

Why Patents "Lose Rights" Upon Entering the Vietnam National Phase: Translation Errors, "New Matter", and Limitations on Amendments

In patent prosecution practice, many applications "fail" - not because the technical solution lacks novelty or an inventive step, but due to the Vietnamese translation at the national phase entry. For [patent applications](#) originating from the Patent Cooperation Treaty (PCT) or those claiming priority under the Paris Convention upon entering the national phase in Vietnam, merely a few mistranslated words in the specification or, particularly, the claims, can inadvertently and silently narrow the scope of protection. By the time this is discovered, it is often too late to remedy.

The greatest risk lies in the fact that the Vietnamese translation serves as both the basis for examination and the "fulcrum" for evaluating subsequent infringement. If the translation distorts the original technical connotation, the patentee may lose the ability to cover variations that the patent should have rightfully protected.

Summary of Risks and Required Actions by the Applicant:

- **Narrowed Scope:** Mistranslating the claims can lead to a narrowed scope of protection; once the patent is granted, amendments are often strictly limited or deemed to introduce "new matter" (or broaden the scope of protection).
- **Loophole Creation:** A mistranslation of just one or two "patentese" terms (e.g., *comprising* / *consisting of* / *and/or* / *substantially* / *resilient*) can entirely alter the infringement analysis, creating a "loophole" for competitors.
- **Rejection of Post-Grant Corrections:** Attempting to "correct" the translation post-grant is highly susceptible to rejection, as it is perceived as broadening the disclosure and affecting the legitimate rights and interests of third parties.
- **Pre-Grant Risk Management:** The optimal time for risk management is prior to the patent grant. It is imperative to conduct a bilingual, claim-by-claim review, unify the terminology glossary, and strictly scrutinize "key" terms that are prone to altering the scope of protection.

Based on our prosecution experience at KENFOX, we have identified a typical risk pattern: the Vietnamese translation can inadvertently narrow or distort the original disclosure; when the applicant subsequently discovers the error and requests an amendment, the Intellectual Property Office of Vietnam (IP Viet Nam) may assess the amendment as adding "new matter" or broadening the disclosure. This restricts the ability to remedy the defect and exacerbates risks regarding both the examination outcome and future disputes.

1. When a "Literally Correct" Translation Distorts the Fundamental Essence

Among the aforementioned risks, the most common and perilous situation occurs when a translation that appears "literally correct" inadvertently distorts the technical essence of the invention, resulting in a fundamental reduction of the scope of protection from the outset.

Patent translation is not literary translation; it is akin to defining the metes and bounds of an intellectual property right. A general translator may produce a beautifully written text, yet completely forfeit the "technical essence" scrutinized by Vietnamese examiners.

Example: The term "Flexible seal"

- **General translation:** "*Dấu niêm phong linh hoạt*" [Literal back-translation: flexible sealing stamp/mark] (Completely inaccurate within a technical context).
- **Poor technical translation:** "*Vòng đệm mềm*" [Literal back-translation: soft washer/O-ring].
- **Standard "Patentese" translation:** "*Cơ cấu làm kín đàn hồi*" [Literal back-translation: resilient sealing mechanism].

If translated as "*vòng đệm*" (washer/O-ring), the translation inadvertently excludes other forms of "sealing" that are not ring-shaped. This substantially narrows the scope of protection that the client has painstakingly established.

2. The Error of "Adding New Matter"

In national phase procedures in Vietnam, the right to amend or supplement an application is not unconditional. The Intellectual Property Law (IP Law) establishes clear barriers based on the following core principles:

- **No Broadening:** Amendments must not broaden the scope or volume of protection beyond what was disclosed or stated in the original application.
- **No Altering the Essence:** Amendments must not alter the essence of the claimed subject matter stated in the application.
- **Maintain Unity:** The unity of invention must be maintained.

Notably, once a patent is granted, the mechanism for "amending a protection title" in practice is primarily utilized to correct administrative information or formal errors. Conversely, "correcting" terminology that alters the technical connotation of the claims is generally highly unlikely to be accepted if there is a risk it will be deemed to broaden the scope of disclosure or alter the essence of the subject matter.

Case Study: Medical Device Clamping System

Alphatek (anonymized) is a global medical device conglomerate holding a patent in Vietnam for a surgical clamping system. Upon discovering that a competitor in Vietnam had launched a product with similar technical characteristics, Alphatek authorized KENFOX to prepare an infringement lawsuit.

However, during the review of the file and cross-examination of evidence, a severe error was discovered. In the original English patent specification, the claim recited:

"A clamping member made of a resilient material..."

Due to a lack of understanding of technical terminology, the aforementioned phrase was translated as: *"Bộ phận kẹp được làm từ vật liệu nhựa..."* [Literal back-translation: "A clamping member made of a plastic material..."] (*Instead of translating it as "resilient," the translator specified "plastic," assuming the resilient material in this specific context was plastic.*)

The key difference lay in the material: the competitor used a high-grade resilient alloy for the clamping member instead of plastic. The paradox here is that the dispute no longer revolved around the degree of structural or functional similarity, but was "shifted" to a seemingly minor element—a single word in the translation. This very deviation risked creating a "loophole" allowing the competitor to escape the patent's [scope of protection](#).

This error gave rise to two significant legal consequences:

- **Non-Infringement Argument:** If the claimed scope on the patent recites "plastic," the competitor's resilient alloy clamping member could arguably fall outside the scope of protection, as rubber or alloys are not plastic.
- **Amendment Attempt:** The applicant filed a request to amend the specification with IP Viet Nam, seeking to change "plastic" back to "resilient material" to match the English original and encompass the competitor's product.

Because the original PCT application (in English) claimed a clamping member made of a "resilient material," Alphatek wished to "restore" the correct wording of the original text (from "plastic" back to "resilient material") to cover plastic, rubber, and alloys. However, this amendment raised a central question: *Is this correcting a translation error, or is it broadening the disclosure after the patent has been granted?*

Patent Amendment Rejected by IP Viet Nam

Immediately, Alphatek requested their former representative (the agency that handled the filing procedure) to file a request to correct the translation error. The goal was to restore the term "resilient material" to cover the competitor's product, arguing this was merely an administrative error during the translation of the PCT application.

However, the request to amend the patent was rejected by IP Viet Nam based on the following grounds:

- **Regarding Timing:** Per regulations, amendments to the specification or translation generally must be executed prior to the decision to grant the patent. Once the patent is granted, the patentee's right to amend is significantly restricted.
- **Regarding the Scope of [Amending a Protection Title](#):** Pursuant to Clause 3, Article 97 of the Intellectual Property Law, the protection title holder only has the right to request the state management agency for industrial property rights to *narrow* the scope of industrial property rights. Therefore,

amendments that broaden the granted scope of rights, even if such scope was disclosed in the initial specification, are impermissible.

- **The Error of "Adding New Matter":** Changing the term from "plastic" to "resilient material" (a concept exponentially broader) after the patent is granted constitutes an act of broadening the granted scope.
- **Legal Consequences:** The public and competitors have relied on the "plastic" scope to guide their business conduct for years. Permitting the patentee to "broaden" the scope of protection at this juncture would severely infringe upon the legitimate rights and interests of third parties.

Because the amendment request was denied, Alphatek was compelled to review and adjust its litigation and dispute resolution strategy based strictly on the narrowed scope of protection recited in the granted patent, rather than the broader scope of protection they could have legitimately obtained had the translation been accurate from the start.

3. Principles of Word Choice in Translating the Specification: Leveraging the "Weapon"

Depending on the specific context and technical field, selecting the corresponding terminology between the source and target languages is always a process of careful deliberation. In the realm of intellectual property, particularly patents, this task demands not only linguistic proficiency but also the simultaneous application of technical and legal expertise by the translator.

A high-quality translation must not only be semantically accurate but also satisfy legal requirements, accurately reflect the technical essence of the invention, and concurrently optimize the scope of protection. Consequently, word choice during the translation process plays a paramount role, capable of directly impacting the validity and scope of protection of the patent.

The table below lists several terms commonly used in patent ("patentes") and provides examples of word-choice principles in translation, aimed at avoiding distortions of scope in the [Vietnamese translation](#) and helping to minimize the risk of narrowing the scope of protection or giving rise to "new matter" arguments when amendments are made later.

Original Term (English)	Risky Translation (Narrow Meaning / Distorting Essence)	Recommended Translation (Preserving Scope)	Legal Consequences of Narrow/Incorrect Translation (Examination & Enforcement)	Application Example
And/Or	"Và" (And) / "Hoặc" (Or) (isolated)	"Và" (And) / "Hoặc" (Or) (isolated)	Translating strictly as "and" can convert optional elements into mandatory conditions, narrowing the scope and creating a "loophole" for competitors by merely omitting one component. Translating strictly as "or" can distort the intended combinatory meaning.	"A, B, and/or C" permits (A), (B), (C), (A+B), (A+C), (B+C), (A+B+C). If translated as "A, B, and C," it is easily construed as requiring all three.
A/an/the	Một (One)	Omit / Do not translate (Depending on context)	Unless the quantitative element "one" produces a significant technical effect and is explicitly detailed, translating "a/an" as "một" (one) inadvertently limits the scope of protection quantitatively, whereas the actual technical solution may encompass more than one such object.	"The device comprises a sensor..." If "a" is translated as "một" (one), it implies the device possesses exactly one sensor. Omitting the translation allows the interpretation of at least one, and potentially multiple, sensors.

<p>Substantially</p>	<p>"Đáng kể" (Significantly) / "Hoàn toàn" (Completely)</p>	<p>"Về cơ bản / xấp xỉ / gần như" (Basically / approximately / almost - preserving technical tolerance)</p>	<p>Translating as "completely" eliminates inherent technical "tolerance," narrowing the scope and elevating the risk of failing to prove infringement (competitors can evade via minor deviations). This may also invite insufficiency/lack of clarity objections if the requirement is overly absolute.</p>	<p>"Substantially planar" does not mean "absolutely flat"; it means "basically flat," permitting minor deviations.</p>
<p>Apparatus / Device</p>	<p>Dụng cụ" (Tool/Implement - implying simple objects)</p>	<p>"Thiết bị / cơ cấu / hệ thống" (Equipment / mechanism / system - depending on context)</p>	<p>Translating as "dụng cụ" can distort the interpretation of structure and complexity, affecting the assessment of the subject matter. During enforcement, the opposing party can easily argue "different type/structure" to diminish technical equivalence.</p>	<p>"An apparatus configured to..." is generally better suited to "thiết bị / cơ cấu" (device/mechanism) rather than "dụng cụ" (tool).</p>
<p>Resilient</p>	<p>"Nhựa / cao su / mềm" (Plastic / rubber / soft)</p>	<p>"Đàn hồi" (Resilient / elastic)</p>	<p>Specifying a material instead of describing its property narrows the scope and enables design-arounds (e.g., substituting with a resilient alloy). Attempting to correct this later easily encounters "new matter" barriers, especially post-grant.</p>	<p>"A member made of a resilient material" covers multiple elastic materials; translating it as "nhựa" (plastic) locks the scope onto a single material class.</p>
<p>At least one</p>	<p>"Một / ít nhất một" (Phrased confusingly, easily read as "only one")</p>	<p>"ít nhất một" (At least one)</p>	<p>If construed as "one" or "only one," the scope is narrowed, creating a design-around by employing two or more elements. In disputes, this point is heavily exploited to deny infringement.</p>	<p>"At least one sensor" unequivocally encompasses 1, 2, 3...</p>
<p>Configured to / adapted to</p>	<p>"Dùng để" (Used for - vague) or "được thiết kế để" (Designed to - mandatory sense)</p>	<p>"Được cấu hình để / được bố trí để / được tạo kết cấu để" (Configured to / arranged to / structured to)</p>	<p>An overly "strong," mandatory translation can convert a functional feature into a rigid structural condition, narrowing the scope. Conversely, an overly "vague" translation is susceptible to clarity objections during examination.</p>	<p>"A controller configured to generate..." focuses on the capability/configuration to perform a function, not necessarily limited by a singular structure.</p>

Conclusion

The most common mistake made by many applicants when entering the PCT national phase in Vietnam is attempting to "beautify" the translation - making the phrasing sound more elegant or commercially "clearer." However, within the framework of examination and rights enforcement, the Vietnamese translation of the specification and claims is not a mere interpretive document; rather, it is the legal instrument that delineates the scope of disclosure and the boundaries of protection at the time of filing. Once the patent is granted, any

attempt to "correct" the text that alters the technical connotation or risks being deemed as broadening the disclosure will inevitably encounter stringent procedural hurdles.

Therefore, a seemingly minor error in translation is not merely an administrative oversight. It can lead to the narrowing of the scope of protection, directly diminishing the commercial value and enforceability of the patent asset. Particularly when disputes arise, competitors frequently exploit the very "loopholes" created by the translation to design around the patent. In other words, the Vietnamese patent specification constitutes the territorial boundaries of the scope of protection; a single mistranslated word can shift those borders detrimentally, making them exceedingly difficult to reverse subsequently.

Consequently, patent translation must be managed as an integral component of the scope of protection strategy, not purely as a technical linguistic task. Applicants can only truly control these risks when the translation is executed and vetted according to "patentese" standards, incorporating a bilingual, claim-by-claim cross-reference, and reviewed within the permissible procedural timeframes—prior to the patent grant and before risks escalate into disputes.

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