

Patent Amendments in Vietnam: Rights and Limitations for Applicants

The patent registration process in Vietnam, as in many other countries, may involve multiple stages of examination. Throughout this process, amendments to the patent application may become necessary to clarify, refine, or narrow the scope of protection.

KENFOX IP & Law Office provides analyses of the rights and limitations regarding patent application amendments under Vietnamese law, while also drawing a comparison with a landmark case in India to help patent applicants in Vietnam understand the differences on this issue.

The Right to Amend Patent Applications in Vietnam

Under the provisions of Vietnam's IP Law and Circular No. 23/2023/TT-BKHCN detailing certain articles of the IP Law, patent applicants in Vietnam have the right to amend their [patent applications](#) during the following stages:

- **Before the application is published:** The applicant may proactively request to amend the patent application before the Intellectual Property Office of Vietnam (IP Vietnam) publishes the application in the Industrial Property Gazette. Amendments at this stage are generally more flexible, provided they do not alter the nature of the invention.
- **During formality examination:** When IP Vietnam issues a notice of intended refusal due to formal deficiencies, the applicant has the right to rectify these deficiencies within the prescribed time limit (typically 2 months from the date of the notice). Amendments at this stage mainly relate to formal requirements concerning presentation format, documents, fees, and charges.
- **During substantive examination:** This is the most critical stage where amendments are often necessary. When IP Vietnam issues a notice of substantive [examination](#) results with an intention to refuse the grant of a protection title due to the invention failing to meet protection criteria (novelty, inventive step, and industrial applicability) or due to other deficiencies, the applicant has the right to respond or amend the application within 3 months from the date of the notice. Amendments at this stage may include clarifying the specification, narrowing the scope of claims, or modifying the claims to meet the protection requirements.
- **After receiving the notice of intended grant:** Even after IP Vietnam issues a notice of substantive examination results indicating an intention to grant a protection title, the applicant may still request to amend or supplement the application. In such cases, the application will be re-examined.
- **During the first-instance appeal:** If the applicant disagrees with IP Vietnam's decisions or notices (e.g., *decision of refusal to accept the application*, *decision of refusal to grant a protection title*), they have the right to appeal. However, under Article 35.3(a) of Circular No. 23/2023/TT-BKHCN, during the appeal process at IP Vietnam, a request to amend or supplement a patent application that has already been subject to a decision of refusal **will not be accepted**. Therefore, applicants whose applications have been refused and who are in the appeal process before IP Vietnam are generally not permitted to amend their patent applications during the appeal proceedings, unless otherwise provided for in international treaties to which Vietnam is a party.

Limitations on Amending Patent Applications in Vietnam

Although applicants have multiple opportunities to amend their patent applications, this right is not unlimited. Vietnamese law imposes important limitations to ensure transparency and fairness within the patent protection system.

- **No alteration of the nature of the subject matter disclosed in the original application:** This is a fundamental principle governing the amendment of patent applications. Pursuant to Clause 2, Article 102 of the IP Law and as further guided under Article 34 of Circular No. 23/2023/TT-BKHCN, amendments must not introduce new technical information or features that are not directly and unambiguously disclosed in the original specification, claims, or accompanying drawings (if any). This includes the addition of new features, characteristics, effects, or an expansion of the scope of protection beyond what was originally disclosed at the time of filing.
- **Scope of permissible amendments:** Amendments are generally accepted when they serve to clarify the content, narrow the scope of the claims in order to meet the protection criteria, or correct typographical or technical errors that do not alter the essence of the invention. Expanding the scope of protection after a certain stage in the application process—particularly after the application has been published—is typically not allowed.

- **Formal requirements:** Amendments must be submitted in writing using the prescribed forms, signed by the applicant or their authorized representative, and accompanied by relevant supporting documents (if any).
- **Time limits:** Applicants must submit amendments within the time limits specified in notifications issued by the Intellectual Property Office of Vietnam. Failure to meet the deadlines may result in the application being refused.

Comparison with an Indian Case: *Collectis v. Deputy Controller of the Patent and Design Office*

The case between *Collectis* and the **Deputy Controller of the Patent and Design Office** in India highlights a critical aspect concerning the amendment of patent applications at the appellate stage before the court.

Case Background: *Collectis*, a biopharmaceutical company, filed a patent application in India. The application was subsequently rejected by the Deputy Controller on the grounds that it did not meet the patentability requirements under certain provisions of the Indian Patents Act. *Collectis* filed an appeal with the **Delhi High Court** (a higher judicial authority). During the appellate proceedings, *Collectis* sought to amend its patent application.

Court's Decision: The Delhi High Court rendered a judgment permitting *Collectis* to amend its patent application at the appellate stage. The Court relied on **Section 59 of the Indian Patents Act, 1970**, which governs amendments to patent applications. The Court identified **three key conditions** under Section 59 for allowing such amendments:

- The amendment must take the form of a **"disclaimer", "correction", or "explanation"**;
- No new matter may be introduced that was not previously disclosed in the original specification; and
- The amended claims must fall **within the scope of the originally filed claims**.

The Court found that the amendments proposed by *Collectis*—namely, **deleting references to cancer treatment** and **adding the phrase "derived from a healthy donor"**—complied with these conditions.

Analysis and Comparison with Vietnamese Law

The Indian case highlights a notable distinction from Vietnamese regulations regarding the amendment of patent applications, particularly at the stage following an administrative refusal by the competent authority.

- **Stage of Amendment:** In India, the Delhi High Court permitted amendment of the patent application at the appellate stage before the court. In contrast, in Vietnam, as previously noted, amendments during the administrative appeal process before the Intellectual Property Office of Vietnam (IP Vietnam) are restricted. Vietnamese law does not expressly provide for the amendment of patent applications during judicial proceedings following the exhaustion of administrative remedies. However, under the general spirit of Vietnamese law, such amendments at the judicial stage would likely be **severely limited**, if not entirely **prohibited**, except for corrections of typographical or minor technical errors.
- **Legal Basis:** Section 59 of the Indian Patents Act clearly sets out the legal grounds for amending a patent application, including the conditions under which such amendments may be accepted. In contrast, the [Vietnamese Intellectual Property Law](#) and its guiding Circulars focus primarily on amendments made during the examination process at IP Vietnam and **do not contain equivalent provisions** governing amendments at the judicial appeal stage.
- **Degree of Flexibility:** The Delhi High Court's decision reflects a certain degree of **flexibility**, allowing amendments that ensure the patent application accurately reflects the intended scope of protection, provided fundamental legal principles are upheld. Vietnamese law appears to be **more rigid**, particularly once a refusal decision has been rendered by IP Vietnam.

Closing thoughts

The amendment of a patent application constitutes a critical component of the registration process, enabling applicants to ensure that the scope of protection sought is appropriate and compliant with legal requirements. In Vietnam, applicants are entitled to amend their applications at various stages; however, this right is subject to certain limitations—most notably, the fundamental principle that amendments must not alter the essence of the invention as originally disclosed.

A comparison with the Indian case reveals a different approach to post-refusal amendments at the judicial appeal stage, with India adopting a seemingly more flexible stance. For patent applicants in Vietnam, a thorough understanding of the applicable legal provisions and the strategic use of amendment opportunities during the examination process before the Intellectual Property Office of Vietnam is essential to securing patent protection.

QUAN, Nguyen Vu | Partner, IP Attorney
NGA, Dao Thi Thuy | Senior Patent Attorney
ANH, Nguyen Thi Kim | Associate

Contact

KENFOX IP & Law Office

Building No. 6, Lane 12/93, Chinh Kinh Street, Nhan Chinh Ward, Thanh Xuan District, Hanoi, Vietnam

Tel: +84 24 3724 5656

Email: info@kenfoxlaw.com / kenfox@kenfoxlaw.com