Intellectual Property System of Vietnam After the Accession to the WTO

Purpose: Information
Submitted by: Viet Nam
27th Meeting of Intellectual Property Rights Experts’ Group (IPEG)
Peru, August, 15 – 16 2008

INTELLECTUAL PROPERTY SYSTEM OF VIETNAM AFTER THE ACCESSION TO THE WTO

Outline

1. Establishment of an IP system complied with WTO’s requirements;
2. Carried out the commitments on IP to the WTO;
3. WTO accession: Opportunities and challenges;
4. Work to be done.
1. Establishment of an IP system complied with WTO’s requirements

- Vietnam filed the application for the WTO’s member in 1995;
- An Action Program on IP developed and implemented to help the IP system fully satisfy the TRIPS Agreement;

Implementation of the Action Program

- the first Civil Code was promulgated in 1995 with a part on intellectual property related;
- Decree No. 76/CP guiding the implementation of some provisions on copyright;
- Decree No. 63/CP stipulating detailed provisions concerning industrial property;
Implementation of the Action Program (cont.)

- Decree No. 54/2000/ND-CP on the protection of industrial property rights to business secrets, GIs, trade names and against unfair competition in respect of IP;
- Decree No. 13/200/ND-CP by the Government on the protection of new plant variety;
- Decree No. 42/2003/ND-CP by the Government on the protection of industrial property rights to layout designs of integrated circuit.

Implementation of the Action Program (cont.)

- Decree No. 12/1999/ND-CP on sanctions against administrative violations in the field of industrial property,
- Circular No. 3055/TT-SHCN on procedures for establishment of industrial property rights,
- Circular No. 23/TC/TCT guiding collection, payment and management of industrial property service fees and charges; and
Implementation of the Action Program (cont.)

- All of the mentioned texts initially formed a fairly comprehensive legal system, all intellectual property subject matters were protected, and protection mechanism was carried out in accordance with the TRIPS Agreement;
- In order to fully satisfy requirements of the WTO/TRIPS and to promote creative activities as well as to enhance competitiveness of the economy, Vietnam continued improving its legal system in the field of intellectual property. Accordingly, Law on Intellectual Property was adopted by the National Assembly of Vietnam in November 2005;

Implementation of the Action Program (cont.)

- And the following legal documents were issued to implement the Law:
  - Decree No. 100/2006/ND-CP guiding the implementation in the field of copyright and related rights;
  - Decree No. 103/2006/ND-CP making detailed provisions on industrial property;
  - Decree No. 105/2006/ND-CP making detailed provisions on enforcement of intellectual property rights and state management of intellectual property;
Implementation of the Action Program (cont.)

- Decree No. 106/2006/ND-CP on penalties for administrative violations in the field of industrial property,
- Decision No. 69/2006/QD-BNN by the Ministry of Agriculture and Rural Development on the confidentiality protection of testing data submitted in the procedures for marketing approval of agro-chemical products, and
- Decision No. 30/2006/QD-BYT promulgating regulations on Data Security of Drug Registration Records

Implementation of the Action Program (cont.)

- Full membership of WTO on 11 Jan. 2007
2. Commitments under the WTO

- Vietnam committed to fully comply with regulations by the TRIPS Agreement since the joining day (11 January 2007);
- Vietnam also carried out specific commitments to the WTO, such as:
  - issuance of guiding the implementation of the Criminal Code to ensure criminal measures towards infringements of copyright and trade marks on the commercial scale;
  - issuance of a legal tool to ensure State bodies to use legitimate software only; and
  - the State television stations only broadcast legal programs.

To carry out the commitments:
- The Prime Minister issued the Instruction 04/2000/CT-TTg on enhancement of copyright protection for computer programs according to which government organizations must use only legal software;
- The Vietnamese television stations no longer broadcast illegal programs and have made agreements with providers to purchase their copyright programs;
- Joint-circular No. 01/2008/TTLT-TANDTC-VKSNDTC-BTP guiding the application of penal liability for acts of infringing intellectual property rights;
2. Commitments under the WTO (cont.)

- Joint-circular No. 02/2008/TTLT-TANDTC-VKSNDTC-BVHTTDL-BKHCN-BTP guiding application of a number of legal provisions to the settlement of disputes over intellectual property rights at people’s courts.
- Ordinance on handling administrative fines issued in 2002 was amended and provided that:
  1. the highest fines of VND 500 million applied for infringements in intellectual property field,
  2. a number of measures in overcoming sequences and specific measures can be applied;

a number of legal documents for operation of the intellectual property system were also promulgated, namely:
- The Circular No. 01/2007/TT-BKHCN of the Ministry of Science and Technology on procedures for establishment of industrial property rights;
- Circular No. 01/2008/TT-BKHCN of the Ministry of Science and Technology on carrying out the profession and principles on industrial property examination.
2. Commitments under the WTO (cont.)

It can be concluded that Vietnam almost comply with international standards in the field of intellectual property and the country is making efforts to fully meet the commitments and obligations under international and bilateral agreements to which Vietnam is a party.

3. WTO accession: Opportunities and challenges

3.1 Opportunities

- Establishment of an “sufficient” and “efficient” IP protection system made Vietnam a reliable environment for foreign investors to market their IP products in;
- Joining WTO offers to Vietnam good opportunities to develop a comprehensive IP system which serves as a driving force to eco-social development and international economic integration;
3. WTO accession: Opportunities and challenges (cont.)

3.1 Opportunities (cont.)

- Obeying international commitments and implementation international obligations make IP legislation, management and enforcement system of Vietnam became modern and compatible with trend of development and international norms;
- Great Importance was attached to IP by high ranking leaders, enterprises, persons and the whole society;
- WTO brings about the organizational improvement of administration and enforcement. Agencies, the capacity of their staff is enhanced which contributes to the sustainable development of the whole system.

3.2 Challenges

- The top rank challenge is to implement commitments and obligations under the WTO;
- An IP protection system with high standards seems to limit the access of Vietnamese to a range of goods and services, influencing to the social policies of Vietnams;
- An IP protection system with high standards pose Vietnamese people and enterprises in a complex legal environment and force them to pay more for the use of mechanism that put difficulties for, especially, SMEs;
3. WTO accession: Opportunities and challenges (cont.)

3.2 Challenges (cont.)

- The sharp increasing of industrial applications together with poor infrastructure and human resource is causing a backlog of applications at the IP offices;
- Level of IP public awareness remains low; IP assets have not been efficiently exploited and used;
- Enforcement of IPR still meets difficulties due to the inappropriate organization of the enforcement system and poor professional capacity and lack of necessary equipments.

4. Work to be done

4.1 Completion of IP legislation system

- Continue completing the IP legal framework to fully comply with international commitments and the new trend of development of IP in the nation and over the world;
- Amendment the 1999 Criminal Code is being formulated, accordingly the criminal sanctions will be imposed for acts of IPR infringement;
- Drafting Circulars providing guidance on applying administrative sanctions in field of IP and other related documents.
4. Work to be done

4.2 Improving IP administration and enforcement systems

- Continuing to improve the capacity and modernize operation of IPR establishment agency and local IP administration departments to effectively implement IP objectives and commitments of Viet Nam.
- Keeping to implement the 168 Action Plan and the 127 Action Plan to fight against smuggling, counterfeits and fraudulent in trade;
- Completing mechanism and system of IPR enforcement, improving enforcement agencies’ capacity, training their staff who are in charge of IPR infringement; doing research on establishment of IP court;
- Developing and improving supporting systems for IPR enforcement (IP assessment agencies, Bar Association...).
- Clarify IP policy and procedures.

4.4 Disseminating IP issues under WTO (opportunities, challenges to Viet Nam) through mass media communication, publications, documents of propaganda; organizing training course for administrative and enforcement staff, producers and businessmen;

4.5 Developing human resource to boost the creation of IP assets within research institutions and commercialization of those assets.

Figure 1. Number of applications for patent and utility solutions


Figure 2. Number of applications for industrial designs

Figure 3. Number of applications for trademarks

Thank you for your attention!