

Vietnam IP News Bulletin

Kenfox IP & Law Office

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PATENT PUBLICATION IN VIETNAM

1. Kindly furnish us with a brief introduction of the Vietnam IP Law concerning publication of patent applications / patent publication in Vietnam.

KENFOX: Publication of patent applications under the Vietnam IP Law and its regulations can be outlined as follows:

Patent applications for normal inventions that have been accepted as to form by the IP Office of Vietnam shall be published in the Industrial Property Official Gazette. Publication fees are required at filing.

Patent applications for confidential inventions (*i.e. inventions which are classified as state secrets in the field of national defense and security*) shall not be published and must be kept confidential. Early publication of patents in Vietnam is available upon request of applicants.

Applicants are statutorily entitled to actively withdraw patent applications before publication in Vietnam ([see Article 116 of Vietnam IP Law](#)). In such regard, the patent applications shall be considered as and not become prior arts (*except where it serves as the basis for priority claim*).

- Patent applications are examined as to substance only after their publication, provided that requests for substantive examination of the applications are previously filed. After the publication of patent applications, the applicants shall be granted certain patent provisional rights to the published inventions ([see Article 126.2 & 131 of Vietnam IP Law](#)).
- As from the publication of patent applications until any date prior to the decision on grant of patents, any third party shall be entitled to present to the IP Office of Vietnam his/her opinions about the grant or refusal of patent grant for the applications / file a Notice of Opposition against the pending patent application ([see Article 112 of Vietnam IP Law](#)).

The Vietnamese current provisions on publication of patent applications are mostly stipulated in the Vietnam IP Law No. 50/2005/QH11 promulgated by the National Assembly of Vietnam and Circular No. 01/2007/TT-BKHHCN issued by the Ministry of Science and Technology detailing a number of articles of the IP law with respect to industrial property rights, revised by Circular No. 16/2016/TT-BKHHCN.

2. Whether publication of patent applications will occur automatically in Vietnam? If so, when does patent publication take place in Vietnam? If not, what are the requirements to effect publication?

KENFOX: Vietnamese patent applications shall be published in the Official Industrial Property Gazette only after being accepted as to form by the IP Office of Vietnam, bearing in mind that publication fees are required to be paid at filing.

Time-limit for publication of patent applications is provided under Article 110 of Vietnam IP Law and Rule 14.2 of Circular No. 01/2007/TT-BKHHCN as follows:

- A patent application shall be published in the nineteenth (19th) month from the priority date or the filing date (if there is no priority date), or within two months from the date of acceptance as to form, whichever is later.
- A PCT derived patent application shall be published within two months from the date of acceptance as to form after its entry into national stage.
- A patent application being requested for early publication shall be published within two months from the date on which the IP Office of Vietnam receives such request or from the date on which the application is accepted as to form, whichever is later.

3. If a patent application claims priority from or the benefit of an earlier application how, if at all, does this affect the timing of publication in Vietnam?

KENFOX: In case a patent application filed in Vietnam claims priority from or the benefit of an earlier application, it shall be published in the nineteenth (19th) month from the priority date or within two (02) months from the date of acceptance as to form, whichever is later.

4. Is there a concrete point in time up to which the applicant can withdraw its application without it being published?

KENFOX: Such a concrete point in time is not provided in Vietnam IP Law and its regulations in Vietnam. If the applicant does not want the patent application to be published, he can file a request for active withdrawal of the patent application before its publication in Vietnam.

Otherwise, in case a Notice of Formality Deficiencies has already been issued for the patent application in the formality examination stage, the applicant can choose not to respond to the Notification so that the patent application filed in Vietnam would be refused and not be published.

5. Please let us know what parts of a pending patent application will be published?

KENFOX: Per Point 13 (b) of Circular No. 16/2016/TT-BKHCHN, publication of a pending patent application in Vietnam includes the following contents:

Information relating to valid application includes information relating to validity of the application in terms of formality specified in the decision on acceptance of valid applications; name and nationality of the author of invention; information relating to valid applications (transfer of applications, submission of secondary applications, serial numbers of the secondary application, etc.); invention abstracts enclosed with drawings (if any).

6. Can the publication of patent application be accessed by any party in Vietnam?

KENFOX: Per Point 13 (c) of Circular No. 16/2016/TT-BKHCHN, Everyone may access detailed information on the nature of the objects stated in the applications published in the Industrial Property Official Gazette or request the IP Office of Vietnam to provide such information and is liable to pay fees for information provision according to regulations.

7. Whether a published pending patent application may give rise to provisional rights (or any type of interim protection) in Vietnam and, if so, to what extent?

KENFOX: Yes, a published pending patent application gives rise to provisional rights to the patent applicant in Vietnam. Particularly, under [Article 131 of Vietnam IP Law](#), where the applicant of an application for invention knows that the invention is being used by another person, without prior use right, for commercial purposes, he shall have rights to notify such user in writing of his or her application filing which specifies the filing date and the date on which the invention is published in the Industrial Property Official Gazette so that the later shall decide either to terminate or continue such use. In case the person having been notified of the published application keeps using such invention, when a Patent for Invention is granted in Vietnam, the owner of such invention is entitled to request such user of the invention to pay compensation equivalent to the royalties for licensing such invention within the relevant extent and period of use.

8. Whether an unpublished pending patent application give rise to provisional rights (or any type of interim protection) in Vietnam and, if so, to what extent?

KENFOX: No. If the patent application is still pending and has not been published in Vietnam yet, then there are no rights granted to the applicant under the Vietnam IP law and its regulations.

9. Is “early publication” allowed in Vietnam? If so, what are the conditions for such early publication in Vietnam? How is the request for early publication made? What is the effect of an early publication on a pending patent application?

KENFOX: Yes, early publication is available in Vietnam upon request of the applicant per Article 110.2 of Vietnam IP Law. The request should be made in writing in local language with signature and seal (if any) of the applicant or representative thereof.

Several effects of an early publication on a pending patent application in Vietnam are listed below:

- The patent application shall be examined as to substance earlier than normal, provided that the request for substantive examination is already filed with the IP Office of Vietnam.
- The provisional rights to the invention are granted to the applicant earlier than normal. To a certain extent, this can be referred to as “a longer protection effect”
- The application, and thus the technological information contained therein, is made available to the public earlier than normal.

10. Is non-publication possible in Vietnam? In other words, can a pending patent application remain confidential in Vietnam? If so, under what conditions is such allowed? How is the request for non-publication made?

KENFOX: Under Vietnam IP Law and its regulations, all patent applications which have been accepted as to form by the IP Office of Vietnam shall be published in the Official Industrial Property Gazette. Only in cases where the applicant actively withdraws the application before publication or where a Decision on refusal against the patent application is issued for not meeting the formality requirements in the formality examination stage, then the application will not be published and thus considered as never to be filed (*except where it serves as the basis for priority claim*).

In other words, a pending patent application cannot remain confidential after being accepted as to form by the IP Office of Vietnam. No request for non-publication of an accepted pending application is available in Vietnam.

11. Will a lapsed, abandoned or withdrawn patent application be published in Vietnam? If not, is that automatic or by the request of the applicant? If it would otherwise be published, can the applicant request non-publication?

KENFOX: A patent application which is actively withdrawn by a written request of the applicant before publication is issued therefor shall not be published in Vietnam.

In addition, a patent application which is passively lapsed and/or abandoned by not responding to any Notice of Formality Deficiencies issued by the IP Office of Vietnam during the formality examination stage shall be refused and not be published in Vietnam.

However, if a patent application is merely lapsed and/or abandoned without any official request for withdrawn, which has no deficiencies in formality, it shall be issued a Notification of acceptance as to form and then automatically published. To avoid the publication, the applicant must file an official request to withdraw the application before its publication.

12. Please tell us what is the position in Vietnam regarding the publication of continuation, continuation-in-part and divisional applications?

KENFOX: Continuation and continuation-in-part applications do not exist in Vietnam. Divisional applications must be re-published and publication procedure thereof is the same with that of normal applications.

13. How should exceptional circumstances be defined, e.g., public order, morality or national security where the IP Office of Vietnam delays or suppresses patent publication? To what extent should these exceptional circumstances be specifically defined?

KENFOX: Per Article 8 of Vietnam IP Law providing for “Policies of the State on intellectual property”, Vietnam does not protect inventions which are contrary to the social morality, public order and detriment to national defense and security. Such inventions shall be immediately refused in the formality examination stage and, thus, not be published.

Under the Vietnam IP regulations, inventions which are classified by competent state agencies as state secrets in the field of national defense and security under the law on protection of state secrets are referred to as confidential inventions. Applications and patents for confidential inventions shall not be published and must be kept confidential under the law on protection of state secrets.

Our firm

KENFOX IP & Law Office, is one of the leading IP law firms providing a full spectrum of IP related services in Vietnam, Laos, Cambodia and Myanmar. With a team of fully qualified and experienced attorneys and specialists in the IP field and such key technology fields as: *Biology, Biomedical Engineering, Chemical Engineering, Chemistry, Civil Engineering, Computer Science, Electrical Engineering, Mechanical Engineering, Electronics, Pharmacy or Telecommunication, etc.*, we take great pride in providing a wide range of discerning clients around the world with professional and high quality services vis-à-vis establishing and enforcing IP rights in the above jurisdictions.

Should your clients be interested in IP protection in the above-mentioned jurisdictions, please feel free to contact us.