights in the jurisdiction under focus.

In the universe of legal rights, intellectual property rights are unusual for two obvious reasons.

First, not only are they the creatures of statutory law for a particular sovereign nation, they also arise in the context of an extensive latticework of international treaties to which member countries in the international community adhere. The result is that intellectual property laws in one country are likely to have strong elements in common with equivalent laws in other countries. For that reason, the first volume of this series offers an overview of substantive rights under trademark, patent and copyright law by reference to those rights as they are recognized in various international treaties. This first volume supports the subsequent volumes, each of which is specific to the laws and procedures of a particular country, allowing for the cross-referencing of common substantive rights without undue repetition.

Second, intellectual property laws recognize as intangible property the rights arising from the efforts of human endeavor.

- A **trademark** is a sign (such as a word or symbol) that indicates the trade origin of particular goods or services. It provides a connection in the course of trade between the trademark and a trader.
- A **patent** protects an idea in the form of an invention that can be applied to be useful to the world. The physical manifestation of a patent is a "patent specification", which is the document describing the invention and setting out in its claims the scope of the monopoly asserted.
- In broad terms, **copyright and related rights** generally protect an original form of expression. Examples of copyright works range from books to paintings to computer software to television shows to movies and music.

Each sign, each invention, each form of expression is born as the creation of the human mind and is then turned into something of tangible value, which may be owned, licensed and sold to others. More particularly, it is turned into something of value allowing the owner of the right to prevent unauthorized third parties from reproducing it and to obtain financial compensation for any infringement that has occurred.

But when and how can an owner of an intangible right protect it? The answer to that question is fundamental to any legal system securing intellectual property rights.

In the case of patents and trademarks (leaving aside cases of unfair competition and other unregistered rights), the right must be validly registered. This means that it must be registered according to several internationally recognized requirements. Typically, it must be registered with the administrative body that is responsible for screening and then granting such rights. Only a trademark or patent that is valid may be infringed, and so it is typical in

many cases for an owner alleging infringement of such rights to be met with a defense that not only denies the act of infringement, but also alleges that the registration is not valid.

In the case of copyright and related rights, the position is analogous, although in most countries copyright protection does not require registration, and arises automatically upon the creation of the work. Even so, the same principle applies. A defendant to a case alleging copyright infringement may not only dispute that an unauthorized reproduction of the work asserted has been made, but may also challenge the ownership or subsistence of the right asserted on the basis that no copyright vests in the work.

For many cases alleging trademark, patent or copyright infringement, it is more complex and time-consuming for a court to determine the challenge to the validity of the right than the arguments concerning infringement. For this reason, when considering the conduct of proceedings concerning the infringement of intellectual property rights, it is important to be aware of the essential requirements for the validity of the right under consideration, in addition to the law relevant to the question of the infringement of those rights.

The structure of the Benchbook series

The first volume in the series, entitled *Introduction to the International Legal Framework for Intellectual Property*, introduces in its first three chapters the subject matter of trademark, patent and copyright law by reference to the international treaties to which most countries are party. Each provides an introduction to the intellectual property right concerned, a description of the process by which the right is registered (in the case of trademarks and patents) and the relevant requirements for validity of the right in question. Each then considers what the owner of the right must establish to demonstrate infringement of that right. Its fourth and final chapter addresses the remedies that may be available to an owner of a right upon proof of infringement.

The subsequent volumes in the series are each devoted to the conduct of intellectual property cases in a specific country. Each volume follows a similar structure to the first, beginning with a chapter entitled "Procedure," which introduces the domestic sources of relevant intellectual property laws and identifies where intellectual property disputes are typically heard within the national judicial system. The chapter then proceeds to identify in some detail any rules of court that are specifically directed towards the conduct of intellectual property cases in that country. The idea is that a judge may look to this chapter to identify what particular matters they must take into consideration in the courtroom, whether at the point when a case is first commenced or when it is ready for final hearing.

The next three chapters in each volume then proceed to address trademark, patent and copyright, providing details that are relevant for judges in each country considering each type of case.

From time to time, contributing authors have inserted "tips," with which they add detail or suggest case management approaches that may be of assistance to judges dealing with such cases.

Reference sources

In seeking to provide an easily accessible guide to judges, the volumes make reference to various sources of relevant rules and legislation governing the conduct of intellectual property cases in each jurisdiction under focus. The sources referred to in the series may be found in the WIPO Lex database, a helpful central repository of not only the legislation identified but also the relevant case law.

Justice Stephen Burley
Federal Court of Australia, Sydney Australia

Acknowledgments

WIPO is grateful to the distinguished judges contributing to this series, as well as to their respective judicial authorities, whose institutional support has been instrumental to enabling the time and work that this publication required.

The launch of the first three titles of the Benchbook series owes a great deal to the leadership of the principal editor of the series, Justice Stephen Burley of the Federal Court of Australia, and to his staff. WIPO also expresses its appreciation to Associate Justice Maria Rowena Modesto-San Pedro of the Court of Tax Appeals, Quezon City, Philippines, and Justice Le Van Minh of the Supreme People's Court of Viet Nam, as the contributing authors of the first two country-specific volumes. The production of these titles were financed by Funds in-Trust provided by the Government of Australia.

The first title in the series, *Introduction to the International IP Legal Framework*, benefitted from the technical expertise of a number of colleagues across WIPO. In particular, the WIPO Judicial Institute wishes to acknowledge and thank the following colleagues for their invaluable input: Ms Marina Foschi (Policy and Legislative Advice Section of the Department for Trademarks, Industrial Designs and Geographical Indications); Ms Tomoko Miyamoto and Ms Nina Belbl (Patents and Treaties Law Section); Ms Michele Woods (Copyright Law Division); and Mr. Xavier Vermandele (Building Respect for IP Division). Within the Institute, Ms Nahal Zebarjadi has driven the creation of this Benchbook series.

Eun-Joo Min

Director, WIPO Judicial Institute

It has been a pleasure to work with a talented group of intellectual property professionals in putting together this Benchbook series. When Eun-Joo Min, Director of the WIPO Judicial Institute and Nahal Zebarjadi, Legal Officer at the WIPO Judicial Institute, first approached me to edit the series, I did not realize what an exciting prospect it offered for interacting in depth with judges from different jurisdictions. After we adjusted for the effects of COVID 19, our regular video meetings became for me a form of lockdown entertainment. They were delightful.

Particular acknowledgment should go to Justice Le Van Minh of the Supreme People's Court of Viet Nam, without whose valuable contributions this volume would not have been possible.

I have also been assisted a great deal by National Judicial Registrar Susan O'Connor and Judicial Registrar Amelia Edwards of the Federal Court of Australia, and by several of my past and current associates, including Tim Gollan, Joseph Petrie, Veronica Sebesfi, Amelia Van der Rijt and Jessica Wotton.

I should also like to thank the Federal Court of Australia for supplying additional resources to enable the production of this work and, of course, Eun-Joo and Nahal, whose unfailingly diplomatic and valuable contributions kept the project on track.

Justice Stephen Burley

Federal Court of Australia

Chapter 1

Procedure

1.1 Introduction

This chapter begins with a brief introduction to the legal system (civil, criminal and administrative) and court system (hierarchy) in Viet Nam. It then addresses the procedural rules that are common to civil, criminal and administrative proceedings for infringement of trademark, patent and copyright (i.e., intellectual property rights) actions when conducted in the relevant courts – namely, the District People’s Courts and the Provincial People’s Courts, including the Economic Courts within the Provincial People’s Courts.

Each of the subsequent chapters in this volume is dedicated to one of those three specific rights and provides more detail for those conducting cases involving the specific right.

1.2 Overview of the legal system in Viet Nam

Viet Nam is a civil law jurisdiction.

Laws in Viet Nam are derived from legislation (codes and laws). Since 2017, judicial decisions have also been a source of law.

Article 22(2)(c) of the Law on Organization of People’s Courts (see section 1.3) provides that the Judicial Council of the Supreme People’s Court has the duties and powers:

To select its cassation trial decisions and judgments and decisions of courts which have taken legal effect and are of standard nature, summarize and develop them into court precedents and publicize court precedents for courts to study and apply in trial.

1.2.1 Court hierarchy

The **Supreme People’s Court** is the highest court in Viet Nam. It hears cases according to cassation or reopening procedures. The Supreme People’s Court summarizes the adjudication practices of lower courts, ensuring the uniform application of law.

Immediately below this, there are three **High People’s Courts**, each of which is responsible for appellate and cassation hearings of the judgments of courts within its territorial jurisdiction – namely, north, central or south Viet Nam. These courts conduct hearings where the judgments or decisions of the Provincial People’s Courts or equivalents that have not yet taken legal effect have been appealed or protested. They further conduct cassation hearings where a legally effective judgment or decision of the People’s Court at the provincial, district or equivalent is protested.

Next are Viet Nam’s 63 **Provincial People’s Courts**, which conduct first-instance trials of certain prescribed cases and hear appeals of first-instance judgments or decisions of the District People’s

Courts or equivalents. Appeals and other protests from the Provincial People's Courts are heard by the People's High Court.¹

There are more than 700 **District People's Courts**, which hear only first-instance matters. Appeals and protests from the District People's Courts lie to the Provincial People's Courts.

Each of the People's High Courts and Provincial People's Courts comprises six specialist divisions or courts – namely, criminal, administrative, civil, labor, economic, and family and juvenile tribunals.

Article 45 of the Law on Organization of People's Courts stipulates that:

The People's Courts of rural districts, urban districts, towns, provincial cities and the equivalent may have a criminal court, a civil court, a family and juvenile court, and administrative court. In case of necessity, the National Assembly Standing Committee shall decide to establish another specialized court at the proposal of the Chief Justice of the Supreme People's Court.

While no specialized courts have yet been established at the district level, specific judges sitting in the District People's Courts may specialize in criminal or administrative matters, civil, labor or commercial matters, or family and minor matters.

1.2.2 Jurisdiction in intellectual property proceedings

The District People's Courts of Viet Nam have jurisdiction to determine first-instance civil and criminal intellectual property disputes.

The civil division of the Provincial People's Courts has jurisdiction to determine first-instance civil intellectual property disputes that involve litigants or assets outside of Viet Nam, or require international judicial cooperation.

The Economic Courts of the Provincial People's Court have jurisdiction to determine first-instance civil intellectual property disputes that have commercial effect (i.e., the alleged infringement has been profitable) involving both foreign and domestic litigants.

Thus intellectual property disputes will generally be resolved by the District People's Courts of districts, towns and cities under central authority. If one of the disputing parties or the property is located outside of Viet Nam, or it is necessary to entrust justice to the representative mission of the Socialist Republic of Viet Nam abroad or to a foreign court, then the disputes will fall under the jurisdiction of the Provincial People's Court. In addition, for disputes over intellectual property in which both parties have commercial (profit-making) purposes, the Provincial People's Court will also have jurisdiction.

In each of these courts, the trial will be conducted by a panel comprising one judge and the people's assessors.²

The **People's Procuracy** is a state agency that is responsible for prosecuting an accused before the courts. In Viet Nam, a criminal indictment is issued under the name of the Procuracy.

1.2.3 Administrative intellectual property jurisdiction

In addition to civil and criminal proceedings, intellectual property infringement disputes in Viet Nam are often resolved through administrative action. Administrative sanctions for intellectual property infringements include warnings, fines, seizure and destruction of counterfeit goods, suspension of business licenses, re-exportation of imported infringing goods or transit of goods out of the country.

1 In Viet Nam, appeal and protest relate to review of a judgment or decision of the first-instance court that has not yet taken legal effect. **Appeal** is a procedural act after the first-instance trial: if the involved parties disagree with the judgment of the first-instance court, they have the right to appeal. **Protest** is a procedural act of a competent person, expressing opposition to the whole or a part of a court's judgment or decision, with the aims of (a) ensuring an accurate and fair trial, and (b) correcting the errors in judgments and decisions of the court.

2 Civil Procedure Code, art. 63.

The following administrative bodies, known as infringement-handling agencies, may issue such sanctions:

- Inspectors of Science and Technology, and of Culture, Sports and Tourism;
- market control agencies;
- the customs authority;
- the police;
- district-level People's Committees; and
- provincial People's Committees.

1.3 Sources of law

Relevant codes, laws and decrees that apply to civil intellectual property proceedings in Viet Nam include:

Code of Civil Procedure No. 92/2015/QH13 of November 25, 2015 ("Civil Procedure Code")

Law No. 50/2005/QH11, of November 29, 2005, on Intellectual Property, amended and supplemented in 2009, 2019 and 2022 ("Law on IP")

Decree No. 103/2006/ND-CP of the Government, enacted in September 2006 and effective as of November 2006, amended and supplemented in 2010, providing guidelines for implementing certain articles of the Law concerning industrial property ("Decree No. 103/2006")

Decree No. 105/2006/ND-CP of the Government, enacted in September 2006 and effective as of November 2006, providing guidelines for the implementation of certain articles of the Law on IP regarding enforcement of intellectual property rights and state management of intellectual property, amended and supplemented in 2010 ("Decree No. 105/2006")

Decree No. 88/2010/ND-CP of the Government, enacted in August 2010 and effective as of October 2010, guiding the implementation of articles of the Law concerning rights on plant varieties

Decree No. 119/2010/ND-CP of the Government, dated December 30, 2010, amending and supplementing a number of articles of Decree No. 105/2006/ND-CP detailing and guiding the implementation of a number of articles of the Law on IP on protection of intellectual property rights and state management of intellectual property

Decree No. 122/2010/ND-CP of the Government, dated December 31, 2010, amending and supplementing a number of articles of Decree No. 103/2006/ND-CP detailing and guiding the implementation of a number of articles of the Law on IP

Decree No. 22/2018/ND-CP of the Government enacted in February 2018 and effective as of April 2018, guiding the implementation of articles of the Law on IP concerning copyrights and related rights ("Decree No. 22/2018")

Joint Circular No. 02/2008/TTLT-TANDTC-VKSNDTC-BVHTT&DL-BKH&CN-BTP of April 3, 2008, of the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Culture, Sports and Tourism and the Ministry of Justice guiding the application of a number of legal provisions to the settlement of disputes over intellectual property rights at people's courts ("Joint Circular No. 02/2008")

Resolution No. 02/2020/NQ-HDTP of September 24, 2020, of the Judicial Council of the Supreme People's Court guiding the application of some provisions stipulating provisional measures in the Civil Procedure Code ("Resolution No. 02/2020")

The codes and laws that apply to criminal intellectual property proceedings include:

Criminal Code No. 100/2015/QH13, of November 26, 2015 ("Criminal Code")

Criminal Procedure Code No. 101/2015/QH13, of November 27, 2015 ("Criminal Procedure Code")

Relevant codes, laws and decrees that apply to administrative intellectual property proceedings in Viet Nam include:

Law No. 15/2012/QH13 of June 20, 2012, on handling administrative violations (“Law on Administrative Violations”)

Law No. 54/2014/QH13 of June 23, 2014, on customs

Law No. 93/2015/QH13 of November 25, 2015, on administrative procedures (“Law on Administrative Procedures”)

Law No. 23/2018/QH14 of June 12, 2018, on competition

Decree No. 105/2006/ND-CP of the Government, enacted in September 2006 and effective as of November 2006, providing guidelines for the implementation of certain articles of the Law on IP regarding enforcement of intellectual property rights and state management of intellectual property, amended and supplemented in 2010 (“Decree No. 105/2006”)

Decree No. 99/2013/ND-CP of the Government, enacted in August 2013 and effective as of October 2013, detailing and providing guidelines for implementing the provisions on handling of administrative violations concerning industrial property (“Decree No. 99/2013”)

Decree No. 131/2013/ND-CP of the Government, dated October 16, 2013, providing for penalties for administrative violations of copyright and related rights (“Decree No. 131/2013”)

Decree No. 28/2017/ND-CP of the Government, dated March 20, 2017, amending and supplementing a number of articles of the Government’s Decree 131/2013/ND-CP dated October 16, 2013, stipulating sanctioning administrative violations of copyright and related rights and the Government’s Decree 158/2013/ND-CP dated November 12, 2013, on sanctioning of administrative violations in the field of culture, sports, tourism and advertising

Broadly relevant, in addition, are:

Law No. 65/2006/QH11, of June 29, 2006, on lawyers (“Law on Lawyers”)

Law No. 02/2011/QH13, of November 11, on complaints (“Law on Complaints”)

Law No. 62/2014/QH13, of November 24, 2014, on the organization of People’s Courts (“Law on Organization of People’s Courts”)

Decree No. 111/2011/ND-CP of the Government, dated December 5, 2011, on consular certification and legalization (“Decree No. 111/2011”)

1.4 Obtaining intellectual property protection

The types of intellectual property right available in Viet Nam include:

- trademark;
- patent;
- copyright;
- geographical indications;
- industrial designs;
- designs of semi-conducting closed circuits; and
- trade secrets.

The subsequent chapters in this volume will look in detail at trademark, patent and copyright; what follows is a general overview of the bodies responsible for granting intellectual property protection.

1.4.1 Administrative bodies responsible for registration

The administrative body responsible for registering trademarks and granting patents is the National Intellectual Property Office of Viet Nam.

The administrative body responsible for issuing copyright registration certificates and related rights certificates in Viet Nam is the Copyright Department of the Ministry of Culture, Information and Sport.

1.4.2 Appellate bodies

Appeals from the intellectual property administrative bodies set out above are heard by:

- the Ministry of Culture, Information and Sport or the Ministry of Science and Technology (depending on the case); and/or
- a District People's Court or the administrative division of the Provincial People's Courts.

Decisions of a Provincial People's Court can be further appealed to the People's High Court.

If the parties do not agree with the appeal decision of the People's High Court, they may request a review under cassation procedures of the People's High Court or the Supreme People's Court of Viet Nam.

The types of decision of the administrative bodies that may ultimately be appealed to a Provincial People's Court include decisions relating to the grant, modification, termination, cancellation and extension of the validity of intellectual property rights protection, including copyright registration certificates, related rights registration certificates, trademark registrations, patents, geographical indications, inventions, industrial designs, designs of semi-conducting closed circuits and trade secrets.

When a decision of the competent administrative bodies is appealed to a Provincial People's Court, the court allows the parties to file new evidence in the appeal proceeding and rehears the matter.³

Article 9 of the Law on Administrative Procedures provides as follows:

Article 9 – Provision of documents and evidences, burden of proof in administrative procedures

1. Involved parties have the right and obligation to furnish the court with documents and evidences and prove that their claims are grounded and lawful. Individuals who institute lawsuits or claim the protection of lawful rights and interests of others have the right and obligation to collect and provide documents and evidences and prove their claims like involved parties.
2. The court shall assist involved parties in collecting documents and evidences and collect and verify evidences; request agencies, organizations and individuals to provide documents and evidences to it or involved parties in accordance with this Law.

Article 84(1)(g) and (2)(c) of the Law on Administrative Procedures adds that:

Article 84 – Verification and collection of documents and evidences

1. Involved parties may collect evidences by themselves with the following measures:
 - g. Requesting the court to issue decisions to solicit expert examination or valuation of assets;

³ Law on Administrative Procedures, art. 9.

2. In the cases specified by this Law, a judge may take one or several of the following measures to collect documents and evidences:
 - [...]
 - c. Soliciting expert examination;

The powers of the administrative division of a Provincial People's Court in relation to appeals from decisions of the competent administrative bodies include:

- to reject or accept the whole or part of the claim;
- to pronounce cancellation of part or the whole of the unlawful administrative decision and relevant complaint settlement decision (if any);
- to compel a state agency, or a competent person in the state agency, to perform tasks or public duties in accordance with the law; and
- to request consideration of the cancelled unlawful administrative decision.⁴

The Chief Justices of the courts may also make recommendations regarding the amendment, supplementation or annulment of legal documents supplied by the competent administrative bodies (see next section).⁵

1.5 Revocation or invalidation

In Viet Nam, the court does *not* have the power:

- to amend an intellectual property right, such as a patent or trademark; or
- to cancel, revoke or remove from the register an intellectual property right, such as a patent or trademark.

Complaints about the registration of industrial property rights may, however, be filed with the court, and the court has the right to hear disputes about the registration of industrial property rights.⁶

The Chief Justices of the courts may also make recommendations regarding the amendment, supplementation or annulment of legal documents supplied by the competent administrative bodies.⁷ These recommendations are always followed, with the consequence that if the court considers amendment or revocation of a registered intellectual property right to be appropriate, it will be so amended or revoked.

Article 112 of the Law on Administrative Procedures provides as follows:

Article 112 – Competence to recommend amendment, supplementation or annulment of legal documents

1. Chief justices of district-level courts may recommend amendment, supplementation or annulment of legal documents of state agencies at the district level or lower level; propose chief justices of provincial-level courts to amend, supplement or annul legal documents of provincial-level state agencies; and report to chief justices of provincial-level courts for proposing the Chief Justice of the Supreme People's Court to recommend amendment, supplementation or annulment of legal documents of central state agencies.
2. Chief justices of provincial-level courts and superior people's courts may recommend amendment, supplementation or annulment of legal documents of state agencies at the provincial level or lower levels; and propose the Chief Justice of the Supreme People's Court to recommend amendment, supplementation or annulment of legal documents of central state agencies.

4 Law on Administrative Procedures, art. 193.

5 Decree No. 103/2006, art. 14; Law on Administrative Procedures, art. 112.

6 See Decree No. 103/2006, art. 14; Law on Administrative Procedures, art. 32.

7 See Decree No. 103/2006, art. 14; Law on Administrative Procedures, art. 112.

1.6 Infringement

Infringement proceedings before the Vietnamese courts can be:

- at first instance in the civil courts;
- administrative proceedings before the infringement-handling agencies; or
- at first instance in the criminal courts.

1.6.1 First-instance civil proceedings

The following steps – set out in the Civil Procedure Code – are generally taken in civil intellectual property infringement disputes in the District People’s Courts and the Provincial People’s Courts (including the Economic Courts within the Provincial People’s Court).

1. The plaintiff files with the court an originating process (see section 1.6.1.1) in the form of the lawsuit petition, together with documentary evidence.⁸
2. The plaintiff may request remedies in the form of provisional urgent measures (if any) at the time of filing the lawsuit petition with the court or shortly thereafter (see section 1.6.1.3).⁹
3. If it accepts the petition (see section 1.6.1.2), the court will notify the defendant of the plaintiff’s claim,¹⁰ and the plaintiff will serve a copy of the lawsuit petition and documentary evidence on the defendant.¹¹
4. If it accepts the petition, the court may also order the provisional urgent measures (if any) sought (see section 1.6.1.3).¹²
5. The defendant must file a response “within 15 days from the day on which the notices are received, defendants and/or persons with relevant interests and duties must submit to the Court opinions in writing towards the request of the plaintiffs and materials and evidences, counter-claims and independent claims (if any).”¹³
6. The proceeding will then enter the trial preparation period. Unless an extension of time is granted, the trial preparation period for intellectual property cases is either two months for “disputes over intellectual property rights or technology transfers among individuals or organizations, which are all for the purposes of profits” or four months for all other disputes over intellectual property rights or technology transfers.¹⁴
7. During the trial preparation period, the court must:
 - hold meetings to monitor the handover of, access to and disclosure of evidence;¹⁵
 - conduct mediation between the parties, unless an exception applies.¹⁶

For example, civil transactions that are contrary to social ethics cannot be mediated, and civil lawsuits that cannot be mediated include where the defendants are intentionally absent from court or one of the litigants applies for non-mediation.

8. Subsequent to such monitoring and mediation, the judge may:
 - recognize the agreement of the parties;
 - suspend the resolution of the civil case;
 - terminate the resolution of the civil case (e.g., if the parties settle the case or agree to withdraw their application); or
 - bring the case to hearing.¹⁷

⁸ Civil Procedure Code, art. 189.

⁹ Law on IP, art. 206(1).

¹⁰ Civil Procedure Code, art. 196(1).

¹¹ Civil Procedure Code, arts. 70.9 and 71.1.

¹² Civil Procedure Code, art. 196(2).

¹³ Civil Procedure Code, art. 199(1).

¹⁴ Civil Procedure Code, arts. 203(a) and (b), and arts. 26(4) and 30(2).

¹⁵ Civil Procedure Code, art. 203(2)(g).

¹⁶ Civil Procedure Code, arts. 203, 205 and 206.

¹⁷ Civil Procedure Code, art. 203.

9. If the case proceeds, a hearing at first instance will be conducted.

1.6.1.1 Originating process

The originating process in civil intellectual property infringement disputes in the District People's Court, the Provincial People's Court or the Economic Courts of the Provincial People's Court is usually a lawsuit petition.¹⁸

For further information about standing to bring civil proceedings for trademark, patent and copyright proceedings, see each of Chapters 2, 3 and 4 in this volume, respectively.

1.6.1.2 Service and acceptance of the case by the court

The judge is required to notify the parties of whether or not the case is accepted.¹⁹

The plaintiff is then required to serve the lawsuit petition and supporting evidence on the defendant. Article 70(9) of the Civil Procedure Code provides that, when participating in civil procedures, the involved parties shall have the following rights and obligations: "To send other involved parties or their lawful representatives photocopies of the petition and materials and evidences, excluding evidences and materials that other involved parties have been provided with as prescribed in clause 2 Article 109 of this Code."

For cases in which there is good and sufficient reason why the plaintiff cannot make copies of the lawsuit petition, materials and evidence, they may request that the court assist.

Article 196 of the Civil Procedure Code provides that:

Article 196 – Notice on acceptance of cases

1. Within 03 working days from the day on which the cases are accepted, the Judge must send written notices to plaintiffs, defendants, agencies, organizations and individuals with rights and obligations related to the settlement of the cases, to the procuracies of the same level on the Courts' acceptances of the cases.
Regarding cases initiated by consumers, the Courts shall post publicly at the offices of the Courts information about the acceptance of the cases within 03 working days from the day on which the cases are accepted.
2. Such a written notice must contain the following principal details:
 - a. Date on which the notice is made;
 - b. Name and address of the Court accepting the case;
 - c. Name, address; phone number, fax, email address (if any) of the litigator;
 - d. Specific matters that the litigator requests the Court to resolve;
 - dd. Whether the case is accepted under normal procedures or simplified procedures (Part 4 of the Civil Procedure Code 2015 outlines conditions and procedures to resolving civil cases according to simplified procedures);
 - e. List of materials and evidences submitted together with the lawsuit petition by the litigator;
 - g. Time limit for the defendant and/ or person with relevant interests and duties to submit to the Court opinions in writing towards the request of the litigator and accompanied materials and evidences, counter-claims, independent claims (if any);
 - h. Legal consequences of case where the defendant and/or person with relevant interests and duties fail to submit to the Court an opinion in writing for the petition for initiating lawsuit.
3. If the plaintiffs file an application for the assistance of the Court in the sending of materials and evidences, the notices on the acceptance of the cases that the Courts sent to the defendants and/or persons with relevant interests and duties copies of materials and evidences provided by the plaintiffs.

18 Civil Procedure Code, art. 189(4) and (5).

19 Civil Procedure Code, art. 196.

1.6.1.3 Urgent measures/interim relief

The plaintiff may request provisional urgent measures (if any) at the time of filing the lawsuit petition with the court or shortly thereafter.²⁰

Article 206 of the Law on IP outlines the circumstances in which provisional urgent measures will be applied, including where there is a risk of irreparable damage to the intellectual property rights holder and a likelihood of the dispersion or destruction of infringing goods and/or evidence:

Article 206 – Right to request the court to apply provisional urgent measures

1. Upon or after the initiation of a lawsuit, an intellectual property right holder (including owners of the intellectual property rights defined at 1.2 above) shall have the right to request the court to apply provisional measures in the following cases:
 - a. There exists a danger of irreparable damage to such intellectual property right holder;
 - b. Goods suspected of infringing upon intellectual property rights or evidence related to the act of infringing upon industrial property rights are likely to be dispersed or destroyed unless they are protected in time.
2. The court shall decide to apply provisional urgent measures at the request of the industrial property right holder defined in Clause 1 of this Article before listening to the party subject to such measures.

Article 207 of the Law on IP outlines what those provisional urgent measures might comprise, including seizure and freezing:

Article 207 – Provisional urgent measures

1. The following provisional urgent measures shall be applied to goods suspected of infringing upon intellectual property rights or to raw materials, materials or means of production or trading of such goods:
 - a. Seizure;
 - b. Distrainment;
 - c. Sealing; ban from alteration of original state; ban from movement;
 - d. Ban from ownership transfer.
2. Other provisional urgent measures shall be applied according to the provisions of the Civil Procedure Code 2015.

The main difference in meaning between seizure and distrainment in Viet Nam is that **seizure** measures are typically applied in criminal and administrative procedures, while **distrainment** is more relevant in civil proceedings.

Article 208 of the Law on IP outlines the obligations of persons requesting provisional urgent measures, including to provide supporting evidence and a security deposit or bank guarantee:

Article 208 – Obligations of persons requesting the application of provisional urgent measures

1. Persons requesting the application of provisional urgent measures are obliged to prove their right to request provided for in Clause 1, Article 206 of this Law with documents and evidence specified in Clause 2, Article 203 of this Law.
2. Persons requesting the application of provisional urgent measures are obliged to pay compensation for damage caused to persons subject to such measures in cases where the latter are found to have not infringed upon industrial property rights. To secure the performance of this obligation, a person requesting the application of provisional urgent measures shall have to deposit a security in one of the following forms:

²⁰ Law on IP, art. 206.1.

- a. A sum of money equal to 20 percent of the value of the goods subject to the application of provisional urgent measures, or at least VND 20 million where it is impossible to value such goods;
- b. A guarantee deed issued by a bank or another credit institution.

The court's jurisdiction to issue decisions in relation to the application of provisional urgent measures derives from its jurisdiction to accept petitions for the institution of lawsuits and to handle cases under articles 33–36 of the Civil Procedure Code.

1.6.1.4 Preparing for the meeting and mediation

The court holds meetings during the trial preparation period to ascertain the scope of the dispute and to attempt to facilitate a mediated outcome.²¹

The steps the parties and the court must take before their first meeting include ensuring that:

- the plaintiff has filed the lawsuit petition, together with documentary evidence;
- the court has reviewed and checked the lawsuit petition and documentary evidence;
- the court has accepted the case;
- the court has notified the defendant of the case, and the plaintiff has served a copy of the lawsuit petition and documentary evidence on the defendant; and
- the defendant has filed their response (if any).

Article 72 of the Civil Procedure Code sets out the rights and obligations of the defendant, including the right to agree or disagree in part or whole of the plaintiff's claims and/or to make counterclaims against the plaintiff.

Article 199 of the Civil Procedure Code further provides that, within 15 days of receipt of notices, the defendant must submit to the court opinions in writing on the plaintiff's petition, materials and evidence, as well as any counterclaims.

The court holds meetings during the trial preparation period to monitor the handover of, access to and disclosure of evidence. It also conducts mediation.²² Participants in these meetings include:

- the judge, who presides over the meeting;
- the court clerk, who records the minutes of the meeting;
- the involved parties or their representatives;
- legal representatives, if the parties have any; and
- an interpreter (if any).²³

The meetings are organized on court premises.

Article 210(4) of the Civil Procedure Code outlines the procedure for mediation at these meetings, as follows.

1. The judge disseminates the relevant law to the parties, so that they can compare a mediated outcome with the possible litigated outcomes of the case;
2. The plaintiff's counsel makes presentations about the disputes, amends its petition initiating the suit, sets out grounds for protecting the petitions, and expresses opinions about matters to be mediated and the likely resolution of the case (if any).
3. The defense counsel makes presentations about the plaintiff's claims and the defendant's counterclaims (if any), grounds for contesting the plaintiff's claims and grounds for defending the counterclaims, and expresses opinions about the matters to be mediated and the likely resolution of the cases.

²¹ Civil Procedure Code, arts. 203(2)(g) and 210.

²² Civil Procedure Code, arts. 203(2)(g) and 210.

²³ Civil Procedure Code, art. 209.

4. Other participants, including the plaintiff and defendant themselves, may express their opinions.
5. The judge then determines the matters about which the parties have or have not agreed, and may request that the parties make additional presentations about matters that remain unclear or not agreed.
6. The judge reaches a conclusion about the matters that are agreed and not agreed between the parties.

If the case does not settle out of court, the same judge who conducts the mediation will participate in the trial panel that hears the case and will write its judgment.

The Civil Procedure Code does not prescribe how many meetings the court will hold during the trial preparation period; in practice, that number will largely depend on the judge's satisfaction with the parties' presentations.

1.6.1.5 Production of relevant materials

The court has the power to order the defendant to discover (i.e., produce to the applicant) copies of the defendant's records or receipts of sales of the allegedly infringing product.

Article 96 of the Civil Procedure Code provides that:

Article 96 – Hand-over of materials and evidences

During the process of resolving civil cases by courts, the involved parties shall have the rights and obligations to hand over materials and evidences to the courts. If the handed materials/evidences are inadequate to form the base for resolution of the matters/cases, the Judge shall request the involved parties to supplement the materials/evidences. If the involved parties fail to hand over the materials/evidences or do not hand over adequately the materials/evidences requested by the Courts, the Courts shall resolve the civil cases pursuant to the materials and evidences handed over by the involved parties and those collected by the Courts according to regulations in Article 97 of this Code ...

Article 97 of the Civil Procedure Code provides that:

Article 97 – Verification and collection of evidences

1. Agencies, organizations and individuals may collect materials and evidences themselves by taking the following measures:
 - [...]
 - d) Requesting the agencies, organizations or individuals to allow the copy or to supply the materials related to the resolution of the matters/cases that are kept or managed by such agencies, organizations or individuals;
 - [...]
 - e) Requesting the Courts to collect materials and evidences, in case the involved parties cannot do it;

Article 203(5) of the Law on IP provides that:

Article 203 – Right and burden of proof of involved parties

- [...]
5. Where a party to a lawsuit against an infringement of intellectual property rights can prove that appropriate evidence proving his/her claims is under the control of the other party and therefore inaccessible, the former shall have the right to request the court to compel the latter to produce such evidence.

1.6.1.6 Judgment

Article 63 of the Civil Procedure Code provides for composition of the trial panel that will hear the case: it shall comprise one judge and two people's assessors. In Viet Nam, the people's assessors are permanently selected.

If an expert is necessary to support the trial panel in intellectual property civil proceedings, that expert is invited to participate as an expert witness, not as a trial panel member. Articles 63–67 of the Civil Procedure Code stipulate further detail on the composition of panels for the resolution of civil proceedings.

After hearing all the arguments and evidence (see section 1.7), the trial panel enters a room in which it will deliberate the case. Deliberation can take up to five working days.

If, during deliberations, the trial panel considers that its inquiries or the evidence offered have been insufficient to support a finding, it may decide to resume the inquiries and hear further argument.²⁴

After deliberation, the trial panel aims to pronounce the judgment in the presence of the parties (i.e., the individuals or representatives of any agencies and organizations involved in the lawsuit). In the event that the involved parties cannot be or are not present, the trial panel will still pronounce its judgment.²⁵

Within three working days of the end of its session, the court will supply the parties with extracts from its judgment.

Within 10 days of the date of judgment, the court shall hand over or send the judgment to the parties and the People's Procuracy.²⁶

1.6.1.7 Appeals and protests

Appeals and protests in civil intellectual property cases do not materially differ from those in other areas of law. They all follow similar procedures.

1.6.2 Administrative proceedings

As noted in section 1.2.3, administrative proceedings in intellectual property cases may be handled in Viet Nam by an infringement-handling agency – namely:

- the courts;
- inspectors for the Ministry of Science and Technology or the Ministry of Culture, Sports and Tourism;
- market control agencies;
- the customs authority;
- the police; and
- People's Committees of all levels.²⁷

1.6.2.1 Administrative powers

The infringement-handling agencies have extensive powers in administrative intellectual property actions, including:

- to issue a **decision on inspection**, which allows the agency to conduct a raid on an alleged infringer of intellectual property rights;
- to issue **minutes of infringement** if an administrative breach is found, which allows the chief of the inspection team, at their discretion, to:
 - confiscate the allegedly infringing products under a decision on temporary seizure; and
 - issue a minute of temporary seizure;
- to seal the allegedly infringing products and request that the alleged infringer preserve the sealed products, until a **decision on dealing** is made by a competent person, and then to issue a **minute of sealing**, if appropriate;

24 Civil Procedure Code, art. 265.

25 Civil Procedure Code, arts. 266 and 267.

26 Civil Procedure Code, art. 269.

27 Decree No. 105/2006, art. 27.1.

- to issue a **sanction decision** shortly after the date of the minutes of infringement,²⁸ which decision – depending on the nature and severity of the intellectual property infringement – may include remedies such as:
 - a warning order or monetary fine (up to VND 500 million);
 - confiscation of material evidence and means used in the commission of the intellectual property infringement, and of raw materials, materials and means used mainly for producing or trading in those goods;
 - suspension of the production, trading or provision of infringing products or services for between one and three months of the effective date of the sanction decision;
 - forcible removal of the infringing elements from the goods;
 - destruction of the infringing goods, means, raw materials and materials used mainly for producing or trading in these goods;
 - forcible alteration or return of domain names and the forcible alteration of enterprise names; and/or
 - forcible remittance of the illicit earnings from the commission of intellectual property infringements;²⁹
- to coercively implement the sanction decision, if the infringer fails to voluntarily execute the sanction decision within the stipulated time period,³⁰ such coercive measures including:
 - deducting a part of wages or income and deducting money from bank accounts of intellectual property infringers;
 - distraining for auction assets with value corresponding to the final amount;
 - collecting money and the assets of infringers to support execution of the sanction decision if infringers are deliberately dispersing such assets;
 - forcible application of remedial measures specified in article 28 of the Law on Administrative Violations, including: forcible correction of false or misleading information; forcible removal of infringing elements on the goods or packaging of goods, means of trading and articles; and forcible recall of products.

1.6.2.3 Administrative actions

The alleged infringer of intellectual property rights may appeal a sanction decision and initiate an administrative lawsuit before the administrative division of the Provincial People's Courts.³¹

When a sanction decision is appealed to a Provincial People's Court, the court allows the parties to file new evidence in the appeal proceeding and rehears the matter.³² The procedural steps set out the Law on Administrative Procedures are again followed by a panel conducting such a rehearing.

Following the hearing, the Chief Justice of the court may then make recommendations about the amendments, supplementation or annulment of legal documents of state agencies, according to their jurisdiction, or request that a competent person specified in article 112 of the Law on Administrative Procedures do so.

A sanction decision is a “document applying the law.” In Viet Nam, this term means that it is:

... a specific legal document with state power promulgated by a competent state agency, official or public servant or a social organization authorized by the state according to procedures, statutory procedures on the basis of application of legal norms to specific and individual relationships in order to establish specific rights and obligations of certain individuals, agencies or organizations or determine legal responsibilities against subjects who violate the law. A document applying the law is a document promulgated by a competent entity according to the procedures and form prescribed by law, with the content being a specific order to an individual or organization determined and executed once in practice.³³

28 Law on Administrative Violations, art. 66.

29 Decree No. 99/2013, art. 3.

30 Law on Administrative Violations, art. 86.

31 Law on Complaints, art. 7.1.

32 Law on Administrative Procedures, art. 9.

33 *Textbook of General Theory of State and Law*, Vietnam National University, School of Economics and Law (Ho Chi Minh City, 2021) p.125.

Consequently, a Chief Justice can make a recommendation to an infringement-handling agency about a sanction decision according to provisions of the relevant law. These recommendations are always followed.

If the alleged infringer is dissatisfied with the first-instance decision of the Provincial People's Court, they may appeal appropriately.³⁴

1.6.3 First-instance criminal proceedings

The hearing of criminal cases, including criminal intellectual property cases, at first instance is in the District People's Court. It is provided for at articles 268–326 of the Criminal Procedure Code.

Intellectual property rights owners have the right to file evidence in criminal proceedings.³⁵

Article 253 of the Criminal Procedure Code provides that when a person or organization or agency provides documents relevant to such a case, the presiding judge must receive, and may ask the person who provided such materials, the matters that are relevant to them, and the answers and materials forwarded must be sent to the People's Procuracy, which must examine them and return them to the court for attachment to the case file.

1.6.3.1 Standing

Intellectual property rights owners, excluding patentees, can request commencement of criminal proceedings by filing a complaint or petition with the competent agencies (such as market management offices, customs offices, the police), including all significant evidence, and asking the competent agency to protect their rights.

Patentees are excluded because there are no criminal penalties for patent infringement in Viet Nam.

Article 212 of the Law on IP provides that “[a]ny individual who commits an act of infringement of intellectual property rights involving a criminal element shall be criminally prosecuted in accordance with the criminal law.”

Article 8 of the Criminal Code defines what constitutes a “crime”:

Article 8 – Definition of crime

1. A crime means an act that is dangerous for society and defined in Criminal Code, is committed by a person who has criminal capacity of corporate legal entity, whether deliberately or involuntarily, infringes the sovereignty and territorial integrity of the nation, infringes the political regime, economic regime, culture, national defense and security, social order and safety, the lawful rights and interests of organizations, human rights, the lawful rights and interests of citizens, other aspects of socialist law, and leads to criminal prosecution as prescribed by this Code.
2. An act showing signs of a crime but not remarkably dangerous for society is not a crime and shall be dealt with otherwise.

For an act of infringement to involve a criminal element or sign, it would typically be deliberate and dangerous to society, and not merely commercially damaging to the rights owner.

Article 155 of the Criminal Procedure Code stipulates circumstances that can be prosecuted at the request of a victim of the crime, or the representative of that victim should they be younger than 18 years old (i.e., a minor), be disabled or mentally incapacitated, or be dead.

1.6.3.2 Procedure

The following preliminary steps are generally taken in criminal intellectual property infringement disputes in the District People's Court.

³⁴ Law on Administrative Procedures, art. 204.

³⁵ Criminal Procedure Code, arts. 62–65.

1. The rights owner files a petition for the handling of intellectual property infringement within criminal proceedings, together with documentary evidence, with an agency with competence to handle such a petition, as defined in article 200 of the Law on IP (i.e., an infringement-handling agency).³⁶
2. If the infringement handling agency finds that the case contains “criminal signs” or criminal elements, it will send the case to a criminal procedure agency, such as the police, for investigation and initiation of a criminal case.³⁷ In Viet Nam, such a criminal sign (or element) will derive from one of six sources of information:
 - an individual’s denunciation;
 - news reported by agencies, organizations or individuals;
 - news made by the press;
 - petitions submitted by state authorities;
 - the infringement-handling agency’s own observations and identification of the signs of a crime;
 - offenders’ confessions.

Article 225(1) of the Criminal Code provides for the criminal signs of a criminal case in relation to copyright and related rights; article 226(1) of the Criminal Code stipulates such signs in relation to industrial rights.

3. The criminal procedure agencies, such as the Criminal Investigation Police, conduct a criminal investigation.³⁸
4. If criminal signs or elements are found, the People’s Procuracy may decide to prosecute the accused before the court, in which case an indictment will be issued, and a criminal case will be initiated and prosecuted.³⁹
5. If no criminal signs or elements are found but there are signs of an administrative offense, the criminal proceeding agency, such as the Criminal Investigation Police, will send or return the case to the competent infringement-handling agency and request that the agency impose an administrative penalty.

No criminal lawsuit can be initiated if:

- there is no offense;
- the acts do not constitute an offense;
- the persons committing the acts have not reached the age of criminal responsibility;
- the statute of limitations for penal liability has expired;
- the offenses have been granted general amnesty; and/or
- the accused is deceased.⁴⁰

1.6.3.3 Search and seizure orders

Search and seizure orders are available in criminal proceedings. Search and seizure orders are provided for in Chapter 13 of the Criminal Procedure Code.

Search and seizure orders are usually made on an interim basis, rather than a final basis.

The courts can decide an application for provisional urgent measures, such as search and seizure orders, without first hearing from the parties who will be its subject.

Search and seizure orders are usually issued in the following types of intellectual property case:

- producing, importing, transporting and trading in intellectual property counterfeit goods; and
- producing, importing, transporting, trading, possessing stamps, labels or other articles bearing counterfeit marks or geographical indications, or assigning others to do so.

³⁶ Decree No. 105/2006, art. 271.

³⁷ Law on Administrative Violations, art. 62.

³⁸ Criminal Procedure Code, arts. 163–178.

³⁹ Criminal Procedure Code, art. 166.

⁴⁰ Criminal Procedure Code, art. 107.

1.7 Evidence

In civil proceedings, the right and obligation to provide evidence in respect of their respective positions rests with the parties. They are expected to conduct the dispute on an adversarial basis, with each providing evidence and arguments in support of its position.⁴¹

In civil intellectual property cases, the court is not obliged to investigate and collect evidence when deciding the case or to otherwise adopt inquisitorial procedures. The court may do so, however, in response to any party's request – but only in circumstances in which that party cannot collect this evidence themselves.

Article 70 of the Civil Procedure Code provides that the rights and obligations of the parties involved include:

Article 70 – Rights and obligations of the involved parties

[...]

5. To supply materials and evidences; to prove to protect their legitimate rights and interests;
6. To petition agencies, organizations and individuals that are keeping or managing materials and evidences to supply such materials and evidences to them;
7. To petition the Court to verify and collect materials and evidences of the cases which they cannot perform themselves; petition the Court to request other involved parties to present materials and evidences they are keeping; petition the Court to issue the decision to request the agencies, organizations and individuals that are keeping and managing the materials/evidences to supply such materials and evidences; request the Court to summon witnesses, to ask for expertise, evaluation or price appraisal;

[...]

A request for the court to collect evidence may be made in a separate document, recorded in testimony, the record of testimony, the record of confrontation or in a written request.

The judge can take a number of measures to collect evidence, including gathering the testimony of witnesses, conducting confrontation between the involved parties, performing on-site review and evaluation or asking for expertise.⁴² The judge should explain that the parties are required to pay the costs of any such measures.

More specifically in intellectual property cases, article 203 of the Law on IP provides:

Article 203 – Right and burden of proof of involved parties

1. The plaintiff and the defendant in a lawsuit against intellectual property right infringement shall enjoy the right and bear the burden of proof provided for in Article 79 of the Civil Procedure Code and this Article.
2. The plaintiff shall prove that he/she is the intellectual property right holder with one of the following evidence:
 - a. Copies of the copyright registration certificate, related right registration certificate or protection title; or an extract of the national register of copyright and related rights, the national register of industrial property (including inventions, industrial designs, layout-designs of semiconductor integrated circuits, trade secrets, marks, trade names and geographical indications and unfair competition) or the national register of protected plant varieties;
 - b. Necessary evidence proving the basis for establishment of copyright or related rights in case of absence of a copyright registration certificate, related right registration certificate; necessary evidence proving rights to business secrets, trade names or well-known marks;
 - c. Copies of license contracts for intellectual property objects where the use right is licensed under contracts.

41 Civil Procedure Code, art. 70; Law on IP, art. 203.

42 See, e.g., Civil Procedure Code, arts. 97(1) and (2), and 102.

3. The plaintiff shall have to produce evidence of acts of infringing upon intellectual property rights or acts of unfair competition.
4. In a lawsuit against an infringement of the right to an invention which is a production process, the defendant shall have to prove that his/her products are produced by a process other than the protected process in the following cases:
 - a. The product made by the protected process is new;
 - b. The product made by the protected process is not new, but the invention owner believes that the product of the defendant is made by the protected process and fails to identify the process used by the defendant in spite of application of appropriate measures.
5. Where a party to a lawsuit against an infringement of intellectual property rights can prove that appropriate evidence proving his/her claims is under the control of the other party and therefore inaccessible, the former shall have the right to request the court to compel the latter to produce such evidence.
6. When making a claim for compensation for damage, the plaintiff must prove his/her actual damage and specify the basis for determining compensation for damage according to the provisions of Article 205 of this Law.

Evidence seized in a criminal proceeding or an administrative action in Viet Nam can be used in a civil proceeding.

Furthermore, article 92(1)(b) of the Civil Procedure Code provides as follows:

Article 92 – Details and facts that are not required to be proved

1. The following details and facts are not required to be proved:
[...]
 - b) Details and facts that have been identified in the Court judgments or decisions which are legally effective or in decisions of competent State bodies which have come into force;

1.7.1 Expert evidence

In relation to expert evidence, article 102(1) of the Civil Procedure Code provides that:

Article 102 – Request for expertise

1. Involved parties may petition Courts to request expertise or request expertise themselves if the involved parties' applications for referenda for expertise have been rejected by the Courts. The right to apply for expertise shall be exercised before the Courts issue decisions to bring the cases to trial according to first-instance procedures or decisions to hold the meetings for resolving civil matters.
[...]

1.7.2 Use of evidence from other proceedings (including overseas proceedings)

Evidence seized in criminal proceedings and administrative actions can be used in civil proceedings.

In particular, article 92(1)(b) of the Civil Procedure Code outlines as among the details and facts that are not required to be proved those “[d]etails and facts that have been identified in the Court judgments or decisions which are legally effective or in decisions of competent State bodies which have come into force.” Article 73(1)(b) of the Law on Administrative Procedures likewise sets out as circumstances and facts that are not required to be proved, “[t]hose which have been identified in legally effective court judgments or rulings.”

Evidence used in overseas proceedings can also be used in civil intellectual property proceedings in Viet Nam. Article 478 of the Civil Procedure Code provides for recognition of papers and materials sent by foreign agencies, organizations or individuals to Vietnamese courts. Clause 1 of the article provides that:

Article 478. Recognition of papers and materials sent by foreign agencies, organizations, or individuals to Vietnamese Courts

1. Vietnamese Courts shall recognize papers and documents made, issued or certified by competent foreign agencies or organizations in the following cases:
 - a. Papers, materials and notarized or certified Vietnamese translations have been legalized by consular offices;
 - b. Papers and documents are exempt from consular legalization in accordance with Vietnamese law or International treaties to which the Socialist Republic of Vietnam is a signatory."

The provisions on consular legalization or exemption from consular legalization are set out in Decree No. 111/2011, article 1 of which specifies that it covers "the competence, order and procedures for consular certification and legalization, contents of state management and responsibilities of agencies, organizations and individuals for consular certification and legalization."

The combined effect of these provisions is that the evidence used in overseas proceedings may be used in civil intellectual property proceedings in Viet Nam if it satisfies the requirements set out.

1.7.3 Expert evidence at trial

The Civil Procedure Code includes several provisions regulating expert witnesses, including articles 80, 102, 230 and 257.

In practice, the judge at the trial may hear expert witnesses concurrently.

1.7.4 Dealing with witnesses

Lay and expert witnesses may be required to attend the trial under subpoena. Where expected lay or expert witnesses are absent, the court may decide to proceed with the trial.

Articles 229 and 230 of the Civil Procedure Code provide as follows:

Article 229. Presence of witnesses

1. Witnesses shall be obliged to attend Court sessions under Court subpoenas.
2. Where the witnesses are absent, the Trial Panels shall decide to keep adjudicating the cases or to postpone the court.
3. The Trial Panels shall keep adjudicating the cases if the witnesses are absent but have earlier given their testimonies in person or sent their testimonies to courts. The presiding Judges shall make such testimonies public.
4. The Trial Panels shall decide to postpone the Court sessions if the absence of the witnesses at Court creates difficulties or affects the objective and comprehensive resolution of the cases.
5. If the witnesses are absent from the Court sessions without good and sufficient reasons and such absence obstructs the adjudication, they can be escorted to the Court sessions under the decision of the trial panels, unless the witnesses are minors.

Article 230 – Presence of expert-witnesses

1. Expert-witnesses shall be obliged to attend Court sessions under Court subpoena to explain and answer issues relating to the expertise and expert conclusions.

2. Where the expert-witnesses are absent, the Trial Panels shall decide to keep adjudicating the cases or postpone the Court sessions.

1.8 Remedies

What follows are the remedies broadly available in the event of infringement of intellectual property rights in Viet Nam.

See also Chapter 4 of the first volume in this series, *Introduction to the International Legal Framework for Intellectual Property*, for more on remedies more generally.

1.8.1 Civil remedies

Remedies in civil intellectual property proceedings include:

- injunctions, apologies and rectification;
- damages; and
- destruction.

Article 202 of the Law on IP provides as follows:

Article 202 – Civil remedies

Courts shall apply the following civil remedies in handling organizations and individuals that have committed acts of infringing upon intellectual property rights:

1. Compelling the termination of infringing acts;
2. Compelling a public apology and rectification;
3. Compelling the performance of civil obligations;
4. Compelling the payment of damages;
5. Compelling destruction, distribution or use for noncommercial purposes of goods, raw materials, materials and means used largely for the production or trading of intellectual property right-infringing goods, provided that such destruction, distribution or use does not affect the exploitation of rights by intellectual property right holders.

1.8.1.1 Injunctions, apologies and rectification

Article 202(1)–(3) of the Law on IP provides that:

Article 202 – Civil remedies

Courts shall apply the following civil remedies in handling organizations and individuals that have committed acts of infringing upon intellectual property rights:

1. Compelling the termination of infringing acts;
2. Compelling the public apology and rectification;
3. Compelling the performance of civil obligations; ...

One of the advantages of civil intellectual property proceedings compared with administrative action is that a rights owner can seek not only a public apology and rectification but also compensation for material or spiritual damage. These remedies are not available in an administrative action.

1.8.1.2 Damages

The principles for determining damage in cases of intellectual property infringement are outlined at article 204 of the Law on IP:

Article 204 – Principle of determination of damage caused by infringements of intellectual property rights

1. Damage caused by acts of infringing upon intellectual property rights include:
 - a. Material damage, including property losses, decreases in income and profit, loss of business opportunities, reasonable expenses for prevention and remedying of such damage;
 - b. Spiritual damage, including damage to honor, dignity, prestige, reputation and other spiritual losses caused to authors of literary, artistic and scientific works; to performers; to authors of inventions, industrial designs, layout-designs; and breeders of plant varieties.
2. The extent of damage shall be determined on the basis of actual losses suffered by intellectual property right holders due to acts of infringing upon intellectual property rights.

The bases on which compensation for such damage shall be determined are outlined at article 205 of the Law on IP:

Article 205 – Bases for determination of compensations for damage caused by infringements of intellectual property rights

1. Where the plaintiff can prove that an act of infringing upon intellectual property rights has caused material damage to him/her, he/she shall have the right to request the court to decide on the compensation level on one of the following bases:
 - a. total material damage calculated in an amount of money plus profit gained by the defendant as a result of an act of infringing upon intellectual property rights where the reduced profit amount of the plaintiff has not yet been calculated into such total material damage;
 - b. the price of the licensing of an intellectual property object with the presumption that the defendant has been licensed by the plaintiff to use that object under a license contract within the scope corresponding to the committed infringing act;
 - c. Where it is impossible to determine the level of compensation for material damage on the bases specified in Points a and b of this Clause, such compensation level shall be set by the court, depending on the damage extent, but must not exceed VND 500 million.
2. Where the plaintiff can prove that an act of infringing upon intellectual property rights has caused spiritual damage to him/her, he/she shall have the right to request the court to decide on the compensation level ranging from VND 5 million to VND 50 million, depending on the damage extent."

See also, regarding the calculation of damages, Part B, section I, point 1, of Joint Circular No. 02/2008, and articles 16(2)–20 of Decree No. 105/2006.

1.8.1.3 Destruction

In relation to destruction, article 202(5) of the Law on IP provides that:

Article 202 – Civil remedies

Courts shall apply the following civil remedies in handling organizations and individuals that have committed acts of infringing upon intellectual property rights:

[...]

5. Compelling destruction, distribution or use for noncommercial purposes of goods, raw materials, materials and means used largely for the production or trading of intellectual property right-infringing goods, provided that such destruction,

distribution or use does not affect the exploitation of rights by intellectual property right holders.

1.8.1.4 Legal costs

Article 205(3) of the Law on IP provides that:

Article 205(3) – Principles for determination of damage caused by infringements of intellectual property rights

[...]

3. In addition to the damage compensation defined in Clauses 1 and 2 of this Article, intellectual property right holders shall also have the right to request the court to compel organizations or individuals that have committed acts of infringing upon intellectual property rights to pay reasonable costs of hiring attorneys.

The reasonable costs of hiring attorneys are expenses necessary for intellectual property cases, and their amount depends upon the characteristics and complexity of the case, the skills and qualifications of the attorney, and amount of time required for “studying the case” – that is, the time the attorney spends preparing for the case and prosecuting or defending it before the court.

Costs include not only attorney fees but also their travel and accommodation expenses. Attorneys agree their fees with their clients in legal service contracts, and those fees will be calculated on bases and with methods set out in article 55 of the Law on Lawyers.

1.8.2 Criminal remedies

Remedies in criminal intellectual property cases include imprisonment, noncustodial sentences, fines and prohibitions on offenders holding certain positions or doing certain works.

For examples of decisions in criminal intellectual property cases in Viet Nam, see the website of the Supreme People’s Court.⁴³ One example is Decision No. 146/2019/HS-ST of November 22, 2019, on a criminal infringing of industrial property rights.

43 See <http://congbobanan.toaan.gov.vn/0t15at1cvn1/Tra-cu-ban-an>

Chapter 2

Trademark

2.1 Introduction

This chapter addresses the conduct of civil proceedings relating to registered trademarks in the District People's Courts and Provincial People's Courts, including the Economic Courts within the Provincial People's Courts. It also addresses the conduct of criminal proceedings for infringement of registered trademarks, which are conducted in the same courts.

Procedural aspects of the conduct of such proceedings were considered in Chapter 1 of this volume, and this chapter will cross-reference that first chapter, where appropriate. A more general summary of the law of trademarks is provided in Chapter 1 of the first volume in the series, *Introduction to the International Legal Framework for Intellectual Property*, which refers to the treaties that apply, but are not specific, to Viet Nam.

This chapter concludes by referring to action that may be taken in relation to unfair competition.

2.2 What is a trademark in Viet Nam?

A **trademark** is defined in Viet Nam as "any sign used to distinguish goods and/or services of different organizations or individuals."⁴⁴ A trademark must be registered in association with specified goods and/or services.

The law of Viet Nam also distinguishes between different types of mark, including:

- a **collective mark**, which is a mark used to distinguish goods and/or services of members from those of nonmembers of an organization that is the owner of such a mark;⁴⁵
- a **certification mark**, which is a mark its owner authorizes another organization or individual to use on their goods and/or services to certify the origin, raw materials, materials, mode of manufacture of goods or manner of provision of services, quality, accuracy, safety or other characteristics of goods and/or services bearing the mark;⁴⁶
- a **well-known mark**, which is a mark widely known by consumers throughout the Vietnamese territory,⁴⁷ determined according to criteria set out at article 75 of the Law on IP (see section 2.3);
- a **protection title**, which is a document granted by the competent state agency to an organization or individual to establish their industrial property rights to an invention, industrial design, layout design, trademark or geographical indication, or rights to a plant variety.

A **trade name** is:

... a designation of an organization or individual in business activities, capable of distinguishing the business entity bearing it from another entity in the same business domain and area. A business area mentioned in this Clause means a geographical area where a business entity has its partners, customers or earns its reputation.⁴⁸

44 Law on IP, art. 4(16).

45 Law on IP, art. 4(17).

46 Law on IP, art. 4(18).

47 Law on IP, art. 4(20).

48 Law on IP, art. 4(21).

A **geographical indication** is “a sign which identifies a product as originating from a specific region, locality, territory or country.”⁴⁹

2.3 Sources of law

The following statutory materials are relevant to the application of trademark law in Viet Nam:

Code of Civil Procedure No. 92/2015/QH13 of November 25, 2015 (“Civil Procedure Code”)

Criminal Code No. 100/2015/QH13, of November 26, 2015 (“Criminal Code”)

Criminal Code No. 12/2017/QH14, of June 20, 2017, on amendments to the Criminal Code No. 100/2015/QH13 (“Revised Criminal Code”)

Law No. 50/2005/QH11, of November 29, 2005, on Intellectual Property, amended and supplemented in 2009, 2019 and 2022 (“Law on IP”)

Law No. 15/2012/QH13 of June 20, 2012, on handling administrative violations (“Law on Administrative Violations”)

Law No. 23/2018/QH14 of June 12, 2018, on competition

Decree No. 103/2006/ND-CP of the Government, enacted in September 2006 and effective as of November 2006, amended and supplemented in 2010, providing guidelines for implementing certain articles of the Law on IP concerning industrial property (“Decree No. 103/2006”)

Decree No. 105/2006/ND-CP of the Government, enacted in September 2006 and effective as of November 2006, providing guidelines for the implementation of certain articles of the Law on IP regarding enforcement of intellectual property rights and state management of intellectual property, amended and supplemented in 2010 (“Decree No. 105/2006”)

Decree No. 119/2010/ND-CP of the Government, dated December 30, 2010, amending and supplementing a number of articles of Decree No. 105/2006/ND-CP detailing and guiding the implementation of a number of articles of the Law on IP on protection of intellectual property rights and state management of intellectual property

Decree No. 122/2010/ND-CP of the Government, dated December 31, 2010, amending and supplementing a number of articles of Decree No. 103/2006/ND-CP detailing and guiding the implementation of a number of articles of the Law on IP

Decree No. 99/2013/ND-CP of the Government, enacted in August 2013 and effective as of October 2013, detailing and providing guidelines for implementing the provisions on handling of administrative violations concerning industrial property (“Decree No. 99/2013”)

Decree No. 71/2014/ND-CP of the Government, dated July 14, 2014, guiding the imposition of penalties for the organizations and individuals committing violations against the law on competition (“Decree No. 71/2014”)

Circular No. 11/2015/ND-CP of June 26, 2015, on detailing and guiding a number of articles of the Government’s Decree No. 99/2013/ND-CP of August 29, 2013, on sanctioning of administrative violations in the field of industrial property

Joint Circular No. 02/2008/TTLT-TANDTC-VKSNDTC-BVHTT&DL-BKH&CN-BTP of the Supreme People’s Court, the Supreme People’s Procuracy, the Ministry of Culture, Sports and Tourism and the Ministry of Justice, dated April 3, 2008, guiding the application of a number of legal provisions to the settlement of disputes over intellectual property rights at People’s Courts (“Joint Circular No. 02/2008”)

Resolution No. 02/2020/NQ-HDTP of the Judicial Council of the Supreme People's Court, dated September 24, 2020, guiding the application of some provisions stipulating provisional measures in the Civil Procedure Code ("Resolution No. 02/2020")

2.4 Obtaining registered trademark protection

To obtain trademark protection in Viet Nam, the applicant must first file a trademark application with the National Office of Intellectual Property (NOIP) or file an international application designating Viet Nam under the Madrid Protocol.

Viet Nam is a 'first to file' country. Ownership of a trademark is granted to whoever first applies for registration of the mark in Viet Nam. Such registration may defeat any person who has previously used the same trademark in Viet Nam but has not registered it.⁵⁰

The following steps are involved in a trademark application:

1. The organization or individual files an application to register a trademark in relation to specified goods and services.⁵¹
2. The NOIP undertakes an examination of the formalities within one month (which period may be extended) of the filing date.⁵²
3. During the formality examination, the NOIP may send the applicant a notice of its intention to refuse the trademark application, stating its reasons and setting a deadline for the applicant to correct any errors.
4. At the conclusion of its formality examination, the NOIP will either:
 - accept the trademark application, in which case it will be published in the Industrial Property Official Gazette for a period of two months, during which third parties may make oppositions and comments;⁵³ or
 - refuse a trademark application on grounds including that the sign is ineligible for registration or the applicant does not have the registration right.
5. Refusal on formality grounds may be appealed to the Director General of the NOIP, then to the Minister of Science and Technology and/or a District People's Court, or to the administrative division of the Provincial People's Court.
6. Within six months of publication, the NOIP will undertake a substantive examination of the trademark application.⁵⁴ During the substantive examination, the NOIP will take into consideration any third-party oppositions or commentary submitted.
7. At the conclusion of the substantive examination, the NOIP will issue either:
 - a notice of its intention to grant the trademark and instruction that the trademark applicant must pay fees, such as the trademark registration fee, after payment of which the trademark application will proceed to registration and be published in the Industrial Property Official Gazette; or
 - a notice of its intention to refuse a trademark registration, clearly stating its reasons and setting a two-month deadline for the applicant to address the issues.

Grounds of refusal include that the application does not fully satisfy the protection conditions and the application does not have the earliest filing date or priority date.⁵⁵ If these issues are not addressed within the specified time period, the NOIP will issue a notification of refusal.

50 Law on IP, arts. 90 and 91.

51 Law on IP, art. 108.

52 Law on IP, art. 109.

53 Law on IP, arts. 110 and 112.

54 Law on IP, arts. 114 and 119.

55 Law on IP, art. 117.

8. Both a notification of refusal and a notice of intended grant of a trademark may be appealed to the Director General of the NOIP, then to the Minister of Science and Technology and/or a District People's Court, or to the administrative division of the Provincial People's Court.
9. Decisions on the grant of a trademark are published by NOIP in the Official Gazette of Industrial Property within 60 days of the date of its issue.⁵⁶

2.5 Requirements for trademark registration

In general terms, a sign is eligible for trademark registration if it is:

- a **visible sign** in the form of letters, words, drawings or images, including holograms, or a combination thereof, represented in one or more colors; and
- **capable of distinguishing goods or services** of the mark owner from those of other traders.⁵⁷

Some signs are not capable of protection as trademarks, including signs that are confusingly similar to national flags and emblems, and signs that are misleading, cause confusion or otherwise deceive consumers as to the origin, properties, intended utilities, quality, value or other characteristics of goods or services.⁵⁸

Article 74 of the Law on IP addresses the issue of whether or not a trademark is distinctive:

Article 74 – Distinctiveness of marks

1. A mark shall be considered distinctive if it consists of one or several easily noticeable and memorable elements, or of many elements forming an easily noticeable and memorable combination, and does not fall into the cases specified in Clause 2 of this Article.
2. A mark shall be considered as indistinctive if it is a sign or signs falling into one of the following cases:
 - a) Simple shapes and geometric figures, numerals, letters or scripts of uncommon languages, except where such signs have been widely used and recognized as a mark;
 - b) Conventional signs or symbols, pictures or common names in any language of goods or services that have been widely and regularly used and known to many people;
 - c) Signs indicating time, place and method of production, category, quantity, quality, properties, ingredients, intended utility, value or other characteristics, that are descriptive of goods or services, except where such signs have acquired distinctiveness through use before the filing of mark registration applications;
 - d) Signs describing the legal status and business field of business entities;
 - e) Signs indicating the geographical origin of goods or services, except where such signs have been widely used and recognized as a mark or registered as collective marks or certification marks as provided for in this Law;
 - f) Signs other than integrated marks which are identical with or confusingly similar to registered marks of identical or similar goods or services on the basis of registration applications with earlier filing dates or priority dates, as applicable, including mark registration applications filed under treaties to which the Socialist Republic of Vietnam is a contracting party;
 - g) Signs identical with or confusingly similar to another person's mark which has been widely used and recognized for similar or identical goods or services before the filing date or the priority date, as applicable;
 - h) Signs identical with or confusingly similar to another person's mark which has been registered for identical or similar goods or services, the registration certificate of which has been invalidated for no more than 5 years, except where

⁵⁶ Law on IP, art. 99.

⁵⁷ Law on IP, art. 72.

⁵⁸ Law on IP, art. 73.

the ground for such invalidation is nonuse of the mark according to Point d, Clause 1, Article 95 of this Law;

- i) Signs identical with or confusingly similar to another person's mark recognized as a well-known mark which has been registered for goods or services which are identical with or similar to those bearing such well-known mark, or for dissimilar goods or services if the use of such mark may affect the distinctiveness of the well-known mark or the mark registration is aimed at taking advantage of the reputation of the well-known mark;
- j) Signs identical with or similar to another person's trade name currently in use if the use of such signs may cause confusion to consumers as to the origin of goods or services;
- k) Signs identical with or similar to a geographical indication being protected if the use of such signs may mislead consumers as to the geographical origin of goods;
- l) Signs identical with, containing or being translated or transcribed from geographical indications being protected for wines or spirits if such signs have been registered for use with respect to wines and spirits not originating from the geographical areas bearing such geographical indications;
- m) Signs identical with or insignificantly different from another person's industrial design which has been protected on the basis of an industrial design registration application with the filing date or priority date earlier than that of the mark registration application.

2.6 Rights conferred by registration

The owner of a trademark has the rights:

- to use and authorize others to use the trademark;
- to prevent others from using the trademark; and
- to assign and license the trademark.⁵⁹

Furthermore, under article 198 of the Law on IP, trademark owners may protect their trademark rights thus:

Article 198 – Right to self-protection

1. Intellectual property right holders shall have the right to apply the following measures to protect their intellectual property rights:
 - a. Applying technological measures to prevent acts of infringing upon intellectual property rights;
 - b. Requesting organizations or individuals that commit acts of infringing upon intellectual property rights to terminate their infringing acts, make public apologies or rectifications and pay damages;
 - c. Requesting competent state agencies to handle acts of infringing upon intellectual property rights according to the provisions of this Law and other relevant provisions of law;
 - d. Initiating lawsuits at courts or arbitration centers to protect their legitimate rights and interests.
2. Organizations and individuals that suffer from damage caused by acts of infringing upon intellectual property rights or discover acts of infringing upon intellectual property rights which cause damage to consumers or society shall have the right to request competent state agencies to handle such acts according to the provisions of this Law and other relevant provisions of law.

"Use" of a trademark includes:

- affixing the mark on goods, on product packaging and on business transaction documents;
- circulating, offering, advertising for sale or stocking for sale goods bearing the mark; and
- importing goods or services bearing the mark.⁶⁰

⁵⁹ Law on IP, art. 123.

⁶⁰ Law on IP, art. 124.

A trademark registration is valid for an initial period of 10 years, and registration can be renewed for consecutive periods of 10 years.⁶¹

2.6.1 Ownership and assignment of a trademark

A registered trademark and a trademark application in progress can be assigned or licensed to a third party.⁶²

For a trademark assignment to be legally effective, it must be registered with the NOIP.⁶³ The same is true of a trademark license.⁶⁴

2.7 Revocation or invalidation

Proceedings may be commenced for the invalidation of a registered trademark either in the NOIP or by way of cross-claim in answer to a case alleging infringement of a trademark.

2.7.1 Proceedings for the revocation of rights

A claim or application for invalidation of a trademark may be filed with the NOIP.

A decision on the invalidation of a trademark may be appealed to the Director General of the NOIP, then to the Minister of Science and Technology and/or a District People's Court, or to the administrative division of the Provincial People's Court.

An appeal to the Provincial People's Court is heard as a rehearing (see section 1.5 of the first chapter in this volume). The procedure for the conduct of such hearings is broadly that set out in section 1.6.1 of that chapter.

2.7.2 Grounds for the revocation of a trademark

A trademark can be terminated on the grounds set out in articles 95 and 136 of the Law on IP, including where the trademark owner:

- fails to pay trademark maintenance and renewal fees;
- declares an intention to relinquish or surrender the trademark;
- no longer exists or is no longer engaged in business activities and there is no rightful heir or successor;
- or their licensee has not used the trademark for five consecutive years prior to a request for termination of validity and can give no justifiable reason for that disuse, except where the use is commenced or resumed at least three months before the request for termination.

In this latter case, the competent agency determines what qualify as "justifiable reasons."

A protection title (which includes a trademark) may be cancelled, or invalidated, under article 96 of the Law on IP, which provides:

Article 96 – Invalidation of protection titles

1. A protection title shall be entirely invalidated in the following cases:
 - a) The registration applicant has neither had nor been assigned the right to register an invention, industrial design, layout-design or mark;
 - b) The subject matter of industrial property fails to satisfy the protection conditions at the time the protection title is granted.
2. A protection title shall be partly invalidated when that part fails to satisfy the protection conditions.

61 Law on IP, art. 93(6).

62 Law on IP, arts. 138 and 139.

63 Law on IP, art. 148(1).

64 Law on IP, art. 148(2).

3. Organizations and individuals may request the state management agency in charge of industrial property rights to invalidate protection titles in the cases specified in Clauses 1 and 2 of this Article, provided that they pay fees and charges.

The statute of limitations for exercising the right to request invalidation of a protection title shall be its whole term of protection. For marks, such statute of limitations shall be 5 years from the grant date, except where the protection title has been granted due to the applicant's dishonesty.

4. Based on the result of the examination of request for invalidation of a protection title and involved parties' opinions, the state management agency in charge of industrial property rights shall issue a decision on entire or partial invalidation of the protection title or notify the refusal to invalidate it.
5. The provisions of Clauses 1, 2, 3 and 4 of this Article shall also apply to the invalidation of international registrations of marks.

Decisions on the invalidation of a trademark are published by the NOIP in the Official Gazette of Industrial Property within 60 days of the date of their issue.⁶⁵

2.8 Infringement proceedings

2.8.1 Standing

Part II, section 1, clause 2, of Joint Circular No. 02/2008 outlines the persons who have "standing" to bring civil proceedings in Viet Nam alleging infringement of industrial property rights, including trademark infringements:

2. Right to institute civil lawsuits over industrial property rights belongs to:

- a) Individuals and organizations involved in disputes over the right to register inventions, industrial designs, layout designs, marks or geographical indications; [...]
- d) Holders of certificates of registered or internationally registered marks, which are accepted for protection in Vietnam, owners of well-known marks;
- e) Holders of industrial property rights to business secrets or trade names; [...]
- h) Lawful heirs of authors of inventions, industrial designs or layout designs; or lawful heirs of industrial property rights of owners of industrial property objects;
- i) Individuals and organizations that are lawfully assigned the ownership of industrial property objects;
- j) Individuals and organizations that are lawfully licensed to use industrial property objects;
- k) Individuals and organizations that are licensed to use industrial property objects under decisions of competent state agencies;
- l) Other rights holders as defined by law.

2.8.2 Establishing infringement

A person infringes a trademark under article 129 of the Law on IP where, without the trademark owner's permission, they use:

- signs identical to registered marks for goods or services that are identical with those goods or services for which such marks have been registered;
- signs identical to registered marks for goods or services that are similar or related to those goods of services for which such marks have been registered, if such use is likely to cause confusion as to the origin of the goods or services;

65 Law on IP, art. 99.

- signs similar to registered marks for goods or services that are identical, similar, or related to those goods or services for which such marks have been registered, if such use is likely to cause confusion as to the origin of the goods or services;
- signs identical or similar to well-known marks, or signs in the form of translations or transcriptions of well-known marks for any goods or services, including those not identical with, dissimilar or unrelated to goods or services for which such marks have been registered, if such use is likely to cause confusion as to the origin of the goods or services or create a misleading impression as to the relationship between the users of such signs and the owners of the well-known mark.

Decree No. 105/2006 provides further guidance on how to determine whether or not a trademark has been infringed, including in its articles 5, 6 and 11:

Article 5 – Determination of acts of infringement

An examined act shall be regarded as an act of infringement of intellectual property rights specified in Articles 28, 35, 126, 127, 129 and 188 of the Law on IP when all the following bases exist:

1. The examined subject matter is a protected one.
2. The examined subject matter contains an infringing element.
3. The person that takes the examined act is neither the intellectual property right holder nor any person permitted by law or a competent agency under Articles 25, 26, 32, 33, Clauses 2 and 3 of Article 125, Article 133, Article 134, Clause 2 of Article 137, Articles 145, 190 and 195 of the Law on IP.
4. The examined act takes place in Vietnam.

An examined act that takes place in the internet but is targeted at consumers or information users in Vietnam shall be regarded to take place in Vietnam.

Article 6 – Bases for determination of protected subject matter

1. The determination of a protected subject matter shall be based on the examination of documents and evidence proving the bases for emergence and establishment of the rights specified in Article 6 of the Law on IP.
2. For intellectual property rights that have been registered with competent agencies, the protected subject matters shall be determined on the basis of the registration certificates, protection titles and other documents accompanying such certificates and protection titles.
[...]
3. For well-known marks, the protected subject matters shall be determined on the basis of documents and evidence expressing the reputation of the marks according to the criteria defined in Article 75 of the Law on IP.

Article 11 – Infringing elements of marks

1. An infringing element of a mark is a sign affixed on goods, their packages, means of services, transaction documents, signboards, means of advertising or other means of business that is identical or confusingly similar to the protected mark.
2. The basis for determination of an infringing element of a mark is the scope of protection of the mark including the mark specimen and a list of goods and services in the mark registration certificate or the certificate of protection in Viet Nam of the internationally registered mark.
3. In order to determine whether a suspected sign is an infringing element of a mark, it is required to compare such sign to the mark and at the same time to compare goods or services bearing such sign to the protected products or services. An infringing element can only be confirmed if the following two conditions are fully met:
 - a. The suspected sign is identical or confusingly similar to the mark within the scope of protection; where a sign is regarded as identical to a protected

mark if it has the same composition and method of presentation (including the colors); a sign is regarded as confusingly similar to a protected mark if it has several features identical or similar to those of the protected mark to such an extent that it is not easy to distinguish between them in terms of composition, the way of pronunciation, the way of phonetic transcription of signs, letters, meaning, the method of presentation and colors, thereby causing confusion to consumers in selecting goods or services bearing the mark;

- b. Goods or services bearing the suspected sign that are identical or similar in substance to, have a relationship in terms of functions and utility with, and have the same distribution channel with, the protected goods or services.
4. For well-known marks, a suspected sign shall be regarded as an infringing element if:
 - a. The suspected sign meets the condition specified at Point a, Clause 3 of this Article;
 - b. Goods or services bearing the suspected sign meet the condition specified at Point b, Clause 3 of this Article or goods or services are not identical, similar or related to the goods or services bearing the well-known mark but are capable of misleading customers as to the origin of services or goods or creating wrong impressions about the relationship between the producer or trader of such goods or services and the owner of the well-known mark.
 5. When a product or service bears a sign that is identical to or is insignificantly different in terms of overall composition and method of presentation from the protected mark of a product or service of the same type within the scope of protection, it shall be regarded as a counterfeit mark goods as provided for in Article 213 of the Law on IP.

2.8.2.1 Defenses to allegations of infringement

To successfully defend a claim for trademark infringement, the defendant must establish that the acts do not constitute trademark infringement.

In particular, a defense is likely to include consideration of whether the allegedly infringing use is of a trademark that is sufficiently similar to the registered trademark to amount to infringement. This will also involve consideration of whether the alleged use is in relation to the same or similar goods and services in respect of which the trademark is registered.

2.8.2.2 Cross-claim challenging the validity of a trademark

A defendant to proceedings for the infringement of a trademark may bring a cross-claim for the revocation of the trademark, arguing that the trademark does not possess the requirements for a valid trademark.

As noted in section 1.2 of the first chapter in this volume, the courts have the right to hear disputes about the registration of industrial property rights.⁶⁶

2.8.3 Procedure for conduct of infringement proceedings

The process by which proceedings for the infringement of a trademark are conducted is set out in section 1.6 of the first chapter in this volume.

2.9 Evidence

Evidentiary requirements in trademark infringement proceedings are set out in article 203 of the Law on IP:

Article 203 – Right and burden of proof of involved parties

1. The plaintiff and defendant in a lawsuit against intellectual property right infringement shall enjoy the right and bear the burden of proof provided for in Article 79 of the Civil Procedure Code and this Article.

66 See Decree No. 103/2006, art. 14; Law on Administrative Procedures, art. 32.

2. The plaintiff shall prove that [they are] the intellectual property right holder with one of the following evidence:
 - (a) ... the national register of industrial property
[...]

See also section 1.7 of the first chapter in this volume.

2.10 Remedies

What follows are the remedies broadly available in the event of infringement of trademark rights in Viet Nam.

See also Chapter 4 of the first volume in this series, *Introduction to the International Legal Framework for Intellectual Property*, for remedies more generally.

Article 199 of the Law on IP provides that:

Article 199 – Remedies against acts of infringing upon intellectual property rights

1. Organizations and individuals that commit acts of infringing upon intellectual property rights of other organizations and individuals shall, depending on the nature and seriousness of such infringements, be handled with civil, administrative or criminal remedies.
2. In case of necessity, competent state agencies may apply provisional urgent measures, measures to control intellectual property-related imports and exports, or measures to prevent and secure the administrative sanctioning according to the provisions of this Law and other relevant provisions of law.

2.10.1 Civil remedies

In civil proceedings, the owner of a trademark may seek any of the following remedies for trademark infringement:

- injunction compelling the termination of infringing acts;
- public apology and rectification;
- specific performance (i.e., compelling the performance of civil obligations);
- damages; and/or
- destruction, distribution or use for noncommercial purposes of goods, raw materials, materials and means used largely for the production or trading of infringing goods, provided that such destruction, distribution or use does not affect the exploitation of rights by their owners or other authorized holders.⁶⁷

2.10.2 Provisional urgent measures

Upon or after the initiation of civil proceedings, the trademark owner may request that the court apply provisional urgent measures if:

- there exists a danger of irreparable damage to the owner's interests or the interests of other authorized rights holders; and/or
- goods suspected of infringing upon intellectual property rights or evidence related to the act of infringing upon industrial property rights are likely to be dispersed or destroyed unless they are protected in time.⁶⁸

The court will decide to apply provisional urgent measures at the request of the trademark owner before hearing from the alleged trademark infringer.⁶⁹

⁶⁷ Law on IP, art. 202.

⁶⁸ Law on IP, art. 206(1).

⁶⁹ Law on IP, art. 206(2).

The following provisional urgent measures may be applied to allegedly infringing goods or to raw materials, materials or means of production or trading of such goods:

- seizure;
- distraint;
- sealing;
- ban from alteration of original state;
- ban from movement;
- ban from ownership transfer; and
- such other provisional urgent measures as may be applied according to the provisions of the Civil Procedure Code.⁷⁰

For further information about civil remedies, see section 1.8.1 of the first chapter in this volume.

See also Resolution No. 02/2020.

2.10.3 Criminal remedies

Article 212 of the Law on IP states that “[a]ny individual who commits an act of infringement of intellectual property rights involving a criminal element shall be criminally prosecuted in accordance with the criminal law.”

Trademark infringements attracting criminal measures are usually acts of such a high level of danger to society that they are considered criminal.

The procedure for the conduct of first-instance criminal proceedings in intellectual property cases is that set out in section 1.6.3 of the first chapter in this volume.

Acts violating industrial property rights in relation to trademarks may constitute crimes such as:

- manufacturing and trading in counterfeit goods, as specified in article 192 of the Criminal Code;
- the crime of producing and trading in counterfeit food, foodstuffs and food additives, as specified in article 193 of the Criminal Code; or
- the crime of trading in and producing counterfeit goods that are curative or prophylactic drugs, as specified in article 194 of the Criminal Code.

In criminal proceedings, the following sanctions are possible.⁷¹

1. A person who infringes a trademark and earns an illegal profit of between VND 100 million and VND 300 million or who causes a loss of between VND 200 million and VND 500 million to the owner of such brand name or geographical indication, or where the violating goods are assessed at a value between VND 200 million and VND 500 million, shall be liable to a fine of between VND 50 million and VND 500 million or face a penalty of up to three years’ community sentence.
2. An offense committed in any of the following circumstances carries a fine of between VND 500 million and VND 1 billion or a penalty of between three and six years’ imprisonment:
 - (a) the offense is committed by an organized group;
 - (b) the offense has been committed more than once;
 - (c) the illegal profit reaped is more than VND 300 million;
 - (d) the loss incurred by the owner of the brand name or geographical indication is more than VND 500 million; or
 - (e) the illegal goods are assessed at more than VND 500 million.
3. The trademark infringer might also be liable to a fine of between VND 20 million and VND 200 million, and prohibited from holding certain positions or doing certain works for between one and five years.

⁷⁰ Law on IP, art. 207.

⁷¹ Criminal Code, art. 226.

A corporate legal entity that commits trademark offenses under article 226(1) of the Criminal Code may also be liable to a fine of between VND 500 million and VND 2 billion.

A corporate legal entity that commits trademark offenses under article 266(2) of the Criminal Code may also be liable to a fine of between VND 2 billion and VND 5 billion or may have its operations suspended for between 6 and 24 months.

Corporate legal entities might also be banned from operating in certain fields or raising capital for between one and three years.

For further information about criminal remedies, see section 1.8.2 of the first chapter in this volume.

2.10.4 Administrative sanctions

Article 200(3) of the Law on IP provides: “The application of administrative remedies shall fall under the competence of inspectorates, police offices, market management offices, custom offices and People’s Committees of all levels. In case of necessity, these agencies may apply measures to prevent and secure the administrative sanctioning provided for by law.”

For further information about the sanctioning of administrative violations of trademark rights, see:

- articles 211, 214 and 215 of the Law on IP; and
- the following articles of the Decree No. 99/2013:
 - article 11 (“Infringement of rights to marks, geographical indications, trade names or industrial designs”);
 - article 12 (“Production, import, trading, transportation or storage for sale of goods bearing counterfeit marks or geographical indications”); and
 - article 13 (“Production, import, trading, transportation or storage for sale of stamps, labels or articles bearing counterfeit marks or geographical indications”).

For further information about administrative sanctions for intellectual property infringement more broadly, see section 1.6.2 of the first chapter in this volume.

2.11 Unfair competition

2.11.1 Definition

In Viet Nam, under article 130 of the Law on IP:

1. the following acts shall be regarded as acts of unfair competition:
 - (a) Using commercial indications to cause confusion as to business entities, business activities or commercial origin of goods or services;
 - (b) Using commercial indications to cause confusion as to the origin, production method, utilities, quality, quantity or other characteristics of goods or services; or as to the conditions for provision of goods or services;
 - (c) Using marks protected in a country which is a contracting party to a treaty to which the Socialist Republic of Viet Nam is also a contracting party and under which representatives or agents of owners of such marks are prohibited from using such marks, if users are representatives or agents of the mark owners and such use is neither consented to by the mark owners nor justified;
 - (d) Registering or possessing the right to use or using domain names identical with, or confusingly similar to, protected trade names or marks of others, or geographical indications without having the right to use, for the purpose of possessing domain names, benefiting from or prejudicing reputation and popularity of respective marks, trade names or geographical indications.

2. Commercial indications specified in Clause 1 of this Article mean signs and information serving as guidelines to trading of goods or services, including marks, trade names, business symbols, business slogans, geographical indications, designs of packages and/or labels of goods.
3. Acts of using commercial indications specified in Clause 1 of this Article include acts of affixing such commercial indications on goods, goods packages, means of service provision, business transaction documents or advertising means; selling, advertising for sale, stocking for sale and importing goods affixed with such commercial indications.

2.11.2 Remedies

The civil remedies for trademark infringement are largely also available against unfair competition.

Article 198(3) of the Law on IP provides that:

Article 198 – Right to self-protection

[...]

3. Organizations and individuals that suffer from damage or are likely to suffer from damage caused by acts of unfair competition shall have the right to request competent state agencies to apply the civil remedies provided for in Article 202 of this Law and the administrative remedies provided for by competition law.

Furthermore, article 6 of Decree No. 71/2014 provides that:

Article 6 – Compensation for damage caused by violations against law on competition

1. Any organization or individual committing violations against the law on competition must compensate for the damage to the interests of the State and lawful rights and interests of other entities.
2. The compensation mentioned in Clause 1 this Article is prescribed in the regulations of the civil law.

The criminal remedies for unfair competition are also largely the same as those available for trademark infringement.

Chapter 3

Patent

3.1 Introduction

This chapter addresses the conduct of civil proceedings involving patents in the District People's Courts and the Provincial People's Courts, including the Economic Courts within the Provincial People's Courts. No criminal proceedings are available for patent infringement in Viet Nam.

Procedural aspects of the conduct of such proceedings were considered in Chapter 1 of this volume, and this chapter will cross-reference that first chapter, where appropriate. A more general summary of the law of patents is provided in Chapter 2 of the first volume in the series, *Introduction to the International Intellectual Property Legal Framework*, which refers to the treaties that apply, but are not specific, to Viet Nam.

3.2 What is a patent in Viet Nam?

The Law on IP refers not to patent as such but to **industrial property rights**, which means and includes "rights of organizations and individuals to inventions, industrial designs, layout-designs of semiconductor integrated circuits, trade secrets, marks, trade names and geographical indications they have created or own, and right to repression of unfair competition."⁷²

An **invention** is defined as "a technical solution in the form of a product or a process which is intended to solve a problem by application of laws of nature."⁷³

The Law on IP refers to two different types of patent:

- an invention patent; and
- a utility solution patent.

An **invention patent** must be novel, involve an inventive step and be susceptible to industrial application.⁷⁴

A **utility solution patent** must be novel and be susceptible to industrial application – that is, a utility solution patent does not need to involve an inventive step.⁷⁵

A **protection title** is a document granted by the competent state agency to an organization or individual to establish their industrial property rights to an invention, industrial design, layout design, trademark or geographical indication, or rights to a plant variety.

72 Law on IP, art. 4(4).

73 Law on IP, art. 4(12).

74 Law on IP, art. 58(1).

75 Law on IP, art. 58(2).

3.3 Sources of law

The following statutory materials are relevant to the application of patent law in Viet Nam

Law No. 50/2005/QH11, of November 29, 2005, on Intellectual Property, amended and supplemented in 2009, 2019 and 2022 (“Law on IP”)

Law No. 15/2012/QH13 of June 20, 2012, on handling administrative violations (“Law on Administrative Violations”)

Law No. 42/2019/QH14 on amendments to some articles of law on insurance business and Law on Intellectual Property (“Law No. 42/2019”)

Decree No. 103/2006/ND-CP of the Government, enacted in September 2006 and effective as of November 2006, amended and supplemented in 2010, providing guidelines for implementing certain articles of the Law on IP concerning industrial property (“Decree No. 103/2006”)

Decree No. 105/2006/ND-CP of the Government, enacted in September 2006 and effective as of November 2006, providing guidelines for the implementation of certain articles of the Law on IP regarding enforcement of intellectual property rights and state management of intellectual property, amended and supplemented in 2010 (“Decree No. 105/2006”)

Decree No. 119/2010/ND-CP of the Government, dated December 30, 2010, amending and supplementing a number of articles of Decree No. 105/2006/ND-CP detailing and guiding the implementation of a number of articles of the Law on IP on protection of intellectual property rights and state management of intellectual property

Decree No. 122/2010/ND-CP of the Government, dated December 31, 2010, amending and supplementing a number of articles of Decree No. 103/2006/ND-CP detailing and guiding the implementation of a number of articles of the Law on IP

Decree No. 99/2013/ND-CP of the Government, enacted in August 2013 and effective as of October 2013, detailing and providing guidelines for implementing the provisions on handling of administrative violations concerning industrial property (“Decree No. 99/2013”)

Circular No. 11/2015/TT-BKHCHN of the Government, dated June 26, 2015, on detailing and guiding a number of articles Decree No. 99/2013/ND-CP, on sanctioning of administrative violations in the field of industrial property

Circular No. 01/2007/TT-BKHCHN of the Government of February 14, 2007, guiding the implementation of Decree No. 103/2006/ND-CP, detailing and guiding the implementation of a number of articles of the Law on IP regarding industrial property (“Circular No. 01/2007”)

Circular No. 13/2010/TT-BKHCHN dated July 30, 2010 on amending and supplementing a number of provisions of the Circular No. 17/2009/TT-BKHCHN of June 18, 2009 and Circular No. 01/2007/TT-BKHCHN (“Circular No. 13/2010”)

Circular No. 18/2011/TT-BKHCHN dated July 22, 2011 on amending and supplementing some provisions of Circular No. 01/2007/TT-BKHCHN, being amended and supplemented by Circular No. 13/2010/TT-BKHCHN and Circular No. 01/2008/TT-BKHCHN, being amended and supplemented by Circular No. 04/2009/TT-BKHCHN, of March 27, 2009 (“Circular No. 18/2011”)

Circular No. 05/2013/TT-BKHCHN dated February 20, 2013 on amending Circular No. 01/2007/TT-BKHCHN, amended in Circular No. 13/2010/TT-BKHCHN and Circular No.18/2011/TT-BKHCHN

Circular No. 11/2015/TT-BKHHCN dated June 26, 2015, detailing and guiding a number of Articles of Decree No. 99/2013/ND-CP (“Circular No. 11/2015”)

Circular No. 16/2016/TT-BKHHCN dated June 30, 2016 on amendment and supplement of some articles of Circular No. 01/2007/TT-BKHHCN, amended and supplemented by Circular No. 13/2010/TT-BKHHCN, Circular No. 18/2011/TT-BKHHCN and Circular No. 05/2013/TT-BKHHCN (“Circular No. 16/2016”)

Joint Circular No. 02/2008/TTLT-TANDTC-VKSNDT-BVHTT&DL-BKH&CN-BTP of the Supreme People’s Court, the Supreme People’s Procuracy, the Ministry of Culture, Sports and Tourism and the Ministry of Justice, dated April 3, 2008, guiding the application of a number of legal provisions to the settlement of disputes over intellectual property rights at people’s courts (“Joint Circular No. 02/2008”)

Resolution No. 02/2020/NQ-HDTP of the Judicial Council of the Supreme People’s Court, dated September 24, 2020, guiding the application of some provisions stipulating provisional measures in the Civil Procedure Code (“Resolution No. 02/2020”)

3.4 Obtaining patent protection

A patent application must be filed with the NOIP or under the Patent Cooperation Treaty.⁷⁶

In broad terms, a patent is a document that describes the invention to be its subject and sets out the monopoly claims over it that the patent applicant asserts. The patent is set down in a document that is referred to as a specification.

An applicant must meet a number of formal requirements if their patent specification is to be valid, including matters such as an adequate description of the invention and a clear scope of the claims.

The substantive requirements for a valid patent are considered at section 3.5.

3.4.1 Application process

To be granted an invention patent in Viet Nam, an applicant must first file a patent application with the NOIP.

The following steps are typically involved in a patent application proceeding.

1. The organization or individual files a patent application with the NOIP.⁷⁷
2. The NOIP undertakes an examination of the formalities.⁷⁸
3. During the formality examination, the NOIP may send the applicant:
 - a notice of its intention to refuse the patent application, stating its reasons and setting a deadline for the applicant to correct any errors or to object to such intended refusal; or
 - a notice of refusal of the patent application if the applicant fails to correct errors, improperly corrects errors or fails to make a justifiable objection to such intended refusal.⁷⁹
4. At the conclusion of its formality examination, the NOIP will either:
 - accept the patent application, in which case it will be published in the Industrial Property Official Gazette for a period of two months, during which parties may submit third time oppositions and opinions (see section 3.4.2);⁸⁰ or

⁷⁶ See section 2.3 in the second chapter of the first volume.

⁷⁷ Law on IP, art. 108.

⁷⁸ Law on IP, art. 109.

⁷⁹ Law on IP, art. 109(3).

⁸⁰ Law on IP, arts. 110 and 112.

- refuse the patent application on formality grounds, including that the invention is ineligible for registration.

An invention patent application will be published in the 19th month after the filing date or the priority date, as applicable, or at an earlier time at the request of the applicant.⁸¹

5. Refusal on formality grounds may be appealed to the Director General of NOIP, then to the Minister of Science and Technology, and then to the Provincial Administrative Court.
6. Within 42 months for an invention patent or 36 months for a utility solution patent after the filing date or the priority date, as applicable, the patent applicant or any third party may request the NOIP to substantively examine the application, provided that they pay the substantive examination fee. If no application is made within that period, the patent application is considered withdrawn.⁸²
7. During the substantive examination, the NOIP will take into consideration any third-party oppositions or opinions submitted.⁸³
8. At the conclusion of the substantive examination, the NOIP will issue, under articles 117 and 118 of the Law on IP, either:
 - a notice of its intention to refuse the patent, clearly stating its reasons and setting a deadline for the applicant to object to its intention, and if these issues are not addressed within the specified period, the NOIP will issue a notification of refusal; or
 - a notice of its intention to grant of the patent and instruction that the patent applicant must pay the relevant fees, after payment of which the patent application will proceed to grant and be published in the Industrial Property Official Gazette.
9. A third party may oppose a notice of intention to grant a patent by requesting that the pending application be re-examined.⁸⁴
10. A notice of refusal and a notice of intention to grant of a patent may be appealed to the Director General of NOIP, then to the Minister of Science and Technology, and then to the Provincial Administrative Court.
11. Decisions on the grant of a patent are published by the NOIP in the Official Gazette of Industrial Property within 60 days of the date of their issue.⁸⁵

3.4.2 Opposition

In terms of third parties' submissions in opposition proceedings, article 112 of the Law on IP provides that:

Article 112 – Third party's opinions on the grant of protection titles

As from the date an industrial property registration application is published in the Official Gazette of Industrial Property until prior to the date of issuance of a decision on grant of a protection title, any third party shall have the right to express opinions to the concerned state management agency in charge of industrial property rights on the grant or refusal to grant a protection title in respect of such application. Such opinions must be made in writing and be accompanied by documents or must quote the source of information.

In accordance with article 117(4) of the Law on IP and section 16 of Circular No. 01/2007, re-examination of a patent may be requested for a pending patent application. A patent application will be re-examined when a third party or the applicant opposes the NOIP's notice of intention to grant or notice of intention to refuse a patent, respectively.

81 Law on IP, art. 110(2).

82 Law on IP, art. 113.

83 Law on IP, art. 112.

84 Law on IP, art. 117(4).

85 Law on IP, art. 99.

Article 117(4) of the Law on IP provides as follows:

Article 117 – Refusal to grant protection titles

[...]

4. Where there appears an objection to the intended grant of a protection title, the relevant industrial property registration application shall be re-examined with regard to the matters against which the objection is made.

3.4.3 Appeals

A notice of refusal and a notice of intention to grant a patent may be appealed to the Director General of the NOIP, then to the Minister of Science and Technology, and then to the administrative division of the Provincial People's Court.

Where an appeal is made to the administrative division of the Provincial People's Court, the subject of the appeal is conducted as a rehearing (see section 1.5 of the first chapter in this volume). The procedure for the conduct of such hearings is broadly that set out in section 1.6.1 of that chapter.

3.5 Requirements for a valid patent

The substantive requirements that must be met if a patent is to be granted concern whether the invention claimed is new (novel), inventive and involves patentable subject matter.

3.5.1 Patentable subject matter

The following are not patentable subject matter:

- scientific discoveries or theories and mathematical methods;
- schemes, plans, rules and methods for performing mental acts, training domestic animals, playing games and doing business;
- computer programs;
- presentations of information;
- solutions of aesthetical characteristics only;
- plant varieties and animal breeds;
- processes of plant or animal production, which are principally of biological nature other than microbiological ones; and
- human and animal disease prevention, and diagnostic and treatment methods.⁸⁶

3.5.2 Novelty

Under article 60 of the Law on IP, disclosure of the invention for which patent protection is sought in any form, including by use, anywhere in the world shall destroy its novelty.

Article 60 of the Law on IP provides that:

Article 60 – Novelty of inventions

1. If it has not yet been publicly disclosed through use or by means of a written description or any other form, inside or outside the country, before the filing date or the priority date, as applicable, of the invention registration application;
2. Having not yet been publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret;
3. It is considered that an invention does not lose its novelty if it is directly or indirectly disclosed by the person entitled to registration specified in Article 86 of this Law or by the person who has information about the invention under the condition that the patent application is submitted in Vietnam within 12 months from the date of disclosure;

⁸⁶ Law on IP, art. 59.

4. The provisions of Clause 3 of this Article shall also be applied to any invention disclosed in the industrial property application or industrial property protection announced by industrial property authority in case the announcement is inconsistent with provisions of laws or the application is submitted by a person ineligible for registration.

There is, however, a grace period of 12 months provided for an invention that is:

- directly or indirectly disclosed by the person entitled to registration specified in article 86 of the Law on IP;
- disclosed by the person who has information about the invention under the condition that the patent application is submitted in Viet Nam within 12 months from the date of disclosure; or
- disclosed in the industrial property application or industrial property protection announced by an industrial property authority in the event that the announcement is inconsistent with provisions of laws or the application is submitted by a person ineligible for registration.

The grace period was formerly six months; the change came into force on November 1, 2019.⁸⁷

3.5.3 Inventive step

Article 2(3) of the Law No. 42/2019 provides that an invention involves “an inventive step” under article 61(1) of the Law on IP if:

... based on technical solutions that have been publicly disclosed in the form of use or written description or in any other form at home and abroad prior to the submitting date or the privilege date of the patent application if those applications entitled to privileges; or the invention is an innovation and cannot be easily created by a person with average knowledge about the corresponding technical field.

Circular No. 01/2007, which comprises detailed guidelines for implementation of the Law on IP, provides in its article 25(6) that the prior art relevant for the purposes of considering an inventive step shall include all the publications or uses that are publicly available anywhere in the world prior to the filing or priority date of the patent application under examination.

In assessing an inventive step, the NOIP examiner will assess whether the essential technical features defining the invention in question have been disclosed in the prior art and whether the combination of the essential technical features of the invention would have been obvious to a person with ordinary skill in the art.

An invention will be regarded as involving an inventive step if it is a result of an inventive activity and is not general or average knowledge in the relevant art.

3.5.4 Susceptible to industrial application

An invention is “susceptible of industrial application” under article 62 of the Law on IP if “it is possible to realize mass manufacture or production of products or repeated application of the process that is the subject matter of the invention, and to achieve stable results.”

3.6 Rights conferred by a patent

The owner of a patent has the right, under article 123 of the Law on IP:

- to use and authorize others to use the invention;
- to prevent others from using the invention; and
- to assign and license the invention.

87 Amendments to art. 60(3) and addition of new (4) to the Law on IP, under art. 2(2) of Law No. 42/2019.

Under article 124 of the Law on IP, “use” of an invention includes:

- manufacturing the protected product;
- applying the protected process;
- exploiting utilities of the protected product or the product manufactured under the protected process;
- circulating, advertising, offering, stocking for circulation the protected product or the product manufactured under the protected process; and
- importing the the protected product or the product manufactured under the protected process.

3.6.1 Duration of rights

An invention patent is valid for 20 years, starting from the grant date and expiring at the end of 20 years after the filing date.⁸⁸

A utility solution patent is valid for 10 years, starting from the grant date and expiring at the end of 10 years after the filing date.⁸⁹

3.6.2 Ownership of and transferring rights

3.6.2.1 Assignment and licensing

A patent’s owner can assign or license it to a third party.⁹⁰

For a patent assignment to be legally effective, it must be registered with the NOIP.⁹¹ The same is true of a patent license.⁹²

Article 148 of the Law on IP stipulates:

Article 148 – Effect of industrial property rights transfer agreement

1. As for industrial property rights granted on the basis of registration specified in Point a, Clause 3, Article 6 of this Law, an industrial property rights transfer agreement shall only come into force when it has been registered with industrial property rights authority.
2. As for industrial property rights granted on the basis of registration specified in Point a, Clause 3, Article 6 of this Law, industrial property rights agreements shall come into force according to the agreement between the parties.
3. Industrial property rights agreements specified in Clause 2 of this Article, except for trademark use agreements, shall be registered with an industrial property rights authority to be valid for third parties.
4. An industrial property rights agreement shall be invalidated if transferor’s industrial property rights are invalidated.

3.6.2.2 Compulsory licensing for State use

In Viet Nam, the State also has a right to demand a compulsory license of an invention in certain circumstances.

Article 133 of the Law on IP states that:

Article 133 – Rights of use of inventions on behalf of the State

1. Ministries and ministerial-level agencies shall have the right to, on behalf of the State, use or permit other organizations or individuals to use inventions in domains under

⁸⁸ Law on IP, art. 93(1).

⁸⁹ Law on IP, art. 93(2).

⁹⁰ Law on IP, arts. 138 and 139.

⁹¹ Law on IP, art. 148(1).

⁹² Law on IP, art. 148(2).

their respective management for public and noncommercial purposes, national defense, security, disease prevention and treatment and nutrition for the people, and to meet other urgent social needs without having to obtain permission of invention owners or their licensees under exclusive contracts (hereinafter referred to as holders of exclusive right to use inventions) according to Articles 145 and 146 of this Law.

2. The use of inventions mentioned in Clause 1 of this Article shall be limited within the scope of and under the conditions for licensing provided for in Clause 1, Article 146 of this Law, except where such inventions are created by using material-technical facilities and funds from the state budget.

Viet Nam's Law on IP includes elaborate provisions for compulsory licensing.⁹³ It provides for three general categories under which compulsory licenses shall be invoked – namely:

- for dependent inventions;⁹⁴
- for reasons of the public interest;⁹⁵ and
- for failure to work the invention.⁹⁶

It adds to these another ground: where the third party fails to negotiate a license on reasonable terms and conditions.⁹⁷

Article 146(d) of the Law on IP provides that “[t]he licensee shall have to pay the holder of exclusive right to use the invention a satisfactory compensation depending on the economic value of such use right in each specific case, and compliant with the compensation bracket set by the Government.”

Article 147(1) of the Law on IP states that:

Article 147 – Competence and procedures for licensing of inventions under compulsory decisions

1. The Science and Technology Ministry shall issue decisions on licensing of inventions based on the consideration of requests for licensing in the cases specified at Points b, c and d, Clause 1, Article 145 of this Law.
Ministries and ministerial-level agencies shall issue decisions on licensing of inventions in domains under their respective management in the cases specified at Point a, Clause 1, Article 145 of this Law after consulting opinions of the Science and Technology Ministry.

Decisions on the licensing of inventions or on refusal to license an invention may be subject to complaints or lawsuits, according to the provisions of Vietnamese law.⁹⁸

There has only been one instance of the compulsory licensing of patent rights in Viet Nam to date.

In 2005, the country was faced with a critical shortage of a drug in the context of the bird flu pandemic caused by the H5N1 virus. The government approached Swiss pharma company Roche and negotiated a license for a Vietnamese company to produce Tamiflu, meeting its emergency needs.

It had been the Ministry of Health's intention, in the event that no license agreement was reached with Roche, to suspend Roche's patent rights and authorize one or more Vietnamese companies to manufacture the drug for a noncommercial purpose based on the Civil Code and a related government decree from 1996. Fortunately, Roche agreed to grant the license to a Vietnamese company that it selected to manufacture the drug.

In light of these provisions, it remains possible in theory for Viet Nam's government to either suspend the patenting or compel the licensing of COVID-19 vaccines for emergency needs in pursuit of disease prevention.

93 Law on IP, arts. 145–147.

94 Law on IP, art. 146(2).

95 Law on IP, art. 145(1)(a).

96 Law on IP, art. 145(1)(b).

97 Law on IP, art. 145(1)(c).

98 Law on IP, art. 147(d).

3.7 Revocation or invalidation

A claim or application for invalidation of a patent must be filed with the NOIP. A decision on the invalidation of a patent may be appealed to the Director General of the NOIP, then to the Minister of Science and Technology, and then to the administrative division of the Provincial People's Court.

The courts do not have the power to cancel a patent. However, the Chief Judges of the courts may make recommendations regarding the amendment, supplementation or annulment of legal documents of the NOIP.⁹⁹ In practice, the NOIP would typically follow these recommendations.

Related infringement proceedings before the civil courts may or may not be suspended until the NOIP – or, if appealed, the Director General of the NOIP, the Minister of Science and Technology or the administrative division of the Provincial People's Court – issues its decision on invalidity.

3.7.1 Standing to apply for revocation

Any natural and juridical party can file a patent invalidation request with the NOIP. No legal interest is required.

Article 96(3) of the Law on IP provides that “[a]ny organization or individual may request the State administrative body for industrial property rights to invalidate a protection title in the cases specified in clauses 1 and 2 of this article, provided that such applicant pays fees and charges.” These provisions are detailed in point 21 of Circular No. 01/2007 and point 20 of Circular No. 16/2016.

3.7.2 Grounds for revocation

Article 96 of the Law on IP provides that, during the term of its validity, a third party may initiate an invalidation action against the patent if:

- any of the requirements for patentability were not fulfilled at the time it was granted; or
- the person to whom it was granted was not entitled to apply for and be granted the patent.

A protection title (which includes a patent) may be cancelled or invalidated under article 96 of the Law on IP, which provides:

Article 96 – Invalidation of protection titles

1. A protection title shall be entirely invalidated in the following cases:
 - a) The registration applicant has neither had nor been assigned the right to register an invention, industrial design, layout-design or mark;
 - b) The subject matter of industrial property fails to satisfy the protection conditions at the time the protection title is granted.
2. A protection title shall be partly invalidated when that part fails to satisfy the protection conditions.
3. Organizations and individuals may request the state management agency in charge of industrial property rights to invalidate protection titles in the cases specified in Clauses 1 and 2 of this Article, provided that they pay fees and charges. The statute of limitations for exercising the right to request invalidation of a protection title shall be its whole term of protection. For marks, such statute of limitations shall be 5 years from the grant date, except where the protection title has been granted due to the applicant's dishonesty.
4. Based on the result of the examination of request for invalidation of a protection title and involved parties' opinions, the state management agency in charge of industrial property rights shall issue a decision on entire or partial invalidation of the protection title or notify the refusal to invalidate it.

⁹⁹ Decree No. 103/2006, art. 14; Law on Administrative Procedures, art. 112.

5. The provisions of Clauses 1, 2, 3 and 4 of this Article shall also apply to the invalidation of international registrations of marks.

3.7.3 Appeals to the Provincial People's Court

Decisions on the invalidation of a patents are published by the NOIP in the Official Gazette of Industrial Property within 60 days of the date of their issue.¹⁰⁰

Where an appeal of such a decision is made to the administrative division of the Provincial People's Court, the subject of the appeal is conducted as a rehearing (see section 1.5 of the first chapter in this volume). The procedure for the conduct of such hearings is broadly that set out in section 1.6.1 of that chapter.

3.8 Infringement proceedings

3.8.1 Standing

In Viet Nam, the following people have standing to bring civil proceedings alleging patent infringement:

- the patentee;
- the registered licensee; and
- any organization or individual suffering because of any act of infringement.

Part II, section 1, of Joint Circular No. 02/2008 outlines the persons who have standing to bring civil proceedings alleging infringement of an industrial property right (including a patent):

2. Right to institute civil lawsuits over industrial property rights belongs to:
 - a) Individuals and organizations involved in disputes over the right to register inventions, industrial designs, layout designs, marks or geographical indications;
[...]
 - h) Lawful heirs of authors of inventions, industrial designs or layout designs; or lawful heirs or heirs of industrial property rights of owners of industrial property objects;
 - i) Individuals and organizations that are lawfully assigned the ownership of industrial property objects;
 - j) Individuals and organizations that are lawfully licensed to use industrial property objects;
 - k) Individuals and organizations that are licensed to use industrial property objects under decisions of competent state agencies;
 - l) Other rights holders as defined by law.

3.8.2 Establishing infringement

In Viet Nam, a person infringes a patent under article 126 of the Law on IP by:

Article 126 – Acts of infringing upon the rights of inventions, industrial designs and lay-outs

1. Using protected inventions, protected industrial designs or industrial designs insignificantly different from protected industrial designs, or protected layout-designs or any original part thereof within valid terms of protection titles without permission of owners;
2. Using inventions, industrial designs or layout-designs without paying compensations according to the provisions on provisional rights in Article 131 of this Law.

¹⁰⁰ Law on IP, art. 99.

Article 8 of Decree No. 105/2006 (guiding the implementation of some provisions of the Law on IP) provides that:

Article 8 – Infringing elements of inventions

1. An infringing element of an invention may take one of the following forms:
 - a. Product or part (component) of a product that is identical or similar to a product or part (component) of a product being protected as an invention;
 - b. Process that is identical or similar to a process being protected as an invention;
 - c. A product or part (component) of the product produced through a process that is identical or similar to a process being protected as an invention.
2. The basis for determination of an infringing element of an invention is the scope of invention protection stated in the invention or utility solution patent.

Article 11(1) of Circular No. 11/2015 clarifies the criteria with which the competent body shall assess the equivalence and similarity of two technical features:

Article 11 – Acts infringing upon rights to inventions

The identification of acts infringing upon rights to inventions must comply with Articles 5 and 8 of revised Decree No. 105/2006/ND-CP and the following guidance:

1. A product/product part/process in question shall be regarded as identical or similar to a protected product/product part/process in a certain (independent and dependent) point of the protection request in an invention patent/utility solution patent if all basic technical specifications (features) stated in that point can be found in the product/product part/process in question in the identical or similar form, in which:
 - a. Two technical specifications (features) are regarded as identical if they have the same nature, utility and method of utilization and share the same connection with other specifications stated in the protection request;
 - b. Two technical specifications (features) are regarded as similar if they have similar or interchangeable natures and basically the same utility and method of utilization.

Inducement and contributory infringement of patent rights are not provided for in the Law on IP.

Article 212 of the Law on IP states that “[a]ny individual who commits an act of infringement of intellectual property rights involving a criminal element shall be criminally prosecuted in accordance with the criminal law,” but patent infringement is not subject to criminal penalty.

Patents owners also have the following rights under article 198 of the Law on IP to protect their patent rights:

Article 198 – Right to self-protection

1. Intellectual property right holders shall have the right to apply the following measures to protect their intellectual property rights:
 - a. Applying technological measures to prevent acts of infringing upon intellectual property rights;
 - b. Requesting organizations or individuals that commit acts of infringing upon intellectual property rights to terminate their infringing acts, make public apologies or rectifications and pay damages;
 - c. Requesting competent state agencies to handle acts of infringing upon intellectual property rights according to the provisions of this Law and other relevant provisions of law;
 - d. Initiating lawsuits at courts or arbitration centers to protect their legitimate rights and interests.

2. Organizations and individuals that suffer from damage caused by acts of infringing upon intellectual property rights or discover acts of infringing upon intellectual property rights which cause damage to consumers or society shall have the right to request competent state agencies to handle such acts according to the provisions of this Law and other relevant provisions of law.

3.8.3 Defenses to allegations of infringement

The main defence to an allegation of patent infringement is that the elements of infringement are not established. In addition, there is also a defense of prior use of an invention in Viet Nam.

Article 134 of the Law on IP provides for the prior use defense thus:

Article 134 – Right of prior use of inventions and industrial designs

1. Where a person has, before the publication date of an invention or industrial design registration application, used or prepared necessary conditions for use of an invention or industrial design identical with the protected invention or industrial design stated in such registration application but created independently (hereinafter referred to as the prior use right holder), then after a protection title is granted, such person shall be entitled to continue using such invention or industrial design within the scope and volume of use or use preparations without having to obtain permission of or paying compensations to the owner of the protected invention or industrial design. The exercise of the right of prior users of inventions or industrial designs shall not be regarded as an infringement of the right of invention or industrial design owners.
2. Holders of prior use right to inventions or industrial designs must not assign such right to others, except where such right is assigned together with the transfer of business or production establishments which have used or are prepared to use the inventions or industrial designs. Prior use right holders must not expand the use scope and volume unless it is so permitted by invention or industrial design owners.

The defendant can also bring a counterclaim against the plaintiff for interference with duties and for damages resulting from the plaintiff's actions. This counterclaim can be accepted for settlement or determination by the court in the patent infringement proceedings.

3.9 Evidence

Evidentiary requirements in patent infringement proceedings are set out in article 203 of the Law on IP:

Article 203 – Right and burden of proof of involved parties

1. The plaintiff and defendant in a lawsuit against intellectual property right infringement shall enjoy the right and bear the burden of proof provided for in Article 79 of the Civil Procedure Code and this Article.
2. The plaintiff shall prove that [they are] the intellectual property right holder with one of the following evidence:
 - a. ... the national register of industrial property.
[...]
3. The plaintiff shall have to produce evidence of acts of infringing upon intellectual property rights or acts of unfair competition.
4. In a lawsuit against an infringement of the right to an invention which is a production process, the defendant shall have to prove that [their] products are produced by a process other than the protected process in the following cases:
 - a. The product made by the protected process is new;
 - b. The product made by the protected process is not new, but the invention owner believes that the product of the defendant is made by the protected process and fails to identify the process used by the defendant in spite of application of appropriate measures ...

3.10 Remedies

What follows are the remedies broadly available in the event of infringement of patent rights in Viet Nam.

See also Chapter 4 of the first volume in this series, *Introduction to the International Legal Framework for Intellectual Property*, for more on remedies more generally.

Article 199 of the Law on IP provides that:

Article 199 – Remedies against acts of infringing upon intellectual property rights

1. Organizations and individuals that commit acts of infringing upon intellectual property rights of other organizations and individuals shall, depending on the nature and seriousness of such infringements, be handled with civil, administrative or criminal remedies.
2. In case of necessity, competent state agencies may apply provisional urgent measures, measures to control intellectual property-related imports and exports, or measures to prevent and secure the administrative sanctioning according to the provisions of this Law and other relevant provisions of law.

There are, however, no criminal penalties for patent infringement (see section 3.10.3).

3.10.1 Civil remedies

In civil proceedings, the owner of a patent may seek any of the following remedies for patent infringement:

- injunction compelling the termination of infringing acts;
- public apology and rectification;
- specific performance (i.e., compelling the performance of civil obligations);
- damages; and/or
- destruction, distribution or use for noncommercial purposes of goods, raw materials, materials and means used largely for the production or trading of infringing goods, provided that such destruction, distribution or use does not affect the exploitation of rights by their owners or other authorized holders.¹⁰¹

3.10.2 Provisional urgent measures

Upon or after the initiation of civil proceedings, the patent owner may request that the court apply provisional urgent measures in the following circumstances:

- there exists a danger of irreparable damage to the owner's interests or the interests of other authorized rights holders; and/or
- goods suspected of infringing upon intellectual property rights or evidence related to the act of infringing upon industrial property rights are likely to be dispersed or destroyed unless they are protected in time.¹⁰²

The court will decide to apply provisional urgent measures at the request of the patent owner before hearing from the alleged patent infringer.¹⁰³

The following provisional urgent measures may be applied to allegedly infringing goods or to raw materials, materials or means of production or trading of such goods:

- seizure;
- distraint;

¹⁰¹ Law on IP, art. 202.

¹⁰² Law on IP, art. 206(1).

¹⁰³ Law on IP, art. 206(2).

- sealing;
- ban from alteration of original state;
- ban from movement;
- ban from ownership transfer; and
- such other provisional urgent measures as may be applied according to the provisions of the Civil Procedure Code.¹⁰⁴

For further information about civil remedies, see section 1.8.1 of the first chapter in this volume.

See also:

- Resolution No. 02/2020;
- article 204 of the Law on IP (“Principles for the determination of damage caused by infringement of intellectual property rights”); and
- article 205 of the Law on IP (“Bases for determination of damage caused by infringement of intellectual property rights”).

3.10.3 Criminal remedies

There are no criminal penalties for patent infringement in Viet Nam.

Organizations and individuals that are found to have committed acts of infringement of other’s patents are liable to civil and/or administrative remedies only, depending on the nature and extent of such infringement.

3.10.4 Administrative sanctions

For further information about the sanctioning of administrative violations of patent rights, see article 10 (“Infringement of rights to inventions, utility solutions and layout designs”) of Decree No. 99/2013.

For further information about administrative sanctions for intellectual property infringement more broadly, see section 1.6.2 of the first chapter in this volume.

¹⁰⁴ Law on IP, art. 207.

Chapter 4

Copyright

4.1 Introduction

This chapter addresses the conduct of civil proceedings relating to copyright and related rights in the District People's Courts and Provincial People's Courts, including the Economic Courts within the Provincial People's Courts. It also addresses the conduct of criminal proceedings for infringement of copyright, which are conducted in the same courts.

Procedural aspects of the conduct of such proceedings were considered in Chapter 1 of this volume, and this chapter will cross-reference that first chapter, where appropriate. A more general summary of the law of copyright is provided in Chapter 3 of the first volume in the series, *Introduction to the International Legal Framework for Intellectual Property*, which refers to the treaties that apply, but are not specific, to Viet Nam.

This chapter focuses primarily on literary and artistic works, but there are other types of work eligible for copyright under the Law on IP, including dramatic works, cinematographic works, computer programs, folklore and scientific works.

4.2 What is copyright in Viet Nam?

The Law on IP defines **copyright** as the “rights of organizations and individuals to works they have created or own.”¹⁰⁵

The Law on IP defines **a work** as “a creation of the mind in the literary, artistic or scientific domain, whatever may be the mode or form of its expression.”¹⁰⁶

The Law on IP also defines **copyright-related rights** as “rights of organizations and individuals to performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals.”¹⁰⁷

4.3 Sources of law

The following statutory materials are relevant to the application of copyright law in Viet Nam:

Civil Code No. 91/2015/QH13 of November 24, 2015 (“Civil Code”)

Code of Civil Procedure No. 92/2015/QH13 of November 25, 2015 (“Civil Procedure Code”)

Criminal Code No. 100/2015/QH13, of November 26, 2015 (“Criminal Code”)

Criminal Code No. 12/2017/QH14, of June 20, 2017, on amendments to the Criminal Code No. 100/2015/QH13 (“Revised Criminal Code”)

¹⁰⁵ Law on IP, art. 4(2).

¹⁰⁶ Law on IP, art. 4(7).

¹⁰⁷ Law on IP, art. 4(3).

Law No. 50/2005/QH11 of November 29, 2005, on Intellectual Property, amended and supplemented in 2009, 2019 and 2022 (“Law on IP”)

Law No. 15/2012/QH13 of June 20, 2012, on handling administrative violations (“Law on Administrative Violations”)

Decree No. 105/2006/ND-CP of the Government, enacted in September 2006 and effective as of November 2006, providing guidelines for the implementation of certain articles of the Law on IP regarding enforcement of intellectual property rights and state management of intellectual property, amended and supplemented in 2010 (“Decree No. 105/2006”)

Decree No. 119/2010/ND-CP of the Government, dated December 30, 2010, amending and supplementing a number of articles of Decree No. 105/2006/ND-CP

Decree No. 131/2013/ND-CP of the Government, dated October 16, 2013, providing for penalties for administrative violations of copyright and related rights (“Decree No. 131/2013”)

Decree No. 28/2017/ND-CP dated March 20, 2017, of the Government amending and supplementing a number of articles of Decree 131/2013/ND-CP and Decree No. 158/2013/ND-CP dated November 12, 2013, on sanctioning of administrative violations in the field of culture, sports, tourism and advertising

Decree No. 22/2018/ND-CP of the Government, enacted in February 2018 and effective as of April 2018, guiding the implementation of articles of the Law concerning copyrights and related rights (“Decree No. 22/2018”)

Decree No. 119/2020/ND-CP of the Government, dated October 7, 2020, on penalties for administrative violations in journalistic and publishing activities

Joint Circular No. 02/2008/TTLT-TANDTC-VKSNDTC-BVHTT&DL-BKH&CN-BTP of the Supreme People’s Court, the Supreme People’s Procuracy, the Ministry of Culture, Sports and Tourism and the Ministry of Justice dated April 3, 2008, guiding the application of a number of legal provisions to the settlement of disputes over intellectual property rights at people’s courts (“Joint Circular No. 02/2008”)

Joint Circular No. 07/2012/TTLT-BTTTT-BVHTTDL of the Ministry of Information and Communications and the Ministry of Culture, Sports and Tourism dated June 19, 2012, stipulating duty of enterprises providing intermediary service in protection of copyright and related rights in the internet and telecommunication networks environment

4.4 Obtaining copyright protection

Copyright arises automatically upon the creation of a work in material form.

Article 6 of the Law on IP provides that:

Article 6 – Bases for the emergence and establishment of intellectual property rights

1. Copyright shall arise at the moment when a work is created and fixed in a certain material form, irrespective of its content, quality, presentation, means of fixation, language and whether or not it has been published or registered.
2. Related rights shall arise at the moment when a performance, phonogram, video recording, broadcast or encrypted program-carrying satellite signal is fixed or displayed without any prejudice to copyright.

4.4.1 Registration

Copyright may be registered with the Copyright Office of Viet Nam, which operates under the auspices of the Ministry of Culture, Sports and Tourism, but registration of copyright is not compulsory.¹⁰⁸ The benefits of registering copyright include a prima facie presumption of copyright ownership and subsistence.¹⁰⁹

Article 49 of the Law on IP provides:

Article 49 – Registration of copyright or related rights

1. The registration of copyright and related rights means the filing of applications and enclosed dossiers (hereinafter referred to collectively as applications) by authors, copyright holders or related right holders with the competent state agencies for recording of information on authors, works, copyright holders and related right holders.
2. The filing of applications for grant of certificates of registered copyright or certificates of registered related rights is not a compulsory formality for enjoyment of copyright or related rights according to the provisions of this Law.
3. Organizations and individuals that are granted certificates of registered copyright or certificates of registered related rights shall not have to bear the burden of proof of such copyright and related rights upon disputes, unless rebutting proofs are adduced.

A copyright registration certificate may be invalidated by an effective judgment or decision of a court or competent authority.¹¹⁰

4.5 Requirements for valid copyright

Article 14 of the Law on IP sets out the types of work that are covered by copyright:

Article 14 – Types of works covered by copyright

1. Literary, artistic and scientific works covered by copyright include:
 - a. Literary and scientific works, textbooks, teaching courses and other works expressed in written languages or other characters;
 - b. Lectures, addresses and other sermons;
 - c. Press works;
 - d. Musical works;
 - e. Dramatic works;
 - f. Cinematographic works and works created by a process analogous to cinematography (hereinafter referred to collectively as cinematographic works);
 - g. Plastic-art works and works of applied art;
 - h. Photographic works;
 - i. Architectural works;
 - j. Sketches, plans, maps and drawings related to topography or scientific works;
 - k. Folklore and folk art works of folk culture;
 - l. Computer programs and compilations of data.
2. Derivative works shall be protected according to the provisions of Clause 1 of this Article only if it is not prejudicial to the copyright to works used to create such derivative works.

¹⁰⁸ Law on IP, art. 49(1) and (2).

¹⁰⁹ Law on IP, art. 49(3).

¹¹⁰ Decree No. 22/2018, art. 39.

3. Protected works defined in Clauses 1 and 2 of this Article must be created personally by authors through their intellectual labor without copying others' works.
4. The Government shall guide in detail the types of works specified in Clause 1 of this Article.

Article 15 of the Law on IP sets out those subject matters that are *not* covered by copyright protection:

Article 15 – Subject matters not covered by copyright protection

1. News of the day as mere items of press information.
2. Legal documents, administrative documents and other documents in the judicial domain and official translations of these documents.
3. Processes, systems, operation methods, concepts, principles and data.

4.6 Rights conferred by copyright

In Viet Nam, authors and/or owners of works acquire both economic and moral rights as a consequence of copyright.

4.6.1 Economic rights

Article 20 of the Law on IP sets out the economic rights – that is, the right to commercialize their works – available to authors and/or owners of works in Viet Nam:

Article 20 – Economic rights

1. Economic rights of authors include the following rights:
 - a. To make derivative works;
 - b. To display their works to the public;
 - c. To reproduce their works;
 - d. To distribute or import original works or copies thereof;
 - e. To communicate their works to the public by wire or wireless means, electronic information networks or any other technical means;
 - f. To lease original cinematographic works and computer programs or copies thereof.
2. The rights specified in Clause 1 of this Article shall be exclusively exercised by authors or copyright holders, or granted by authors or copyright holders to other persons for exercise under the provisions of this Law.
3. Organizations and individuals, when exercising one, several or all of the rights specified in Clause 1, this Article and Clause 3, Article 19 of this Law, shall have to ask for permission of and pay royalties, remunerations and other material benefits to copyright holders.

4.6.2 Moral rights

Article 19 of the Law on IP sets out the moral rights available to authors and/or owners of works in Viet Nam:

Article 19 – Moral rights

Moral rights of authors include the following rights:

- To title their works;

- To attach their real names or pseudonyms to their works; to have their real names or pseudonyms acknowledged when their works are published or used;
- To publish their works or authorize other persons to publish their works;
- To protect the integrity of their works, and to prevent other persons from modifying, mutilating or distorting their works in whatever form prejudicial to their honor and reputation.

Article 20(3) of Decree No. 22/2018 further provides that:

Article 20 – Moral rights

[...]

3. The right to protect the integrity of works and to prevent other persons from modifying or mutilating works provided for in Clause 4, Article 19 of the Intellectual Property Law means the right of the author of a work to prevent other persons from modifying or mutilating [their] work without [their] consent.

4.6.3 Duration of rights

The term of copyright protection in Viet Nam is:

- 75 years from the date of first publication of a cinematographic work, photographic work, dramatic work, work of applied art and anonymous work; or
- 100 years from the date of fixation if the work remains unpublished within 25 years of the date of fixation.¹¹¹

The term of copyright protection for all other works is 50 years after the death of the author (or last surviving coauthor).¹¹²

The term expires at midnight on December 31 of the year in which the copyright protection period ends.¹¹³

The term of moral rights is indefinite.¹¹⁴

4.6.4 Ownership of copyright

The legal owner of a work may be:

- its author or coauthors;
- organizations and individuals who assign tasks to authors or who enter into contracts with authors;
- the author's or coauthor's heir;
- the assignee of rights over the works; or
- the State, in certain cases.¹¹⁵

An **author** is the individual who personally creates the literary, artistic or scientific work.¹¹⁶

Two or more authors who jointly create a copyright work are considered **coauthors**, and they share moral and economic rights under articles 19 and 20 of the Law on IP.¹¹⁷

Different rules apply where a copyright work is created under a contract with an author. Article 39 of the Law on IP provides:

¹¹¹ Law on IP, art. 27.

¹¹² Law on IP, art. 27.

¹¹³ Law on IP, art. 27(2)(c).

¹¹⁴ Law on IP, art. 27(1).

¹¹⁵ Law on IP, arts. 36–42.

¹¹⁶ Decree No. 22/2018, art. 6.

¹¹⁷ Law on IP, art. 38.

Article 39 – Copyright holders being organizations and individuals that have assigned tasks to authors or entered into contracts with authors

1. Organizations which have assigned tasks of creating works to authors who belong to them shall be holders of the rights specified in Article 20 and Clause 3, Article 19 of this Law, unless otherwise agreed.
2. Organizations and individuals that have entered into contracts with authors for creation of works shall be holders of the rights specified in Article 20 and Clause 3, Article 19 of this Law, unless otherwise agreed.

4.6.5 Assignment and licensing of copyright

Copyright can be assigned or licensed to a third party.¹¹⁸

Authors must not assign or license their moral rights, except for the right of publication, and performers must not assign or license the moral rights specified in article 19(2) of the Law on IP.¹¹⁹

The assignment of copyright and any related right must be in writing to be legally effective.¹²⁰ The same is true of the licensing of copyright and any related right.¹²¹

4.7 Revocation or invalidation

Since subsistence of copyright does not depend on formalities such as registration (see section 3.4.1), it is not subject to revocation or invalidation procedures.

4.8 Infringement proceedings

4.8.1 Civil proceedings

4.8.1.1 Standing

The author of the work has standing to bring civil proceedings alleging copyright infringement.

In addition, Part II, section 1, of the Joint Circular No. 02/2008 provides as follows:

1. Right to institute civil lawsuits over copyright or related rights:
 - a. Individuals and organizations defined in Article 14 of the Government's Decree No. 100 may institute civil lawsuits over copyright or related rights at competent people's courts for protection of their rights and lawful interests.
 - b. Concerned state agencies and organizations may, within the scope of their tasks and powers, institute civil lawsuits to protect public interests and the State's interests in the domain of copyright and related rights according to Clause 3, Article 162 of the Civil Procedure Code.

4.8.1.2 Acts of civil infringement

Article 28 of the Law on IP lists the acts of infringement that a party with standing may allege:

Article 28 – Acts of infringing upon copyright

1. Appropriating copyright to literary, artistic or scientific works.
2. Impersonating authors.
3. Publishing or distributing works without permission of authors.
4. Publishing or distributing works under joint-authorship without permission of coauthors.

118 Law on IP, arts. 45–48.

119 Law on IP, arts. 45(2) and 47(2).

120 Law on IP, art. 45.

121 Law on IP, art. 45.

5. Modifying, mutilating or distorting works in such a way as prejudicial to the honor and reputation of authors.
6. Reproducing works without permission of authors or copyright holders, except for the cases specified at Points a and e, Clause 1, Article 25 of this Law.
7. Making derivative works without permission of authors or holders of copyright to works used for the making of derivative works, except for the cases specified at Point i, Clause 1, Article 25 of this Law.
8. Using works without permission of copyright holders, without paying royalties, remunerations or other material benefits according to the provisions of law, except for the cases specified in Clause 1, Article 25 of this Law.
9. Leasing works without paying royalties, remunerations or other material benefits to authors or copyright holders.
10. Duplicating, reproducing, distributing, displaying or communicating works to the public via communication networks and by digital means without permission of copyright holders.
11. Publishing works without permission of copyright holders.
12. Willingly cancelling or deactivating technical solutions applied by copyright holders to protect copyright to their works.
13. Willingly deleting or modifying right management information in electronic form in works.
14. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing equipment when knowing or having grounds to know that such equipment may deactivate technical solutions applied by copyright holders to protect copyright to their works.
15. Making and selling works with forged signatures of authors of original works.
16. Exporting, importing or distributing copies of works without permission of copyright holders.

Decree No. 105/2006 sets out further guidance and information on how to determine infringement of copyright, its articles 5–7 providing as follows:

Article 5 – Determination of acts of infringement

An examined act shall be regarded as an act of infringement of intellectual property rights specified in Articles 28, 35, 126, 127, 129 and 188 of the Law on Intellectual Property when all the following bases exist:

1. The examined subject matter is a protected one.
2. The examined subject matter contains an infringing element.
3. The person that takes the examined act is neither the intellectual property right holder nor any person permitted by law or a competent agency under Articles 25, 26, 32, 33, Clauses 2 and 3 of Article 125, Article 133, Article 134, Clause 2 of Article 137, Articles 145, 190 and 195 of the Law on Intellectual Property.
4. The examined act takes place in Vietnam.
An examined act that takes place in the internet but is targeted at consumers or information users in Vietnam shall be regarded to take place in Vietnam.

Article 6 – Bases for determination of protected subject matter

1. The determination of a protected subject matter shall be based on the examination of documents and evidence proving the bases for emergence and establishment of the rights specified in Article 6 of the Law on Intellectual Property.

2. For intellectual property rights that have been registered with competent agencies, the protected subject matters shall be determined on the basis of the registration certificates, protection titles and other documents accompanying such certificates and protection titles.
3. For copyright and rights of performers, rights of producers of phonograms or video recordings, rights of broadcasting organizations that are not registered with competent agencies, these rights shall be determined on the basis of the original exemplar of the work, the first fixation of the performance, phonogram, video recording, broadcast and relevant documents, if any.
When the original exemplar of the work, the first fixation of the performance, phonogram, video recording, broadcast and relevant documents no longer exist, copyright or rights of performers, of producers of phonograms or video recordings or of broadcasting organizations shall be deemed to be true on the basis of information that is usually shown on lawfully published copies on authors, performers, producers of phonograms or video recordings or broadcasting organizations and on the subject matters of copyright or related rights.
[...]

Article 7 – Infringing elements of copyright and related rights

1. An infringing element of copyright may take one of the following forms:
 - a. Illegally made copy of a work;
 - b. Illegally made derivative work;
 - c. Work with the forged name and signature of the author, impersonation of the author or appropriation of copyright;
 - d. Illegally recited, duplicated or incorporated part of a work;
 - e. Product with an illegally deactivated technical device used for copyright protection.

Products containing an infringing element defined in this Clause shall be regarded as copyright infringing products.

2. An infringing element of related rights may take one of the following forms:
 - a. Illegally made first fixation of a performance;
 - b. Illegally made copy of the fixation of a performance, illegally made copy of a phonogram, video recording or broadcast;
 - c. Illegally duplicated, extracted or incorporated part or whole of a fixed performance, a phonogram or video recording; illegally received, decoded and distributed part or whole of a broadcast;
 - d. Product with an illegally deactivated technical device used for related rights protection; the fixation of a performance from which related rights management information has been illegally disengaged or modified.

Products containing an infringing element defined in this Clause shall be regarded as related rights infringing products.

3. The basis for determination of an infringing element of copyright shall be the scope of copyright protection determined according to the forms of expression of the original work. For determination of infringing elements of derivative works, the basis shall be the characters, images; ways of expression of characters' personalities, images and circumstances of the original work.
4. The basis for determining an infringing element of related rights shall be the scope of related rights protection already determined according to the forms of expression of the first fixation of the performance, phonogram, video recording or broadcast.
5. In order to determine whether a copy or a work (or the fixation of a performance, phonogram, video recording or broadcast) constitutes an infringing element of copyright or related rights, it is required to compare the copy or work with the

original exemplar of the work (the first fixation of a performance, phonogram, video recording or broadcast) or the original work.

A copy of a work or the fixation of a performance, phonogram, video recording or broadcast shall be regarded as an infringing element in the following cases:

- a. The copy is a duplicate of part or the whole of a protected work, the first fixation of a protected performance, phonogram, video recording or broadcast of another person;
 - b. The work (part of the work) is part or the whole of a protected work, the first fixation of a protected performance, phonogram, video recording or broadcast of another person;
 - c. The work or part of the work contains a character, image, way of expression of the personality of a character or image or circumstances of a protected work of another person.
6. Products containing an infringing element defined at Points a and d, Clause 1, Points b and c, Clause 2 of this Article shall be regarded as pirated goods under the provisions of Article 213 of the Law on Intellectual Property.

4.8.2 Criminal proceedings

Article 212 of the Law on IP states that “[a]ny individual who commits an act of infringement of intellectual property rights involving a criminal element shall be criminally prosecuted in accordance with the criminal law.”

Article 8 of the Criminal Code defines a “crime” as follows:

Article 8 – Definition of crime

1. A crime means an act that is dangerous for society and defined in Criminal Code, is committed by a person who has criminal capacity of corporate legal entity, whether deliberately or involuntarily, infringes the sovereignty and territorial integrity of the nation, infringes the political regime, economic regime, culture, national defense and security, social order and safety, the lawful rights and interests of organizations, human rights, the lawful rights and interests of citizens, other aspects of socialist law, and leads to criminal prosecution as prescribed by this Code.
2. An act showing signs of a crime but not remarkably dangerous for society is not a crime and shall be dealt with otherwise.

For an act of infringement to involve a criminal element or sign, it would typically be deliberate and dangerous to society, and not merely commercially damaging to the rights owner.

4.9 Evidence

Evidentiary requirements in copyright infringement proceedings are set out in article 203 of the Law on IP:

Article 203 – Right and burden of proof of involved parties

1. The plaintiff and defendant in a lawsuit against intellectual property right infringement shall enjoy the right and bear the burden of proof provided for in Article 79 of the Civil Procedure Code and this Article.
2. The plaintiff shall prove that [they are] the intellectual property right holder with one of the following evidence:
 - (a) Copies of the copyright registration certificate, related right registration certificate or protection title; or an extract of the national register of copyright and related rights ... ;
 - (b) Necessary evidence proving the basis for establishment of copyright or related rights in case of absence of a copyright registration certificate, related right registration certificate; necessary evidence proving rights to business secrets, trade names or well-known marks;

- (c) Copies of license contracts for intellectual property objects where the use right is licensed under contracts.
3. The plaintiff shall have to produce evidence of acts of infringing upon intellectual property rights or acts of unfair competition ...

4.9.1 Presumptions

Copyright registration is prima facie evidence of copyright ownership and subsistence, under article 49(3) of the Law on IP:

Article 49.3 – Registration of copyright or related rights

[...]

3. Organizations and individuals that are granted certificates of registered copyright or certificates of registered related rights shall not have to bear the burden of proof of such copyright and related rights upon disputes, unless rebutting proofs are adduced.

4.9.2 Defenses to allegations of infringement

Article 25 of the Law on IP outlines a number of circumstances in which “published works may be used without having to seek permission or pay royalties or remuneration”:

Article 25 – Cases of use of published works where permission and payment of royalties and/or remunerations are not required

1. Cases of use of published works where permission or payment of royalties and/or remunerations is not required include:
 - a. Duplication of works by authors for scientific research or teaching purpose;
 - b. Reasonable recitation of works without misrepresenting the authors’ views for commentary or illustrative purpose;
 - c. Recitation of works without misrepresenting the authors’ views in articles published in newspapers or periodicals, in radio or television broadcasts, or documentaries;
 - d. Recitation of works in schools for lecturing purpose without misrepresenting the authors’ views and not for commercial purpose;
 - e. Reprographic reproduction of works by libraries for archival and research purpose;
 - f. Performance of dramatic works or other performing-art works in mass cultural, communication or mobilization activities without collecting any charges in any form;
 - g. Audiovisual recording of performances for purpose of reporting current events or for teaching purpose;
 - h. Photographing or televising of plastic art, architectural, photographic, applied-art works displayed at public places for purpose of presenting images of such works;
 - i. Transcription of works into Braille or characters of other languages for the blind;
 - j. Importation of copies of others’ works for personal use.
2. Organizations and individuals that use works defined in Clause 1 of this Article must neither affect the normal utilization of such works nor cause prejudice to rights of the authors and/or copyright holders; and must indicate the authors’ names, and sources and origins of the works.
3. The use of works in the cases specified in Clause 1 of this Article shall not apply to architectural works, plastic works and computer programs.

Article 26 of the Law on IP outlines the circumstances in which published works may be used without consent, but royalties and remunerations must be paid to the copyright holders.

In Viet Nam, it is possible to use certain types of work without the owner's authorization, provided that the user pays legal royalties to the copyright holder:

Article 26 – Cases of use of published works where permission is not required but the payment of royalties and/or remunerations is required

1. Broadcasting organizations which use published works in making their broadcasts, which are sponsored, advertised or charged in whatever form, shall not have to obtain permission but have to pay royalties or remunerations to copyright holders according to the Government's regulations.
2. Organizations and individuals that use works defined in Clause 1 of this Article must neither affect the normal utilization of such works nor cause any prejudice to the rights of the authors and/or copyright holders; and must indicate the authors' names, and sources and origins of the works.
3. The use of works in the cases specified in Clause 1 of this Article shall not apply to cinematographic works.

4.10 Remedies

What follows are the remedies broadly available in the event of **infringement** of copyright and related rights in Viet Nam.

See also Chapter 4 of the first volume in this series, *Introduction to the International Legal Framework for Intellectual Property*, for more on remedies more generally.

Article 199 of the Law on IP provides that:

Article 199 – Remedies against acts of infringing upon intellectual property rights

1. Organizations and individuals that commit acts of infringing upon intellectual property rights of other organizations and individuals shall, depending on the nature and seriousness of such infringements, be handled with civil, administrative or criminal remedies.
2. In case of necessity, competent state agencies may apply provisional urgent measures, measures to control intellectual property-related imports and exports, or measures to prevent and secure the administrative sanctioning according to the provisions of this Law and other relevant provisions of law.

4.10.1 Civil remedies

In civil proceedings, a copyright owner may seek any of the following remedies for copyright infringement:

- injunctions compelling the termination of infringing acts;
- public apology and rectification;
- specific performance (i.e., compelling the performance of civil obligations);
- damages; and/or
- destruction, distribution or use for noncommercial purposes of goods, raw materials, materials and means used largely for the production or trading of infringing goods, provided that such destruction, distribution or use does not affect the exploitation of rights by their owners or other authorized holders.¹²²

¹²² Law on IP, art. 202.

4.10.2 Provisional urgent measures

Upon or after the initiation of civil proceedings, the patent owner may request that the court apply provisional urgent measures if:

- there exists a danger of irreparable damage to the owner's interests or the interests of other authorized rights holders; and/or
- goods suspected of infringing upon intellectual property rights or evidence related to the act of infringing upon industrial property rights are likely to be dispersed or destroyed unless they are protected in time.¹²³

The court will decide to apply provisional urgent measures at the request of the patent owner before hearing from the alleged patent infringer.¹²⁴

The following provisional urgent measures may be applied to allegedly infringing goods or to raw materials, materials or means of production or trading of such goods:

- seizure;
- distraint;
- sealing;
- ban from alteration of original state;
- ban from movement;
- ban from ownership transfer; and
- such other provisional urgent measures as may be applied according to the provisions of the Civil Procedure Code.¹²⁵

For further information about civil remedies, see section 1.8.1 of the first chapter in this volume.

4.10.3 Criminal remedies

In Viet Nam, the People's Procuracy or the court has the authority to impose the most severe penalties for intellectual property infringement.

Criminal charges can be brought for copyright infringement and intellectual property counterfeiting.

Criminal prosecution can be brought by government authorities, with penalties including fines and jail terms.

Criminal enforcement authorities usually prioritize cases involving counterfeits that pose serious harm to consumers and public health (e.g., fake pharmaceutical products, gasoline and consumer goods).

The penalties for criminal copyright infringement are set out in article 225 of the Revised Criminal Code:

Article 225 – Infringement of copyrights and relevant rights

1. A person who, without the consent of the holders of copyrights and relevant rights, deliberately commits any of the following acts which infringe upon copyrights and relevant rights protected in Vietnam for commercial purpose or to earn an illegal profit of from VND 50,000,000 to under VND 300,000,000 or causes a loss of from VND 100,000,000 to under VND 500,000,000 for the holders of such copyrights and relevant rights, or with the violating goods assessed at from VND 100,000,000 to under VND 500,000,000 shall be liable to a fine of from VND 50,000,000 to VND 300,000,000 or face a penalty of up to 03 years' community sentence:
 - a. Making copies of works, video recordings or audio recordings;

123 Law on IP, art. 206(1).

124 Law on IP, art. 206(2).

125 Law on IP, art. 207.

- b. Making the copies of works, video recordings, audio recordings publicly available.
2. This offence committed in any of the following circumstances carries a fine of from VND 300,000,000 to VND 1,000,000,000 or a penalty of 06–03 years' imprisonment:
 - a. The offence is committed by an organized group;
 - b. The offence has been committed more than once;
 - c. The illegal profit reaped is \geq VND 300,000,000;
 - d. The loss incurred by the holders of copyrights and relevant rights is \geq VND 500,000,000;
 - dd. The illegal goods are assessed at \geq VND 500,000,000.
 3. The offender might also be liable to a fine of from VND 20,000,000 to VND 200,000,000, prohibited from holding certain positions or doing certain works for 01–05 years.
 4. Punishments incurred by a corporate legal entity that commits any of the offences specified in this Article:
 - a. Any corporate legal entity that commits an offence specified in Clause 1 of this Article for commercial purpose or to earn an illegal profit of from VND 200,000,000 to under VND 300,000,000 or causes a loss of from VND 300,000,000 to under VND 500,000,000 for the holders of such copyrights and relevant rights, or with the violating goods assessed at from VND 300,000,000 to under VND 500,000,000; earns an illegal profit of from VND 100,000,000 to under VND 200,000,000 or causes a loss of from VND 100,000,000 to under VND 300,000,000 for the holders of such copyrights and relevant rights, or with the violating goods assessed at from VND 100,000,000 to under VND 300,000,000 while having incurred an administrative penalty for any of the offences specified in this Article or having an unspent conviction for the same offence shall be liable to a fine of from VND 300,000,000 to VND 1,000,000,000;
 - b. A corporate legal entity that commits this offence in any of the circumstances specified in Clause 2 of this Article shall be liable to a fine of from VND 1,000,000,000 to VND 3,000,000,000 or has its operation suspended for 06–24 months;
 - c. The violating corporate legal entity might also be liable to a fine of from VND 100,000,000 to VND 300,000,000, be banned from operating in certain fields or raising capital for 01–03 years.

The Criminal Code identifies other related crimes in addition to those it sets out in its article 225, including of:

- manufacturing and trading of counterfeit goods;¹²⁶
- manufacturing and trading of counterfeit food or food additives;¹²⁷
- manufacturing and trading of counterfeit medicines for treatment or prevention of diseases;¹²⁸
- manufacturing and trading of counterfeit animal feeds, fertilizers, veterinary medicines, pesticides, plant varieties, animal breeds;¹²⁹ and
- deceiving customers.¹³⁰

For further information about criminal remedies, see section 1.8.2 of the first chapter in this volume.

4.10.4 Administrative sanctions

Article 200(3) of the Law on IP provides: “The application of administrative remedies shall fall under the competence of inspectorates, police offices, market management offices, custom

126 Criminal Code, art. 192.

127 Criminal Code, art. 193.

128 Criminal Code, art. 194.

129 Criminal Code, arts. 195 and 196.

130 Criminal Code, art. 198.

offices and People's Committee of all levels. In case of necessity, these agencies may apply measures to prevent and secure the administrative sanctioning provided for by law."

For further information about the sanctioning of administrative violations of copyright and related rights, see Decree No. 131/2013.

For further information about administrative sanctions for intellectual property infringement more broadly, see section 1.6.2 of the first chapter in this volume.

The Intellectual Property Benchbook Series is a set of practical manuals on IP law and procedure to assist judges in adjudicating IP cases appearing before them in their own courts, as well as for readers interested in learning about judicial adjudication of IP disputes across jurisdictions.

This title in the Benchbook series provides a guide to the judicial management of IP disputes at each stage of adjudication in Viet Nam, with a particular focus on procedural aspects. The volume was drafted by experienced judges with the perspective of sharing good practices with their judicial peers.



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WIPO Publication No. 1081.3EN
ISBN: 978-92-805-3498-6 (print)
ISBN: 978-92-805-3499-3 (online)