

## Patent litigation in Vietnam: overview

Thomas J Treutler, Tilleke & Gibbins

Loc Xuan Le and Linh Duy Mai, T&G Law Firm LLC (TGVN) (local firm affiliated with Tilleke & Gibbins)

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### SOURCES OF LAW

#### 1. What are the principal sources of law and regulation relating to patents and patent litigation?

The principal sources of law and regulations relating to patents and patent litigation in Vietnam are the following:

- Civil Code 2015, in particular Chapter 13.
- Code on Civil Procedure 2015.
- Law on Intellectual Property 2005 (as amended in 2009).
- Decree No. 103/2006/ND-CP dated 22 September 2006 (as amended by Decree No. 122/2010/ND-CP dated 31 December 2010), providing detailed regulations and guidelines on a number of Articles of the Law on Intellectual Property 2005.
- Decree No. 105/2006/ND-CP dated 22 September 2006 (as amended by Decree No. 119/2010/ND-CP dated 30 December 2010), providing detailed regulations and guidelines regarding the protection of IP rights and state management of IP rights.
- Decree No. 99/2013/ND-CP dated 29 August 2013 on administrative penalties in the area of industrial property.
- Circular No. 11/2015/TT-BKHCN dated 26 June 2015, which provides guidance on the implementation of Decree No. 99/2013/ND-CP.

Vietnam is a party to the following international treaties:

- WIPO Paris Convention for the Protection of Industrial Property 1883.
- Patent Cooperation Treaty 1970.
- WTO Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (Vietnam is a member country of the WTO).

In the case of conflict, in theory, the following sources will take precedence in order of priority:

- International treaties.
- Laws and codes, which are adopted by the National Assembly.
- Decrees, which are introduced by the government.
- Circulars and joint circulars, which are issued by ministers of the relevant ministries.

However, in practice, the implementing and enforcement authorities usually give more weight to circulars and joint circulars, as they often contain detailed guidelines and regulations for applying the laws in practice.

### COURT SYSTEM

#### 2. In which courts/government bodies are patents enforced?

The following authorities are empowered to enforce patent rights:

- Administrative bodies, such as:
  - **Inspectorates.** These include the Inspectorate of the Ministry of Science and Technology and the inspectorates of the Departments of Science and Technology at the provincial level, which deal with patent infringement administrative actions;
  - **Customs.** Customs can seize goods that infringe patents at the Vietnam borders. To some extent, customs seizures can be regarded as administrative actions;
  - **Chairpersons of People's Committees.** Chairpersons at the provincial and district levels do not directly handle patent infringement. However, they impose administrative sanctions on infringers in accordance with the petitions from Customs or the Inspectorate of the Ministry of Science and Technology.
- Judicial bodies, such as the People's Court system, have jurisdiction over patent infringement. There is no special chamber that deals with patent infringement. IP dispute cases are treated similarly to other disputes when it comes to resolution by the courts.

The Inspectorate of the Ministry of Science and Technology is the most renowned of all the authorities in terms of its IP expertise and experience, but its knowledge may be considered modest by international standards.

The National Office of Intellectual Property (NOIP) does not have jurisdiction to enforce patents. However, it can issue expert opinions on patent infringement on request from the competent enforcement authorities.

Due to their limited knowledge and experience in IP, Vietnamese enforcement authorities, including the courts, often rely on expert opinions to serve as guidelines in handling patent disputes. An expert opinion from an authorised expert witness such as the Vietnam Intellectual Property Research Institute or the NOIP often plays a decisive role in a patent enforcement case, though their opinions are technically not binding.

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### 3. Do the courts/government bodies deal with infringement and invalidity simultaneously or must invalidity actions be brought in separate proceedings?

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Under Article 96.3 of the Law on Intellectual Property 2005, the National Office of Intellectual Property (NOIP) deals with invalidity actions.

In principle, a court can also rule on the validity of a patent as part of an administrative action or infringement action. The Hanoi Municipal Court has jurisdiction over administrative actions brought against the NOIP to nullify the patent. Infringement actions are heard by any competent civil court. During the proceedings, the court can review the NOIP's decision on the patent grant to rule on the patent infringement. Recently, some authorities (including certain courts) have taken the view that the court has no power to review the validity of a patent. The court only reviews the NOIP's decision to grant the patent in question. In most cases, the NOIP handles validity issues.

For administrative actions against patent infringement (see *Question 2*), the alleged infringer must bring the invalidation action to the NOIP in separate proceedings. Administrative enforcement agencies (such as the Inspectorate of the Ministry of Science and Technology) cannot hear the invalidation action. In these circumstances, the enforcement agency can still proceed with resolving the patent infringement regardless of the invalidation action, provided that the patent holder swears under oath to the incontestable validity of its patent.

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### 4. Who can represent parties before the court and/or government body?

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All locally licensed Vietnamese lawyers can represent parties before the court. For administrative actions, a licensed Vietnamese IP agent will usually represent the patent holder.

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### 5. What is the language of the proceedings? Is there a choice of language?

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All proceedings are conducted in Vietnamese only. As the courts do not review foreign documents, all foreign documents submitted to the court must be translated into Vietnamese. Foreign witnesses can give testimony in court through an interpreter.

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### 6. To what extent are courts willing to consider, or are bound by, the opinions of other national or foreign courts, or other national or international bodies, that have handed down decisions in similar cases?

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Vietnamese courts are not bound by the opinions of any foreign courts.

However, Vietnamese enforcement officials have been willing to consider foreign opinions for guidance, particularly in areas of law that are not well developed in Vietnam, such as unfair competition.

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## SUBSTANTIVE LAW

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### 7. How is patent infringement assessed?

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Vietnam applies the doctrines of equivalent and literal infringement. Therefore, patent infringement can take any of the following forms:

- A product or part (component) of a product that is identical or equivalent to a product or part (component) of a product within the scope of protection of an invention patent.
- A process that is identical or equivalent to a process that is protected as an invention.
- A product or part (component) of a product that is manufactured by a process that is identical or equivalent to a process protected as an invention.

In practice, most patent infringement cases in Vietnam involve literal infringement. Therefore, the courts in Vietnam have not had much practice applying the law on equivalent infringement.

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### 8. What defences are available to an alleged infringer?

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The following defences are available to an alleged infringer:

- Prior use.
- Fair use.
- Parallel importation.
- Compulsory licence.
- Use of the patent to maintain the operation of a foreign vehicle in transit in, or only temporarily entering, Vietnam.
- Expiration of statute of limitations. When the statute of limitations expires, the competent authorities can decline to hear the case. In administrative actions, the statute of limitation is two years from the date of termination of the patent infringement. If the infringement is ongoing, the statute of limitations is two years from the time the infringement was detected. In civil actions, the statute of limitation is two years from the date on which the patent holder becomes aware that its legitimate rights and interests are being encroached.

A defendant can also make counterclaims, such as:

- Apply to revoke preliminary injunctions.
- Counterclaim invalidity of the patent.
- Counterclaim for recovery of damages caused by the claimant's actions.

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### 9. On what grounds can a patent be invalidated?

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A patent can be invalidated on the following grounds (*Article 96.1, Law on Intellectual Property 2005 (as amended in 2009)*):

- The applicant did not have the right to file an application for the patent.
- The invention did not meet patentability criteria applicable at the time the patent was issued.

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### 10. Can a court only partially invalidate a patent or transform it into a utility model?

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In theory, a court can partially invalidate a patent if part of the invention fails to meet the patentability criteria (*Article 96.2, Law on Intellectual Property 2005 (as amended in 2009)*). In practice, the National Office of Intellectual Property (NOIP) will decide on partial invalidation.

The court and the NOIP are not permitted to transform a patent into a utility model.

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### 11. Is it possible to amend patent claims during proceedings?

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It is possible to amend a patent during infringement proceedings. However, this can only be carried out by the National Office of Intellectual Property, and not the court or administrative bodies (see *Question 2*).

The court and administrative bodies can stay proceedings pending the conclusion of the amendment proceedings.

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### 12. Are there any grounds on which an otherwise valid patent can be deemed unenforceable?

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A patent holder will not be able to enforce its valid patent rights in cases where the:

- Enforcement of the patent is considered to be contrary to national security or social interests in Vietnam.
- Statute of limitations for infringement has expired (see *Question 8*).

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## PARTIES TO LITIGATION

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### 13. Who can sue for patent infringement?

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#### Patent holder

Currently, a patent holder can sue for patent infringement.

#### Exclusive licensee

Unless prohibited by the patent holder, an exclusive licensee can commence patent infringement proceedings before the competent authorities. In principle, the licensee must be registered with the National Office of Intellectual Property (NOIP) to be eligible to sue (*Article 148.2, Law on Intellectual Property 2005 (as amended in 2009)*).

#### Non-exclusive licensee

A non-exclusive licensee can commence infringement proceedings, provided that it is registered with the NOIP (*Article 23, Decree No. 105/2006/ND-CP*).

#### Distributor

In both civil litigation and administrative actions, a distributor can initiate patent infringement proceedings if it is authorised to do so by the patent holder.

#### Other

In administrative actions, the patent holder can authorise external IP agents or the heads of their own representative offices, branches, or agents in Vietnam to pursue the action before the competent authorities (*Article 23.1, Decree 99/2013/ND-CP*).

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### 14. Under what conditions, if any, can an alleged infringer bring proceedings to obtain a declaratory judgment on non-infringement?

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There are no declaratory proceedings in Vietnam.

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### 15. Who can be sued for patent infringement?

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Both individuals and juristic persons (companies) can be sued for patent infringement. If infringement is committed by a company, the law remains ambiguous as to whether the patent holder can sue the company director, or any other employee of the company, individually.

The current laws do not provide for contributory infringement and/or induced infringement.

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### 16. Is it possible to add or remove parties during litigation?

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It is possible to remove a defendant from a suit. The parties can also request the court to add other entities to the suit as "parties having related rights and obligations" (*Article 70, Code on Civil Procedure*). However, it is practically infeasible to join other defendants in ongoing suits.

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## ENFORCEMENT OPTIONS

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### 17. What options are open to a patent holder when seeking to enforce its rights in your jurisdiction?

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#### Civil proceedings

The following options are open to a patent holder when seeking to enforce its rights in Vietnam (*Article 198, Law on Intellectual Property 2005 (as amended in 2009)*):

- Compulsory termination of the patent infringement.
- Compulsory public rectification and apology.
- Compulsory performance of civil obligations.
- Compulsory compensation for damages.
- Compulsory destruction, distribution or putting to use for non-commercial purposes of goods, materials and implements, the predominant use of which is the production or trading of goods that infringe patent rights.
- Criminal proceedings.

Criminal proceedings are not available for patent infringement. Criminal proceedings are only available for counterfeiting of trade marks and/or geographical indications.

#### Border measures

Border measures are available for patent enforcement. To benefit from border measures, the patent holder must register its patent with Vietnam customs. Customs officials will then be on the lookout for any infringing products. However, patent infringement (unlike trade mark infringement) will be difficult to detect from the appearance of the products, especially due to the short time from the declaration of importation to the customs clearance. Therefore, providing customs with detailed information about specific infringing products is vital to the effectiveness of this process.

#### Other

Other enforcement options include:

- Informal actions such as sending cease and desist letters.
- Administrative actions.
- Arbitration.

Sending cease and desist letters is not mandatory under the law. However, they can work well in certain cases to the effect that the

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infringer will voluntarily cease the infringement. However, in some cases, a warning letter can alert the infringer to the possibility of further enforcement actions initiated by the patent holder and the infringer could make a separate claim to invalidate the patent.

A patent holder can use administrative actions to enforce its rights. In fact, most patent holders prefer administrative actions to civil litigation because:

- It is cost-effective.
- The action can put an end to ongoing infringement in a short time, typically between three and five months.
- The competent authorities entrusted with the action generally have deeper knowledge and expertise in IP than the courts.

In principle, arbitration is a viable option provided that both the patent holder and the infringer agree to the action. However, in practice, it is extremely difficult for the two parties to reach a consensus on arbitration.

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### 18. Is it compulsory to send a cease and desist letter to an alleged infringer before commencing patent proceedings?

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See Question 17, Other.

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### 19. To what extent are courts willing to grant cross-border or extra-territorial injunctions (preliminary or permanent)?

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There is no precedent in Vietnam for cross-border or extra-territorial injunctions, and the Vietnamese courts are quite reluctant to issue these orders.

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### 20. To what extent do courts recognise the blocking effect of "torpedo" actions abroad?

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The Vietnamese courts do not recognise the blocking effect of "torpedo" actions (that is, an action filed in another jurisdiction to delay domestic proceedings).

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### 21. To what extent are arbitration, and alternative dispute resolution (ADR) methods (such as mediation), available to resolve patent disputes?

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#### Arbitration

Arbitration is not available to assess patent invalidity. Generally, arbitration is only available for commercial disputes.

Vietnam does not have a successful record on the enforcement of foreign arbitral awards.

#### ADR

Alternative dispute resolution (ADR) methods are available, but only if both parties contractually agreed to refer the matter to ADR before the dispute arose. Therefore, it is possible to choose ADR for disputes arising under a licence agreement in Vietnam.

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## COMPETITION AND ANTI-TRUST

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### 22. Can a patent holder bring proceedings claiming both patent infringement and unfair competition for the same set of facts?

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There is no provision in Vietnam national legislation that prohibits a patent holder from bringing proceedings claiming both patent infringement and unfair competition for the same set of facts.

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### 23. To what extent can enforcement of a patent expose the patent holder to liability for an anti-trust violation?

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There are only a limited number of provisions in Vietnam national legislation that regulate this matter. Under Article 8.4 of the Law on Competition, an "agreement to restrain technical or technological development" is a type of anti-competitive agreement, which could conceivably include bad-faith use (or non-use) of patents. This type of agreement is further explained and specified in Article 11 of Decree No. 71/2014 on imposition of penalties for violations against the Law on Competition.

To the best of the authors' knowledge, there has been no precedent in practice.

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## PROCEDURE IN CIVIL COURTS

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### 24. What is the format of patent infringement proceedings?

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An infringement action can take the form of regular proceedings or summary proceedings. In theory, summary proceedings last about one month. However, as summary proceedings have not been tested in practice, it is difficult to estimate the exact timeline for these proceedings (the rules on summary proceedings have been codified since 1 July 2016 in the Code on Civil Procedure 2015).

In regular proceedings, an infringement action will involve the following main steps after the court agrees to deal with the action:

- **Sessions of settlement and meetings on evidence disclosure.** The court will convene mandatory sessions for the parties to reach a settlement. If the parties reach an amicable agreement, the court will recognise their agreement and issue its decision accordingly. The decision is final and binding on all relevant parties. In practice, during the sessions of settlement, the court also convenes a session on evidence disclosure. During this session, the parties can have access to all the evidence available in the action. In summary proceedings, the court will not convene any meetings on settlement and evidence disclosure. Instead, the court will proceed to trial after about one month from the date on which it accepts the case.
- **Trial.** In the absence of settlement, the court will bring the case to trial and enter a first instance judgment.

A first instance judgment can be appealed once to the competent appellate court (the provincial court or Superior Court, as the case may be). Appellate proceedings can last about 12 months. The appellate court's judgment is final and binding. If there is no appeal, the first instance judgment will take effect.

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### 25. What are the rules and practice concerning evidence in patent infringement proceedings in your jurisdiction?

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#### Documents

The courts will accept evidence from the following sources (*Article 82, Code on Civil Procedure 2015*):

- Readable, audible or visible materials.
- Exhibits.
- Parties' testimonies.
- Witnesses' testimonies.
- Expert conclusions, such as the expert conclusion of the Vietnam Intellectual Property Research Institute (VIPRI).
- On-site appraisal results.
- Common practices.
- Property valuation and price appraisal results.
- Other sources prescribed by law.

#### Witness evidence

The court can accept witness evidence and can also determine which witnesses must be summoned to court. The parties can cross-examine witnesses.

#### Expert evidence

Due to their lack of knowledge and experience in IP, the Vietnamese courts often rely on expert opinions to handle IP cases. Therefore, the decisive (but not binding) factor in a civil action is usually an expert opinion from an authorised expert witness.

So far, VIPRI is the only agency in Vietnam licensed to be an expert witness in the IP field and with the authority to draw a conclusion on infringement. The National Office of Intellectual Property can also issue an opinion, which is given the same weight as a VIPRI expert conclusion.

### 26. Is evidence obtained in criminal proceedings admissible in civil proceedings and vice versa?

Criminal proceedings are not available in patent infringement cases. However, evidence obtained in general criminal proceedings is admissible in civil proceedings.

### 27. Is evidence obtained in civil proceedings admissible in other civil proceedings?

Evidence gathered legally in civil proceedings is admissible in other civil proceedings.

### 28. To what extent is pre-trial disclosure permitted and what other mechanisms are available for obtaining evidence from an adverse party or third parties?

#### Pre-trial discovery

Pre-trial discovery does not exist in Vietnam. However, litigants have the right to review the evidence submitted by the other party to the court. Claimants and defendants have the right to request the court to compel the other party to produce evidence from an adverse party or third parties.

#### Other mechanisms

A patent holder can pursue an administrative action to stop ongoing patent infringement and gather convincing evidence of infringement for a subsequent civil action.

### 29. What level of proof is required for establishing infringement or invalidity?

Vietnam does not have detailed regulations on standards of proof, but the claimant must prove infringement. Therefore, it is best practice for practitioners to obtain an opinion from an IP expert to persuade the court.

### 30. How long do patent infringement proceedings typically last?

By law, the court must schedule a hearing within two to six months. However, in practice, it usually takes between 18 and 24 months for a court to hear a case.

#### Fast-track procedures

Summary proceedings or fast-track procedures are available under the new Code on Civil Procedure 2015, which took effect in July 2016.

#### Timetable

It is impossible to set a schedule for proceedings. The judge has complete discretion in this regard.

#### Delay

Delays occur frequently during the litigation process and generally cannot be avoided. Claimants should keep an open line of communication with the court to ensure that the case is handled as quickly as possible.

Delaying tactics are common in Vietnam, especially as Vietnamese courts tend to give defendants several opportunities to appear at court if they miss a trial conference or hearing. Ongoing invalidation proceedings before the National Office of Intellectual Property (NOIP) can also cause substantial delay to the action. In some cases, the courts have stayed infringement proceedings pending the outcome of invalidation proceedings at the NOIP. There are few default judgments in Vietnam.

## PRELIMINARY RELIEF

### 31. Is preliminary relief available, and if so what measures are available and under what conditions?

#### Search and preservation orders

Preliminary relief is available under Vietnamese law. The measures that can be applied to infringing goods include the following (*Article 207, IP Law*):

- Seizure.
- Distrainment.
- Sealing.
- Prohibiting a change in state.
- Prohibiting removal.
- Prohibiting the transfer of ownership rights.
- Other applicable measures prescribed under the Code on Civil Procedure.

#### Injunctions

The patent holder must prove to the court that its request for a preliminary injunction is reasonable. The request is deemed reasonable in the following circumstances:

- There is a demonstrable risk of irreparable damage caused to the patent holder.
- There is a demonstrable risk of removal or destruction of potentially infringing goods or evidence of infringement, if not protected in a timely fashion.

In addition to the above, there must be an element of urgency.

Without notice injunctions are possible as there is no statutory requirement for the court to serve a notice on the defendant. However, under current practices, the court is unlikely to grant a cross-border or extra-territorial preliminary injunction.

Preliminary injunction proceedings cannot take place without main proceedings. Vietnam is currently drafting a law on preliminary injunctions that would allow such injunctions before the filing of an action.

An application for injunctive relief can be lodged with the court at any time during a civil action, including at the time of filing the complaint. If the application is filed before the hearing is held, the judge in charge of the case will consider and decide on the preliminary injunction. If the application is filed during the hearing, the judge panel will have this responsibility.

#### Other

As an alternative to preliminary injunction proceedings, the patent holder can pursue an administrative action to seize the infringing goods and preserve the evidence prior to civil litigation.

### 32. Can a protective writ be filed at the court at which an ex parte application may be filed against that defendant?

There are no specific regulations on protective writs. However, generally, the concerned parties are entitled to submit any relevant evidence to present their position. Therefore, in principle, a defendant can file a protective writ to pre-empt a without notice application for an injunction.

### 33. What is the format/procedure of preliminary injunction proceedings?

#### General

The claimant will make a request for a preliminary injunction and, depending on the particulars of the case, the judge will schedule either a without notice hearing or a hearing with both parties present.

#### Level of proof

Vietnamese civil procedure law does not provide any guidelines on the level of proof required. In any case, it is at the discretion of the court to decide on whether it finds the motion for a preliminary injunction reasonable.

A favourable expert opinion from the Vietnam Intellectual Property Research Institute or the National Office of Intellectual Property (NOIP) could be of great importance to the court's decision in favour of the applicant for a preliminary injunction.

#### Evidence

Affidavits and witnesses can be used in preliminary injunction proceedings to the extent desired by the claimant.

#### Patent validity

There is no provision that prohibits an argument based on patent validity in a preliminary injunction proceeding or during any part of a proceeding. However, it is unlikely to be successful if the defendant has not formally filed a petition for cancelling the patent at the NOIP.

#### Length of proceedings

In cases of demonstrable risk of irreparable damage, the court must decide on the preliminary injunction within three days of receipt of the application and the bond.

In cases of demonstrable risk of removal or destruction of potentially infringing goods or evidence of infringement, the court must decide within 48 hours of receipt of the application and the bond.

### 34. If a preliminary injunction is granted and the main infringement action is finally lost, can the defendant claim damages for the unjustified preliminary injunction?

The applicant can be required to pay compensation for damages incurred by the defendant as a result of a wrongful injunction.

The applicant for a preliminary injunction must deposit a bond equivalent to 20% of the value of the goods that are subject to the preliminary injunction. If the value of the goods cannot be determined, the bond must be at least VND20 million. As an alternative to the bond in cash, the applicant can secure the application for preliminary injunction by a guarantee document issued by a bank or another credit organisation.

## FINAL REMEDIES

### 35. What remedies are available against a patent infringer?

The following remedies are available against a patent infringer:

- Compulsory termination of the patent infringement.
- Compulsory public rectification and apology.
- Compulsory performance of civil obligations.
- Compulsory compensation for damages (*see below, Monetary remedies*).
- Compulsory destruction or distribution or putting to use for non-commercial purposes of goods, materials and implements, the predominant use of which is the production or trading of goods that infringe patent rights, provided that this distribution and use does not influence the patent holder's exploitation of its rights (*see below, Delivery up or destruction of infringing goods*).

In principle, these remedies are applicable to the infringer only. However, third parties must also respect the remedies.

#### Permanent injunction

In general, the final judgment will serve as a permanent injunction. However, if the infringer changes the infringing product to a product that still violates that patent, it will generally be necessary to file a new lawsuit, even if the new infringing product is only minimally different from the original infringing product.

The grant of the above remedies will follow a finding of patent infringement by the judging panel at the trial. In general, the final judgment can be narrowly written so it is important for the claimant to request a broadly worded judgment.

In some cases, the defeated defendants do not show adequate respect for the courts' orders/injunctions and may not voluntarily abide by the orders. In addition, the enforcement of court orders, to some extent, has not always been effective.

It is unprecedented for the courts to grant a cross-border or extra-territorial civil remedy.

## Monetary remedies

Monetary remedies are available in the form of an award of compensation for damages. Damages will be determined on the basis of the actual losses suffered by the patent holder due to the act of infringement. The damages can include the following (*Article 204, Law on Intellectual Property 2005 (as amended in 2009) (IP Law)*):

- Material damages, including loss of property, decrease of income and profits, loss of business opportunities, reasonable expenses for the prevention and remedy of these damages.
- Spiritual damages, including loss of honour, dignity, prestige, reputation and other spiritual damages.

When the claimant can prove that the infringement of its patent caused material damage, the compensation can be calculated using one of the following methods (*Article 205, IP Law*):

- An amount of money equivalent to the total material damage and the profits gained by the defendant from the act of infringement if the reduced profits of the claimant have not yet been included in the total material damage.
- The value of the licence of the patent if the defendant had been licensed by the claimant to use the patent under a licence agreement within a scope equivalent to the infringing act.

If the amount of compensation cannot be determined, the court can award damages that do not exceed VND500 million.

In principle, attorneys' fees for the court action can be recovered.

There have been very few IP dispute cases resolved by the Vietnamese courts so far. Therefore, there are not many precedents on which the courts can rely to determine the amount of damages in their cases.

## Delivery up or destruction of infringing goods

The court can order the destruction of infringing goods and the seizure of means for producing infringing goods. In practice, Vietnamese authorities regularly order the destruction of infringing goods, including pharmaceutical goods.

## Publication of the decision

In principle, the public can access court decisions on the following online database: <https://congbobanan.toaan.gov.vn>. However, this database is not usually up to date.

## Recall order

The law does not expressly make provision for recall orders as a remedy in patent litigation. However, in practice, the courts have awarded these orders in some trade mark infringement cases. In administrative actions, the competent authorities can also issue recall orders.

## Declaration of infringement and validity

The court can declare and confirm the infringement and validity of the patent in the judgment.

## APPEAL PROCEDURE

### 36. What avenues of appeal are available for a defeated party and under what conditions?

An appeal can be filed to the competent appellate court (provincial or municipal level court, or Superior People's Court) within 15 days after the judgment of the local people's court (*Article 271, Civil Procedure Code*). The relief at first instance is stayed pending the outcome of the appeal.

Typically, appeal proceedings last between five and 12 months.

## LITIGATION COSTS

### 37. What level of cost should a party expect to incur to take a case through to a first instance decision, preliminary injunction proceedings and appeal proceedings?

The legal fees for a court case per level of adjudication (either first instance or appeal) are likely to range from US\$8,000 to US\$25,000, depending on how long the main proceedings last.

The above costs cover all the proceedings during a civil action, including preliminary injunction proceedings. In principle, reasonable legal fees are recoverable.

## REFORM

### 38. What are the important developing and emerging trends in your country's patent law?

The Vietnamese Government plans to amend and supplement the Law on Intellectual Property 2005 (as amended in 2009) in the next two to three years. Further, in light of the upcoming Comprehensive and Progressive Agreement for Trans-Pacific Partnership Agreement (to which Vietnam could become a party) and the Vietnam - EU Free Trade Agreement, patent law in Vietnam is likely to undergo dramatic changes in the near future.

There has been an increase in infringement actions relating to pharmaceutical patents. However, nullity proceedings before the National Office of Intellectual Property still cause substantial delay to such actions.

## ONLINE RESOURCES

### National Office of Intellectual Property (NOIP)

W <http://noip.gov.vn/>

**Description.** This is the official website of the NOIP. The contents of the website are available in English and are up to date.

### Government Portal

W <http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban>

**Description.** This is a portal managed by the Government of Vietnam. Almost all legal documents are available through the portal. However, there is no official translation of the documents.

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## Practical Law Contributor profiles

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### **Thomas J Treutler, Partner and Managing Director (Vietnam)**

Tilleke & Gibbins  
**T** +84 4 3772 6688  
**F** +84 4 3772 5568  
**E** thomas.t@tilleke.com  
**W** www.tilleke.com

**Professional qualifications.** Registered Foreign Attorney, Vietnam; State Bar of California; USPTO

**Areas of practice.** IP; commercial transactions and M&A; dispute resolution; technology, media, and telecommunications; energy and infrastructure; government relations.

**Non-professional qualifications.** JD, Indiana University, Bloomington; BSE (Computer Engineering), University of Michigan



### **Loc Xuan Le, Director, Intellectual Property**

T&G Law Firm LLC (TGVN) (local firm affiliated with Tilleke & Gibbins)  
**T** +84 4 3772 8811  
**F** +84 4 3772 8822  
**E** loc.l@tgvn.vn  
**W** www.tgvn.vn

**Professional qualifications.** Qualified IP Agent, Vietnam; Hanoi Bar Association

**Areas of practice.** IP; dispute resolution and litigation; anti-trust and competition.

**Non-professional qualifications.** LLM, Université Montpellier 1; LLB, Hanoi Law University



### **Linh Duy Mai, Attorney-at-Law**

T&G Law Firm LLC (TGVN) (local firm affiliated with Tilleke & Gibbins)  
**T** +84 4 3772 8811  
**F** +84 4 3772 8822  
**E** duylinh.m@tgvn.vn  
**W** www.tgvn.vn

**Professional qualifications.** Hanoi Bar Association; Vietnam Bar Federation

**Areas of practice.** IP; dispute resolution and litigation.

**Non-professional qualifications.** LLB, Hanoi Law University; BA, People's Security Academy