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Navigating the patent filing procedures in Vietnam requires a clear understanding of the country's legal framework, available protection types, and procedural steps from application to post-grant maintenance .

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PATENT FILING PROCEDURES IN VIETNAM

Overview

Patent protection in Vietnam is governed primarily by the Law on Intellectual Property No. 50/2005/QH11, which was originally enacted in 2005 and subsequently amended, most recently in 2022, to align with international standards and Vietnam's commitments under various trade agreements such as the CPTPP, EVFTA, and RCEP. This law outlines the principles, rights, obligations, and procedures concerning the protection of intellectual property rights, including inventions.

The competent authority for patent administration is the Intellectual Property Office of Vietnam (the IP Office of Vietnam), a government agency under the Ministry of Science and Technology. The IP Office of Vietnam is tasked with receiving, examining, granting, and managing patent applications and rights. In addition to examining applications, it also manages post-grant procedures such as oppositions, amendments, renewals, and invalidations. For enforcement purposes, the IP Office of Vietnam works in conjunction with administrative enforcement bodies, civil courts, customs authorities, and market surveillance agencies.

The legal framework also recognizes international treaties to which Vietnam is a party, including the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty (PCT). These instruments permit foreign applicants to file patent applications in Vietnam through the PCT national phase and claim priority based on earlier foreign filings. Together, the domestic legislation and international treaties form a comprehensive legal and procedural structure for patent protection in Vietnam, reflecting the country's ongoing efforts to strengthen its intellectual property system and foster innovation.

Types of Patents

Vietnam offers two primary categories of patent protection under its intellectual property regime: Invention Patents and Utility Solution Patents. These two forms of protection differ mainly in their substantive requirements and duration of protection.

Invention Patents are granted for technical solutions in the form of products or processes that satisfy the conditions of novelty, inventive step (non-obviousness), and industrial applicability. To be eligible, the invention must not be publicly disclosed anywhere in the world prior to the filing or priority date, must demonstrate a sufficient level of inventiveness that would not be obvious to a person skilled in the art, and must be capable of practical application in industry. Invention Patents offer a protection term of 20 years from the filing date, subject to the payment of annual maintenance fees. These patents are suitable for technologies involving higher levels of innovation, such as pharmaceuticals, machinery, electronics, and software with technical effects.

Utility Solution Patents, on the other hand, are designed to protect new and industrially applicable technical solutions but do not require the same level of inventiveness as Invention Patents. This makes them particularly suitable for incremental innovations, improvements to existing products, or localized adaptations that may not meet the inventive step threshold required for Invention Patents. Utility Solution Patents are often used by SMEs or domestic inventors to protect practical and useful innovations. The term of protection is 10 years from the filing date, also renewable annually.

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Both types of patents must not fall into excluded subject matter, such as scientific theories, aesthetic creations, methods of treatment, or plant/animal varieties (except for microorganisms). In practice, choosing between an Invention Patent and a Utility Solution Patent depends on the nature of the invention and the desired scope and duration of protection.



Filing Routes

Applicants seeking patent protection in Vietnam have two primary filing routes: national filing and international filing via the Patent Cooperation Treaty (PCT). The choice between these routes depends on the applicant's strategy, nationality, and whether they are seeking protection in multiple jurisdictions.

National Filing involves the direct submission of a patent application to the Intellectual Property Office of Vietnam (IP Office of Vietnam). This route is available to both domestic and foreign applicants. Foreign applicants who do not reside or have a business establishment in Vietnam must appoint a registered local intellectual property representative to file on their behalf. The application must be submitted in Vietnamese and comply with all formal and substantive requirements stipulated under the Law on Intellectual Property. Upon acceptance, the application undergoes formal examination, publication, and substantive examination. This route is commonly used when protection is sought exclusively in Vietnam or when the invention is first filed in the country.

International Filing is available through the Patent Cooperation Treaty (PCT), to which Vietnam has been a contracting state since 1993. Under this route, applicants may file a single international application designating multiple PCT member states, including Vietnam. To obtain protection in Vietnam, the applicant must enter the national phase of the PCT process by filing a national phase application with the IP Office of Vietnam. This must be done within 31 months from the earliest priority date, regardless of whether a demand for international preliminary examination was filed. The application must be translated into Vietnamese and meet local requirements concerning formality and substance.

In both routes, it is important to be mindful of priority claims, translation timelines, and power of attorney requirements. Delays or deficiencies in any of these areas may result in the loss of rights or delays in prosecution. Applicants should also consider whether accelerated examination or deferment is strategically advantageous, as Vietnam allows for certain procedural flexibilities under specific conditions.

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Required Documents

To ensure that a patent application is valid and accepted for examination in Vietnam, applicants must submit a complete set of required documents to the Intellectual Property Office of Vietnam (IP Office of Vietnam) in accordance with the provisions of the Law on Intellectual Property and related regulations.

A standard patent application must include the following core documents:

- Patent Specification: This includes a detailed description, set of claims, abstract, and drawings (if necessary).

The description must clearly and fully disclose the invention so that a person skilled in the art can understand and carry it out. It should include a title of the invention, technical field, background of the invention, summary of the invention, detailed description of embodiments, and explanation of any accompanying drawings.

The claims must define the scope of protection sought. They should be concise, supported by the description, and drafted in accordance with Vietnamese examination standards.

The abstract provides a brief summary of the disclosure and should not exceed 150 words. It is used mainly for publication and search purposes.

Drawings, if necessary to understand the invention, must be submitted on separate sheets and referenced in the description.

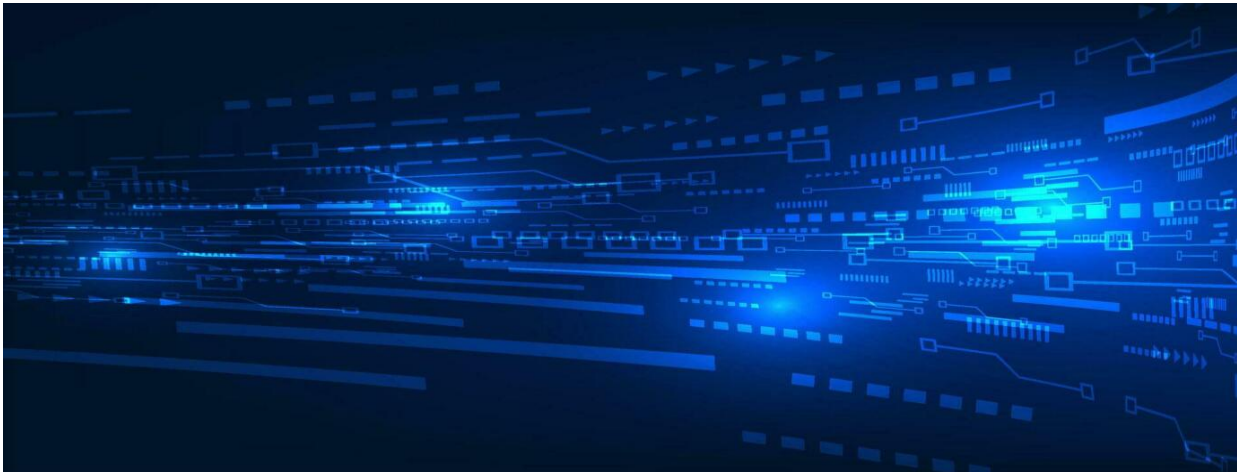
- Priority Document: If the application claims priority under the Paris Convention, a certified copy of the priority document must be submitted. This should be accompanied by a Vietnamese translation, unless otherwise exempted. The priority document must be submitted within three months from the filing date of the application in Vietnam.

- Power of Attorney (POA): Foreign applicants must appoint a registered local IP agent in Vietnam and submit a signed Power of Attorney authorizing the agent to act on their behalf. The POA does not require notarization or legalization but must be submitted within one month from the filing date. Extensions may be available in certain cases, but failure to submit the POA in time may result in the application being deemed withdrawn.

- Information Sheet: This typically includes applicant and inventor details, nationality, address, and other bibliographic data. The full legal name and address of each applicant must match supporting documentation.

- Proof of Right to File (if applicable): If the applicant is not the inventor, documentation evidencing the assignment or transfer of rights may be required, especially if requested by the examiner during the prosecution stage.

Applicants should ensure that all documents are submitted in compliance with Vietnam's formal requirements and within applicable deadlines. Incomplete or non-compliant applications may be rejected or delayed. It is advisable to prepare Vietnamese translations of all essential documents, as the IP Office of Vietnam requires filings to be in the Vietnamese language.



Filing Process

The process of filing and prosecuting a patent application in Vietnam is governed by the Intellectual Property Law (as amended in 2022) and involves several distinct procedural stages, each with specific timelines and legal implications.

Formality Examination

Upon filing, the application is subject to a formality examination conducted by the Intellectual Property Office of Vietnam (IP Office of Vietnam). This examination typically takes between one to two months from the filing date. During this stage, the Office assesses whether the application complies with administrative and documentary requirements, including proper formatting, completeness of the documents, correct classification of the invention, and whether all required fees have been paid. If any deficiencies are identified, the applicant will be notified and given a time frame (usually one to two months) to make necessary corrections. An application that fails to meet the formal requirements within the given period may be considered as withdrawn.

Publication of the Application

After successful completion of the formality examination, the application is published in the Official Industrial Property Gazette. For invention patent applications, publication generally occurs within 19 months from the priority date (or the filing date if no priority is claimed). However, applicants may request early publication, provided that the request is made in writing and submitted before the default 19-month period. Early publication may be advantageous for initiating third-party observations or for transparency in enforcement planning.

Substantive Examination

The substantive examination is the most critical phase, where the patentability of the claimed invention is assessed. The applicant must file a request for substantive examination separately:

- For invention patents, the request must be submitted within 42 months from the earliest priority date.
- For utility solution patents, the deadline is 36 months from the earliest priority date.

IP Insights – July 2025

Failure to submit the examination request within the prescribed time frame results in the application being deemed withdrawn. Upon receiving the request and required fees, the IP Office of Vietnam begins evaluating whether the claimed invention meets the criteria of novelty, inventive step, and industrial applicability, as defined under Vietnamese law. The examination duration may vary depending on workload and complexity but typically spans 18 to 36 months. Throughout this process, applicants may receive official actions (office actions) and are required to respond with clarifications, amendments, or arguments in defense of the application.

It is worth noting that in the context of the Patent Cooperation Treaty (PCT), the national phase entry into Vietnam must be completed within 31 months from the priority date, and the request for substantive examination must still be filed separately to initiate further proceedings.

Examination and Grant

Following the completion of the substantive examination phase, if the Intellectual Property Office of Vietnam (IP Office of Vietnam) concludes that the application meets all patentability criteria—namely, novelty, inventive step (for inventions), and industrial applicability—it will issue a decision on grant of patent rights. This decision formally recognizes the patentability of the invention or utility solution and marks the transition to the final administrative step in the application process.

Once the decision to grant is issued, the applicant is required to pay the prescribed granting and publication fees within a specified time frame, typically three months from the date of the notification. These fees cover the issuance of the patent certificate and its publication in the official Industrial Property Gazette. Failure to settle the required fees within the deadline may result in the withdrawal of the grant decision, and the applicant would forfeit rights to the patent.

Upon successful payment and publication, the patent certificate is issued, and legal protection is conferred on the rights holder from the filing date (not from the grant date), in accordance with Vietnamese patent law.

The duration of protection varies depending on the type of patent:

- For invention patents, the maximum term of protection is 20 years from the filing date, subject to the timely payment of annual renewal fees.
- For utility solution patents, which are typically granted for technical solutions with a lower threshold of inventiveness, the protection term is 10 years from the filing date.

It is important to note that patents in Vietnam are not automatically maintained throughout their term. The rights holder must pay annual maintenance fees, starting from the year following the grant, to keep the patent in force. These fees are due annually in advance and must be paid within six months of the anniversary of the filing date. A six-month grace period is available for late payment, subject to a surcharge.

In addition, rights holders are advised to ensure that the patented invention is put into use within Vietnam. Under the IP Law, if a patented invention is not used or licensed for use without justifiable reason within five years from the grant date, it may be subject to compulsory licensing under certain conditions.



Post-Grant Requirements

Once a patent has been granted in Vietnam, the rights holder is responsible for maintaining the validity of the patent through the timely payment of annual maintenance fees. These fees are calculated on a per-year basis and become due starting from the first year following the grant date, regardless of whether the patent concerns an invention or a utility solution.

The payment of these maintenance fees is mandatory to keep the patent in force. Each annual fee must be paid within six months prior to the anniversary of the filing date. If the rights holder fails to make the payment within the regular timeframe, Vietnamese law allows for a grace period of six months, during which the fee can still be paid with the addition of a statutory surcharge.

However, if the maintenance fee, along with the surcharge, is not paid within this grace period, the patent automatically lapses and ceases to have legal effect. Once lapsed, the patent cannot be revived, and all exclusive rights conferred to the rights holder will be lost permanently. This can expose the underlying invention or utility solution to unrestricted public use, including commercial exploitation by third parties.

Additionally, although not explicitly required under the law, it is advisable for patent holders to actively monitor their renewal deadlines and engage local representatives or agents to ensure timely compliance. In practice, many applicants assign this responsibility to their IP counsel to prevent any inadvertent lapses in protection due to administrative oversight.

Moreover, maintaining the patent does not require submission of working statements or evidence of commercial use, but under specific circumstances—such as challenges or requests for compulsory licensing—proof of use may become relevant. Therefore, rights holders are also encouraged to retain internal records of how the invention has been applied in commerce.

In summary, post-grant compliance in Vietnam hinges primarily on the annual payment of maintenance fees. It is a critical aspect of preserving patent rights and should be managed with diligence to avoid unintended forfeiture of protection.



Conclusion

In conclusion, navigating the patent filing procedures in Vietnam requires a clear understanding of the country's legal framework, available protection types, and procedural steps from application to post-grant maintenance. While Vietnam's patent system operates in line with international standards, including adherence to the Patent Cooperation Treaty, it also presents its own procedural nuances—particularly in examination timelines and post-grant obligations. Whether filing nationally or via the PCT route, applicants are encouraged to prepare comprehensive documentation, monitor deadlines closely, and consider engaging qualified local representatives to ensure compliance and enhance the likelihood of a successful grant. By following the proper channels and maintaining timely payments, patent holders can effectively secure and enforce their intellectual property rights in Vietnam's growing innovation-driven economy.

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