

## Invalidation of a European Patent: How can it impact your patents in Vietnam?

Many businesses worry that the invalidation of a European patent will automatically lead to the loss of protection in Vietnam. Can a decision to invalidate a patent in Europe truly "cross borders" and affect your patent in Vietnam? KENFOX IP & Law Office provides detailed guidance on the relationship between patent invalidation in Europe and its impact on patents in Vietnam.

It can be affirmed that, although the invalidation of a European patent may affect a Vietnamese patent, it does not "automatically" lead to the [invalidation of the patent in Vietnam](#).

[Vietnam's patent protection](#) system operates independently from Europe's. A patent application or granted patent in Vietnam is not automatically invalidated solely because a corresponding patent has been invalidated in another country. Each country has its own independent process for examining and establishing patent validity. Regarding "grounds for patent invalidation", Vietnam establishes its own specific grounds for invalidating a patent in whole or in part under Article 96 of the Intellectual Property Law, as amended in 2023, including:

- (i) **Violation of Security Control Regulations:** The patent application is filed in violation of the regulations on security control over inventions.
- (ii) **Non-Disclosure or Incorrect Disclosure of Genetic Resources or Traditional Knowledge:** The patent application for an invention directly created based on genetic resources or traditional knowledge associated with genetic resources fails to disclose or incorrectly discloses the origin of such resources or knowledge as required in the description.
- (iii) **Lack of Right to Register:** The applicant does not have the right to register the invention and has not been assigned such a right.
- (iv) **Non-Patentable Subject Matter:** The invention does not satisfy the conditions for patentability as specified in Article 8 (contrary to social morality and public order or harmful to national defense and security) and Chapter VII (failing to meet the criteria of novelty, inventive step, and industrial applicability).
- (v) **Unauthorized Amendments:** [Amendments or supplements](#) to the patent application go beyond the scope of the subject matter disclosed or stated in the application or result in a change to the nature of the claimed subject matter.
- (vi) **Insufficient Disclosure:** The invention is [not disclosed in a sufficiently clear and complete](#) manner to enable a person skilled in the art to carry out the invention.
- (vii) **Excessively Broad Claims:** The patented invention has a scope of protection that exceeds the scope of the initial disclosure in the application.
- (viii) **Violation of First-to-File Principle:** The grant of the patent does not comply with the first-to-file principle as stipulated in Article 90 of this Law.

**Case:** EliLil company in Vietnam is granted [a patent for a cancer treatment drug](#). EliLil also filed a patent application for the same invention in Europe. In Europe, EliLil's patent was invalidated due to lack of novelty, as another company had publicly disclosed a drug with similar composition and function earlier. In Vietnam, a competitor of EliLil discovers the information about the patent invalidation in Europe. This competitor can use that information as evidence and file a request with the Vietnam Intellectual Property Office (IP Office) to invalidate EliLil's patent in Vietnam, based on the same grounds (lack of novelty).

**Outcome:** The Vietnam Intellectual Property Office (IP Office) will review the invalidation request, assess the evidence provided (including the European patent invalidation decision), and compare it against Vietnamese law and novelty assessment criteria to determine whether to invalidate EliLil's patent in Vietnam.

Although Vietnam's patent system is independent of Europe's, a European patent invalidation decision can still be used as evidence in a case concerning a corresponding patent in Vietnam.

- **Reference Evidence:** The Vietnam Intellectual Property Office (VNIPO) may refer to the European patent invalidation decision, along with related documents (reasons for invalidation, evidence, etc.), to gain a better understanding of the legal status of that invention abroad. The invalidation of a patent in another country, especially in jurisdictions with reputable legal systems, can be used as evidence suggesting that the invention does not meet the patentability criteria. This can create a precedent and weaken the legal standing of the corresponding patent in Vietnam.
- **Grounds for Third-Party Invalidation Requests:** If the grounds for invalidation of the European patent align with the grounds for patent invalidation under Vietnamese law (e.g., lack of novelty, lack

of inventive step, etc.), a third party has the right to use this information as evidence and request the VNIPO to invalidate the corresponding patent in Vietnam.

- **Basis for IP Office Review:** The VNIPO will carefully review the European patent invalidation decision, assess the [evidence and arguments](#) of the parties involved, and compare them with the provisions of Vietnamese law to make a final decision on whether to invalidate the patent in Vietnam.

However, it is important to note that a European patent invalidation decision is not absolutely binding on the VNIPO. The VNIPO will conduct an independent examination based on the criteria and regulations of Vietnamese law. The invalidation of a patent in Europe is only one of the factors to be considered, not the sole determining factor.

## Final thoughts

The invalidation of a patent in Europe or other countries does not automatically lead to its invalidation in Vietnam. Vietnam's patent system operates independently, with its own distinct regulations and criteria for assessing the validity of a patent. Not all grounds for patent invalidation in foreign countries are applicable in Vietnam. Patent holders should ensure that their patent applications are complete, accurate, and meet the requirements of Vietnamese law. Furthermore, it is crucial to proactively monitor international legal developments and stay updated on changes in Vietnamese intellectual property law to effectively respond to disputes or requests for patent invalidation in Vietnam.

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