

Legal news

October 2010

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INTELLECTUAL PROPERTY LAW

Patenting inventions contrary to the Government's requirements in Vietnam

By Nguyen Thi Trang

Although the Vietnam Intellectual Property Law No. 50/2005/QH11 (IP Law) provides that inventions which are against the public morality shall not be protected in Vietnam, the Law does not define which inventions are considered as being against the public morality. Therefore, the issue whether an invention shall be refused on the ground that the use of a patented invention is subject to restrictions of the local law has long been in debate in the National Office of Intellectual Property of Vietnam (NOIP). The practicability of a gaming system is one example.

In 2006, the applicant X filed an application for the invention relating to a gaming system with the NOIP. In 2008, the NOIP refused to grant a patent to that invention on the ground that gambling is prohibited by Vietnamese law, and granting a patent for such invention is considered to encourage gambling and therefore, violate the Vietnamese law.

The applicant tried to argue that according to Paris Convention "The grant of a patent shall not be refused and a patent shall not be invalidated on the grounds that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law." Further, the applicant cited the relevant provision of Agreement on Trade-Related Aspects of Intellectual Property Rights that reads "Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *order public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law."

Also, the applicant opined that although gambling action itself is generally prohibited by Vietnamese law, he does not wish to patent the gambling itself, but the gambling machine. Furthermore, according to Vietnam's current law and regulations, Vietnam allows trading and importing an electronic game machine installed with prize pay-out programs and specific devices for casino games, and business of electronic games with prizes in Vietnam, such as *Circular 48/2006/TT-BVHTT* dated 05 May 2006 of Ministry of Culture and Information providing implementation guidelines for Decree 12/2006/ND-CP dated 23 January 2006 of the Government detailing provisions on the implementation of the Commercial Law on international sales of goods and agent for sales, purchase, processing and transit of goods with foreign parties, allows so. Other relevant legal instruments are *Decision 32/2003/QĐ-TTg* dated 27 February 2003 of Prime Minister promulgating *Regulations on conducting a business of electronic games with prizes for foreigners*; *Decision 91/2005/QĐ-BTC* dated 08 December 2005 of Minister of Finance Ministry promulgating *Regulations on financial management of business activities of games with prizes*; and *Decision*

84/2007/QĐ-BTC dated 17 October 2007 of Finance Ministry promulgating *Regulations on financial management of business activities of games with prizes*.

In practice, gambling is still permitted in some restricted areas in Vietnam in accordance with the government's permission, for example, in Do Son Casino, Haiphong province. Therefore, the gambling machine should not be exempted from patent protection as long as the exploitation of the patented gambling machine should obey the Vietnamese law. It would be fine if the applicant manufactures the patented gambling machine but he is not going to operate it by himself in Vietnam, he may sell it to any authorized person for operating it in Do Son Casino, for example, or somewhere else. However, the NOIP's examiner did not accept the applicant's arguments.

To avoid any further argumentation over the patentability of the gambling machine-like inventions, the NOIP has now expressly provided in their guidelines for patent examination that the inventions in relation to means and/or apparatus for gambling, devices for heroin distribution, tools for making fake currency notes, bills, official documents, certificates, stamps, and antiques are regarded as inventions contrary to the government's requirements. Those inventions are not patentable since gambling, distribution of counterfeit currency notes, bills, official documents, certificates, stamps, and antiques are against the government's requirements.

The Guidelines also provides that "the meaning of the government's requirements, public morality and social benefit is rather broad, and it may change from time to time and from place to place. Sometimes, certain regulations may be added or deleted on account of issuance and implementation of new laws or amendment or abrogation of the previous laws. Therefore, examiners should pay special attention to this matter to consider patentable subject matters". However, the validity term of a patent is limited to 20 years, so that the applicant may suffer from certain loss due to being refused to grant a patent if in the near future the government changes their policy in areas wherein the applicant's invention was refused.

In the same vein, the NOIP now explicitly provided that the following inventions shall not be patented on the ground of the public morality:

- (i) if the publication and exploitation of inventions are against the public morality;
- (ii) if the exploitation and/or the use of inventions causes harm to the public or the society, or breaks the proper order of the government and society;
- (iii) if the exploitation and/or the use of inventions causes injury or damage to people, or damage to property;
- (iv) if the exploitation and/or the use of inventions shall severely pollute the environment, waste the energy or resource source, disrupt the eco-balance, or affect the public health; or

- (v) if the use of the patented inventions contain words and/or images which relate to important political events of the government or religion which may hurt the people's or any ethnic group's sentiments.

The Guidelines became effective from 31 March 2010 and shall be applied to all pending patent applications. The applicants should take into account this matter when they decide to file patent applications for their inventions relating to gambling machines or the like in Vietnam./.

Other Sectors

Finance

- On October 12, 2010, the Ministry of Finance issued Circular No. 158/2010/TT-BTC providing guidelines for the financial regime for the National Office of Intellectual Property of Vietnam.
- Inter-ministerial Circular No. 157/2010/TTLT-BTC-BTP dated October 12, 2010 of the Ministry of Finance and the Ministry of Justice providing guidelines for estimation, management, use and finalization of State budget expenditures to ensure the provision of legal assistance to enterprises.
- On October 1, 2010, the Ministry of Finance stipulated Circular No.154/2010/TT-BTC promulgating the Regulation on pricing properties, goods and services.
- Circular No. 148/2010/TT-BTC dated September 24, 2010 of the Ministry of Finance providing guidelines for the implementation of measures to prevent and combat against money laundry regarding the fields of insurance, securities and entertainment games with prizes.

Banking

- On 29 October, 2010, the State Bank of Vietnam issued Circular No.22/2010/TT-NHNN providing for capital mobilization and lending in gold by credit institutions.
- Decision No. 74/2010/QD-UBND dated October 7, 2010 of the People's Committee of Ho Chi Minh City on the amendment and supplement to regulations on loan limit applicable to low-income earners borrowing money from the City's housing development fund to establish their residential houses.
- On October 20, 2010, the Ministry of Finance stipulated Circular No. 161/2010/TT-BTC providing guidelines for the implementation of the Regulation on the settlement of risky debts of the Bank for Social Policies attached together with Decision No. 50/2010/QD-TTg dated July 28, 2010 of the Prime Minister.

Securities

- Circular No. 162/2010/TT-BTC dated October 20, 2010 of the Ministry of Finance proving guidelines for the amendment and supplement to Circular No.95/2008/TT-BTC dated October 24, 2008 providing guidelines for accounting regime applicable to securities companies.

- On September 28, 2010, the Ministry of Finance issued Circular No.152/2010/TT-BTC providing guidelines for the accounting regime applicable to the Vietnam Securities Depository Center.

Taxation

- Decree No. 106/2010/ND-CP dated October 28, 2010 amending and supplementing a number of articles of Decree No. 85/2007/ND-CP dated May 25, 2007 detailing the implementation of a number of articles of Law on Tax Management and Decree No. 100/2008/ND-CP dated September 8, 2008 detailing a number of articles of Law on Personal Income Tax.
- On September 24, 2010, the General Department of Taxation stipulated Decision No. 1579/QD-TCT providing for duties of bureaux of the Taxation Management Department for Large Corporations under General Department of Taxation.
- Circular No. 167/2010/TT-BTC dated October 27, 2010 of the Ministry of Finance amending export tax rates applicable to a number of mineral items under Group 2614 in the Export Tariff.
- On October 11, 2010, the Ministry of Finance issued Circular No. 156/2010/TT-BTC amending export tax rates applicable to Apatite ore item under Group 2510 specified in the Export Tariff.
- Inter-ministerial Circular No. 146/2010/TTLT/BTC-BCA-BQP dated September 23, 2010 of the Ministry of Finance, the Ministry of Public Security and Ministry of National Defence providing guidelines for the exchange and provision of customs information and information about taxpayers.

Trade

- On October 25, 2010, the Prime Minister stipulated Decision No. 65/2010/QD-TTg promulgating the Regulation on responsibilities and coordinative relationship between State management bodies in the activities of preventing and fighting against smuggling, counterfeits and commercial frauds.
- Decision No. 1170/QD-LDTBXH dated September 29, 2010 of the Ministry of Labour, Invalids and Social Affairs on designating organizations to inspect the quality of products and goods.

Labour

- On October 29, 2010, the Government issued Decree No. 108/2010/ND-CP providing for region-based minimum wages for employees working for Vietnamese companies, enterprises, cooperatives, collaborative groups, farms, households, individuals and other organizations being employer.

- Decree No. 107/2010/ND-CP dated October 29, 2010 providing for region-based minimum wages for Vietnamese employees working for foreign-invested enterprises, foreign agencies and organizations, international organizations and foreign individuals in Vietnam.
- On October 28, 2010, the Ministry of Education and Training and the Ministry of Labour, War Invalids and Social Affairs jointly stipulated Circular No.27/2010/TTLT-BGDDT-BLDTBXH providing guidelines for the accreditation training from the vocational intermediate or college to college and university.
- Circular No. 168/2010/TT-BTC dated October 28, 2010 of the Ministry of Finance providing for the collection, payment and use management regime of charges for issuing criminal records to employees working overseas for a definite period of time.
- On October 25, 2010, the Ministry of Labour, War Invalids and Social Affairs issued Circular No. 32/2010/TT-BLDTBXH providing guidelines for the implementation of a number of articles of Decree No. 127/2008/ND-CP detailing and providing guidelines for a number of articles of Law on Social Insurance with respect to unemployment insurance.

Health

- Decree No. 103/2010/ND-CP dated October 1, 2010 detailing the implementation a number of articles of Law on Infectious Diseases Prevention and Control with respect to the border medical quarantine.
- On October 25, 2010, the Prime Minister stipulated Decision No. 64/2010/QD-TTg providing for conditions for public announcement of epidemics and announcement of the end of infectious disease epidemics.

Transport

- Circular No. 33/2010/TT-BGTVT dated October 15, 2010 of the Ministry of Transport amending and supplementing Circular No. 30/2009/TT-BGTVT dated November 19, 2009 of the Ministry of Transport providing for National technical specifications on discharge gas of new manufactured, assembled and imported light motor cycles and motorbikes.
- On October 12, 2010, the Ministry of Public Security issued Circular No.38/2010/TT-BCA providing for the notification about person violating the laws on traffic order and safety.
- Circular No. 35/2010/TT-BCA dated October 11, 2010 of the Ministry of Public Security providing for the issuance of licenses for transportation of industrial explosive materials and dangerous goods.

- On October 11, 2010, the Ministry of Transport stipulated Circular No.32/2010/TT-BGTVT providing for the elaboration, evaluation, issuance, and review of legal documents on transport.
- Circular No. 30/2010/TT-BGTVT dated October 1, 2010 of the Ministry of Transport providing for the prevention, control and remedy of consequences of floods and storms in the road sector.
- On September 30, 2010, the Ministry of Transportation issued Circular No.29/2010/TT-BGTVT providing for the prevention, control and remedy of consequences of floods and storms in the maritime industry.

Construction – Real Estate

- Decision No. 67/2010/QD-TTg dated October 29, 2010 of the Prime Minister amending and supplementing a number of articles of Decision No. 167/2008/QD-TTg dated December 12, 2008 of the Prime Minister on the policy on residential housing support to the poor households.
- On October 29, 2010, the Construction Ministry stipulated Decision No. 988/QD-BXD providing for the functions, duties, powers and organizational structure of the State Inspection Department on Construction Works Quality.
- Decision No. 1879/QD-TTg dated October 13, 2010 of the Prime Minister approving the list of irrigation and hydropower reservoirs on river basins that must set up a process for the inter-reservoir operation.
- On October 11, 2010, the Prime Minister issued Decision No. 1874/QD-TTg approving Vietnam urban lighting development orientation up to 2025.
- Decision No. 76/2010/QD-UBND dated October 8, 2010 of the People's Committee of Ho Chi Minh City promulgating regulations on the inspection process regarding land management and use in Ho Chi Minh City.
- On October 28, 2010, the Ministry of Planning and Investment stipulated Circular No. 21/2010/TT-BKH detailing the appraisal of tender invitation dossier and requirement dossier.
- Circular No. 19/2010/TT-BXD dated October 22, 2010 of the Ministry of Construction providing guidelines for the establishment of the Regulation on management of urban planning and architecture.
- On October 15, 2010, the Ministry of Construction issued Circular No.18/2010/TT-BXD providing for the application of specifications and standards in construction activities.
- Circular No. 34/2010/TT-BCT dated October 7, 2010 of the Ministry of Industry and Trade providing for management of the safety of hydraulic dam for hydraulic works.

- On September 30, 2010, the Ministry of Construction stipulated Circular No.17/2010/TT-BXD providing guidelines for determination and management of costs of construction planning and urban planning.

Natural Resources - Environment

- Decision No. 5328/QD-UBND dated October 28, 2010 of the People's Committee of Hanoi on the establishment of provincial Management Board of State management projects on environment in Hanoi.
- On October 11, 2010, the Ministry of Industry and Trade issued Decision No.5289/QD-BCT supplementing zoning plan for exploration, exploitation, processing and use of group minerals, raw material white limestone (marble), feldspar, kaolin and magnezit up to 2015, with orientation to 2025.
- Decision No. 5288/QD-BCT dated October 11, 2010 of the Ministry of Trade and Industry supplementing plan for exploration, exploitation, processing and use of tin, tungsten and antimony ores for the period from 2007 to 2015, with orientation to 2025.
- On October 5, 2010, the Ministry of Industry and Trade stipulated Decision No.5174/QD-BCT supplementing zoning plan for exploration, exploitation, processing and use of group minerals, raw material white limestone (marble), feldspar, kaolin and magnezit up to 2015, with orientation to 2025.
- Decision No. 73/2010/QD-UBND dated October 5, 2010 of the People's Committee of Ho Chi Minh City amending and supplementing the Regulation (standard form) on organization and operation of the Office of Natural Resources and Environment of urban district or rural district.
- On October 12, 2010, the Ministry of Natural Resources and Environment issued Circular No. 19/2010/TT-BTNMT providing for circulation registration of biological products used for waste treatment in Vietnam.
- Circular No. 155/2010/TT-BTC dated October 11, 2010 of the Ministry of Finance providing guidelines for the collection rates and the collection, payment, management and use regime of charges for issuing the licenses for mineral activities and charges for exclusive mineral exploration.

Science - Technology

- On October 25, 2010, the Prime Minister stipulated Decision No. 1960/QD-TTg approving the agreement on co-operation in the energy sector between Vietnam and Argentina.
- Circular No. 166/2010/TT-BTC dated October 27, 2010 of the Ministry of Finance providing guidelines for the collection rates and the collection, payment, management and use regime of fees for evaluation of conditions for scientific and

technological activities; and charges for issuing the licenses for establishment of representative offices and branches of foreign scientific and technological organizations in Vietnam.

- On September 21, 2010, the Ministry of Science and Technology issued Circular No. 16/2010/TT-BKHHCN amending and supplementing Circular No.21/2009/TT-BKHHCN promulgating and implementing national technical specifications on safety of electrical and electronic equipment.

Communications

- Circular No. 23/2010/TT-BTTTT dated October 15, 2010 of the Ministry of Information and Communications providing for the provision of information on the website on capacity of management of and investment in information technology applications.
- On October 6, 2010, the Ministry of Information and Communications stipulated Circular No. 22/2010/TT-BTTTT providing for the organization and operation of the printing activities, and amending and supplementing a number of provisions of Circular No. 04/2008/TT-BTTTT dated July 9, 2008 and Circular No.02/2010/TT-BTTTT dated January 11, 2010 of the Ministry of Information and Communications.

Administrative - Judiciary

- Decision No. 1974/QD-TTg dated October 28, 2010 of the Prime Minister promulgating the list of documents detailing the implementation of laws coming into force on January 1, 2011, and assigning and directing the elaboration and submission for approval.
- On October 25, 2010, the People's Committee of Hanoi issued Decision No.52/2010/QD-UBND on declaration of assets and incomes of people subject to such declaration in the agencies and units of Hanoi.
- Decision No. 51/2010/QD-UBND dated October 18, 2010 of the People's Committee of Hanoi providing for the functions, duties, powers and organizational structure of the Department of Justice of Hanoi.
- On October 14, 2010, the Ministry of Industry and Trade stipulated Decision No.5353/QD-BCT announcing the list of expired legal documents, which were issued or jointly issued by the Ministry of Industry and Trade.
- Circular No. 145/2010/TT-BQP dated October 29, 2010 of the Ministry of National Defence guiding the implementation of temporary detainment measure according to administrative procedures by the Border Guard and Marine Police.

- On October 28, 2010, the Ministry of Interior issued Circular No. 10/2010/TT-BNV providing for codes and professional standards of public servants who are enforcement officers and secretary to enforce civil judgement.
- Circular No. 159/2010/TT-BTC dated October 15, 2010 of the Ministry of Finance providing for the financial management regarding construction, application and maintenance of quality management system according to national standard ISO 9001:2008 in activities of State administrative agencies.
- On October 11, 2010, the Ministry of Justice stipulated Circular No. 17/2010/TT-BTP providing for the decentralizing management of public servants and public officials being the leaders or managers of civil judgement management agencies and civil judgment enforcement agencies.
- Circular No. 16/2010/TT-BTP dated October 8, 2010 of the Ministry of Justice providing guidelines for recording in the household book on the divorce conducted abroad.
- On October 4, 2010, the Ministry of Justice issued Circular No. 15/2010/TT-BTP providing for professional standards of civil servants as Legal Assistant.

Agriculture

- Decision No. 63/2010/QD-TTg dated October 15, 2010 of the Prime Minister on the support policies for the purpose of reducing post-harvest losses of agricultural and aquatic products.
- On September 28, 2010, the Ministry of Agriculture and Rural Development stipulated Circular No. 55/2010/TT-BNNPTNT promulgating the additional list of plant varieties permitted for production and trade in Vietnam.

Enterprise

- Decree No. 102/2010/ND-CP dated October 1, 2010 detailing the implementation of a number of articles of Law on Enterprises.
- On October 20, 2010, the Prime Minister issued Decision No. 1918/QD-TTg on the functions and duties of the Small and Medium Enterprises Development Encouragement Council.

Miscellaneous

- Decree No. 105/2010/ND-CP dated October 27, 2010 providing for the sanctioning administrative violations on the lottery business.
- On October 19, 2010, the Prime Minister stipulated Decision No. 1914/QD-TTg approving a project on solutions for improving the quality of growth, and efficiency and competitiveness of the economy.

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