

TREATMENT OF USE CLAIMS IN VIETNAM

by Vu Thi Kim Dung and Thomas J. Treutler



Left: Vu Thi Kim Dung, Patent Executive
Right: Thomas J. Treutler, Registered Foreign Lawyer

Vietnam's National Office of Intellectual Property (NOIP) recently vowed to clarify various ambiguities regarding the patentability of use claims in Vietnam. Under the current law, the NOIP prohibits use claims. Certain patent examiners in the NOIP allow use claims to be rewritten as a product or process claim, but this practice is not applied uniformly throughout the NOIP and has caused much consternation to practitioners.

Article 4.12 of the IP Law provides that "invention" means a technical solution in the form of a product or process which is intended to solve a problem by application of natural laws." Article 25.3.a of Circular No. 01 of the

Ministry of Science and Technology further prescribes that "the subject matter stated in the application for registration of an invention shall be deemed not to be a technical solution if it is not a product or process." It is based on these provisions that the NOIP maintains its position that use claims are not patentable because they are not a product or process per se.

Many practitioners and IP stakeholders in Vietnam believe that a use claim should be regarded as a type of process. As a result, the Vietnamese Intellectual Property Association (VIPA) petitioned the NOIP to (1) issue an official announcement to clarify this matter and

and allow IP agents to submit comments; and (2) temporarily accept use claims at the formality examination stage and allow applicants to have the option to preserve such use claims during substantive examination until a final decision is made.

One NOIP official recently allayed concerns by remarking that the issue of whether Vietnam protects or refuses use claims will be further discussed within the NOIP and an official announcement on this matter will be issued soon. ❖

PATENT CLAIM INTERPRETATION – GLOBAL EDITION

Tilleke & Gibbins Once Again Authors Vietnam Chapter

The Patent Practice Group of Tilleke & Gibbins' Vietnam offices has once again authored the Vietnam chapter of *Patent Claim Interpretation – Global Edition* (2008 – 2009 Ed.). This publication by West LegalWorks is considered the "bible" of international patent interpretation and provides an in-depth understanding of international patent claims and the varying interpretations that exist among different cultures. It is a useful resource for those who have or seek patents in multiple countries, are involved in multinational licensing, or are exposed to claims of patent infringement in any of the world's leading economic markets. The chapter was authored by Tilleke & Gibbins' patent professionals including Vu Thi Kim Dung, Nguyen Thi Phi Nga, and Thomas J. Treutler.

PRIME MINISTERIAL NOTICE ON COPYRIGHT IN VIETNAM

Statutory Royalty Rates On the Way?

On August 13, 2009, the Office of the Government issued Notification No. 249/TB-CP Providing the Conclusion of the Prime Minister of the Government at the Meeting on the Appraisal of the Implementation of the Laws on Copyright and Related Rights. Notification No. 249 announces the conclusions made at a meeting between various state agencies to address conflicts between domestic rightsholders' associations and Vietnamese television and radio stations regarding royalty rates and the use of copyrighted musical works.

While emphasizing that Vietnam's policy is to protect copyrights and the interests of authors, Notification No. 249 notes that at the same time it is necessary to respect "the rights of the public to enjoy music to make the spiritual life of the people." In this regard, the relevant Ministries were assigned the task of developing principles for determining royalty rates to serve as a basis for rightsholders and users of works to agree on royalty rates so as to ensure harmony among various relevant interests. Based on this plan by the government, it will be interesting to see the extent to which Vietnam develops new regulations on mechanical licenses and statutory royalty rates, and to which types of rights such licenses will apply.

NGUYEN DUY DZUNG

PROMOTED TO PATENT EXECUTIVE

Nguyen Duy Dzung of Tilleke & Gibbins' Hanoi office was promoted to patent executive in August 2009. Mr. Nguyen holds a B.Sc. Degree in Chemistry from Hanoi National University and an M.Sc. Degree in Materials Science from the International Training Institute for Materials Science. He specializes in pharmaceutical and chemical patents, and has a strong industry background in materials science, ceramics, and magnetics. Mr. Dzung bolsters T&G's strong pharmaceutical/biotech/chemical patent group, which features several practitioners with strong academic and industry backgrounds in these arts.



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