

## Patenting Business Methods in Vietnam

Dat Thanh Nguyen and Kenneth Guerra  
[dat.n@tilleke.com](mailto:dat.n@tilleke.com)

### Background

Modern e-commerce and the Industrial Internet of Things (IIoT) have accelerated innovation while advancing collaboration. This new environment has revolutionized not only traditional business activities such as commerce, administration, and finance, but also fundamental interactions such as communications between employees, servers, and automated machinery, and between enterprises and their clients. Though intangible, the business methods used to navigate this new environment have become important proprietary assets for both large corporations and small businesses.

Traditionally, companies in Vietnam and around the world have protected their business methods as trade secrets through physical measures such as security clearances, and legal measures such as nondisclosure agreements. A classic example of traditional trade secret protections involves a highly publicized case from 2006. Two employees of a global beverage company with access to their company's secret new formula contacted top-level executives at a rival company offering to exchange the recipe for millions of dollars. Fortunately, the executives at the rival company were responsible competitors, immediately reporting this offer to the FBI. The FBI investigated and the U.S. Department of Justice successfully convicted the perpetrators based in part on surveillance footage of the employees stuffing confidential files and samples of the new product into their bags as they left restricted areas.

As the business environment has evolved, and many trade secrets are now stored digitally on servers or cloud networks, security is no longer as easy as locking proprietary information in a vault. As such, traditional security measures may no longer be adequate to prevent theft. In practice, espionage techniques (e.g., hacking) and network attacks (e.g., viruses, spyware, and ransomware) are growing increasingly sophisticated, leaving trade secrets at risk. Despite this risk, businesses have no choice but to utilize digital data storage methods, as modern business models and tools include supply-chain algorithms, algorithms generating marketing analytics, and consumer data, which are either impractical or impossible to physically lock in a vault. Further, with the rise of the mobile employee, many companies' trade secrets must be accessible to employees from anywhere in the world.

### Protection in Vietnam

As Vietnam becomes more economically attractive through trade agreements, coalitions, and rapid economic growth, companies must seriously consider investing in Vietnam or being left behind their competitors. However, when companies calculate investment risk in emerging markets, they need reliable forms of intellectual property protection for their business methods. Patents can

viably protect some trade secrets; however, Vietnam currently excludes business methods from the scope of patentable subject matter. Under Article 59.2 of the Law on Intellectual Property, business methods are listed as subject matter that is ineligible for patent protection. This means that while a traditional trade secret—such as the secret formula of a beverage—is likely patentable in Vietnam, a proprietary business method—such as a supply-chain algorithm that predicts the demand and costs of raw goods—is likely not. This is unusual, as many countries include business methods as patentable material. For Vietnam to continue experiencing financial prosperity and economic growth, the scope of patentable subject matter should include business models like most other patent offices in the world.

According to the Vietnamese Guidelines for patent examination, if claimed subject matter (a) is merely directed to a method of doing business, (b) does not use technical means, (c) does not solve any technical problems, and (d) does not create any technical effects, the subject matter will be excluded from patent protection. However, this means if the claimed subject matter involves methods of doing business and specifies an apparatus or a technical process for carrying out at least some part of these methods, the subject matter will not be excluded from patent protection.

In practice, when the Vietnam Patent Office examines business methods, much attention is paid to the designation of the claimed subject matter and the International Patent Classification (IPC) symbol used. To reduce the risk of an objection, technical features providing technical effects should be clearly recited in the claims instead of only being disclosed in the description. Applicants must always bear in mind that, in Vietnam, a patent application must demonstrate a technical feature before it is assessed on the requirements of patentability.

## Outlook for the Future

In order to encourage companies to invest in Vietnam, the Vietnam Patent Office should move toward more liberal protection of business methods, following the model of the United States and many other patent offices. Meanwhile, companies should proactively identify and incorporate technical features providing unexpected technical effects into the steps of their business methods to be protected. By doing so, they may be able to protect the parts of their business methods that are difficult to secure as trade secrets through technical features that are protected by patents.

It is hoped that in the near future patent scope will more generously protect business methods in Vietnam with stipulations to be modified like the rest of the world and more transparent guidelines.

*This summary is designed to provide general information only and is not offered as specific advice on any particular matter.*

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