

LEGAL UPDATE (December 19th, 2023)

In this issue, we would like to bring to your attention to the following:

- **Cases of invalidation of a protection title**
- **Process for handling objections to applications for registration of industrial property**
- **Using results of appraisal of application for registration of inventions of foreign patent authorities**

1. **Cases of invalidation of a protection title**

The Ministry of Science and Technology issued Circular No. 23/2023/TT-BKHCN dated November 30, 2023 detailing several articles of the Law on Intellectual Property and measures to implement Decree No. 65/2023/ND-CP dated August 23, 2023 of the Government elaborating on several articles and implementation measures of the Law on Intellectual Property regarding industrial property rights, protection of industrial property rights, rights to plant varieties, and state management of intellectual property related to procedures for establishing industrial property rights and ensuring industrial property information.

In particular, Circular No. 23/2023/TT-BKHCN stipulates in detail specific cases where a invention protection title is invalidated because the patented invention exceeds the scope disclosed in the initial description of the patent application according to the provisions of Point dd, Clause 2, Article 96 of the Law on Intellectual Property and the trademark protection title is invalidated due to the person filing a trademark registration application with malicious intents according to the provisions of Point a, Clause 1, Article 96 of the Law on Intellectual Property.

An invention protection title is invalidated when the applicant adds technical specifications or information that cannot be directly and clearly identified from the initial description and/or initial protection claims, technical specifications related to dimensional parameters which are obtained by measuring dimensional parameters on drawings, detailed descriptions and components not mentioned in the initial description of the application leading to special effects not included in the initial application, effects (benefits) that cannot be determined from a person with ordinary knowledge in the relevant technical field in the initial application, new content by changing undefined contents into defined and specific contents; the applicant changes the technical specifications of the claim without the change being disclosed or identified directly and clearly from or different from the original application/description; the applicant introduces new content by changing undefined contents into defined and specific contents, combining separate technical specifications of the initial application into a new technical specification in the application when the relationship between these technical specifications is not disclosed in the initial application or a technical specification is removed from the claim that is necessary for the object of the claim to achieve the proposed purpose and/or this removal changes this technical specification or others.

A trademark protection certificate is invalidated when the applicant knows or has a basis to know that the trademark he/she registered is identical or similar to the point of being difficult to distinguish from a widely used trademark in Vietnam or a well-known trademark in other countries for identical or similar goods or services at the time of filing and the filing of this application is intended to take advantage of the reputation and prestige of that trademark for profit, resale, licensing, transfer registration rights, prevent the possibility of entering the market, or conduct acts contrary to other fair commercial practices.

2. New method of determining electricity generation prices for new power plants

The process for handling objections to applications for registration of industrial property according to Circular No. 23/2023/TT-BKHCN requires the applicant's response to the objection and the objector's response to the reply from the applicant, the time limit set for each side is 02 months. The National Office of Intellectual Property handles objections and announces the results based on evidence, arguments, dialogue results, etc. between the two parties.

Please be advised that objections to applications for registration of industrial property must be made in Vietnamese. Documents attached to the objections may be made in another language but must be translated into Vietnamese upon request.

3. Using results of appraisal of application for registration of inventions of foreign patent authorities

Circular No. 23/2023/TT-BKHCN stipulates several cases where the results of appraisal of application for registration of inventions of foreign patent authorities can be used, such as: The Intellectual Property Office can refer to during the substantive examination of a patent application or the applicant can request the Intellectual Property Office to use the results of substantive examination of a patent application filed abroad to evaluate the possibility of protection if meet certain conditions according to Vietnamese laws.

We hope this Newsletter would bring you useful information.

Best regards.

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