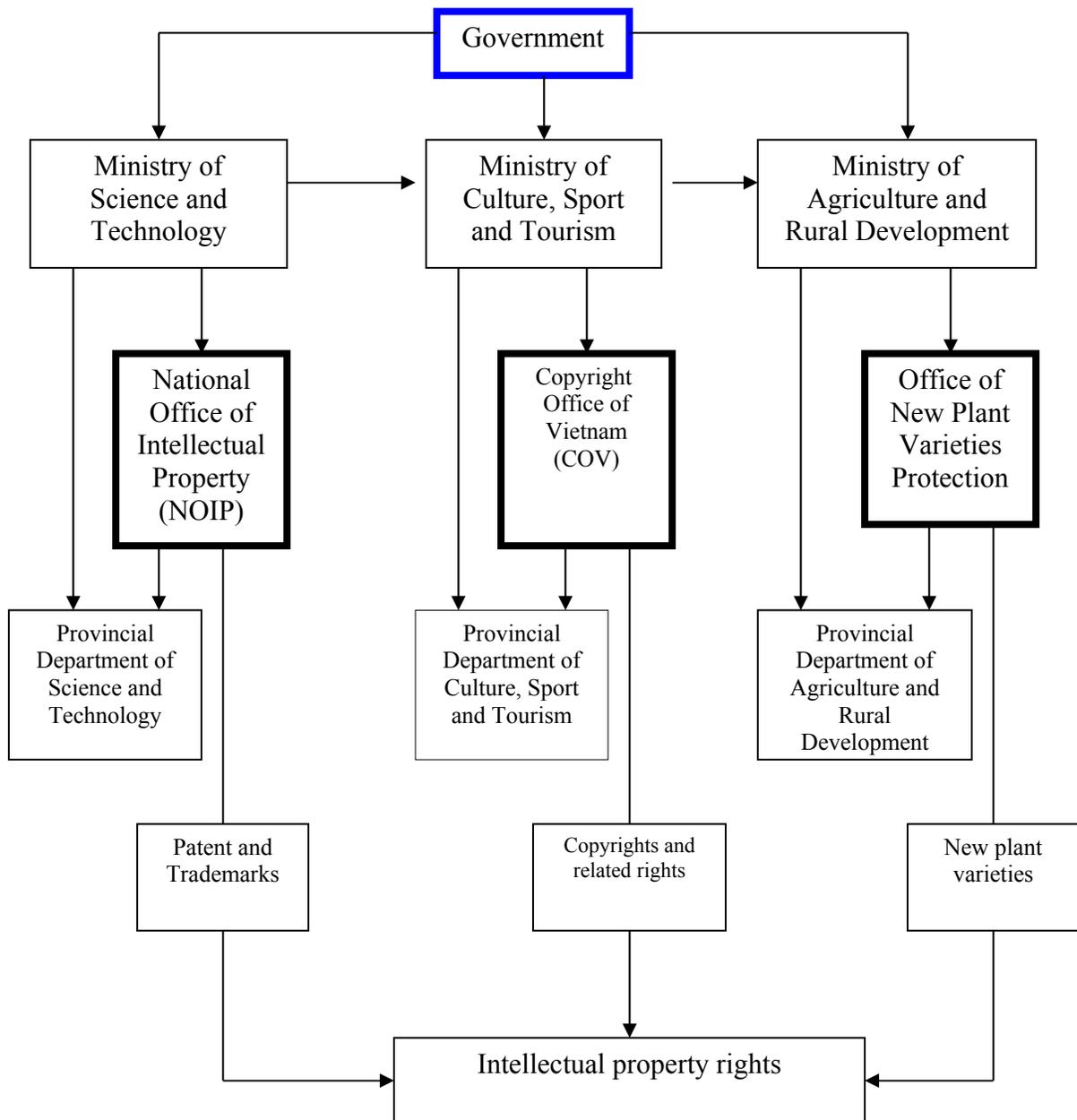


INTRODUCTION TO THE IP ADMINISTRATION SYSTEM OF VIETNAM

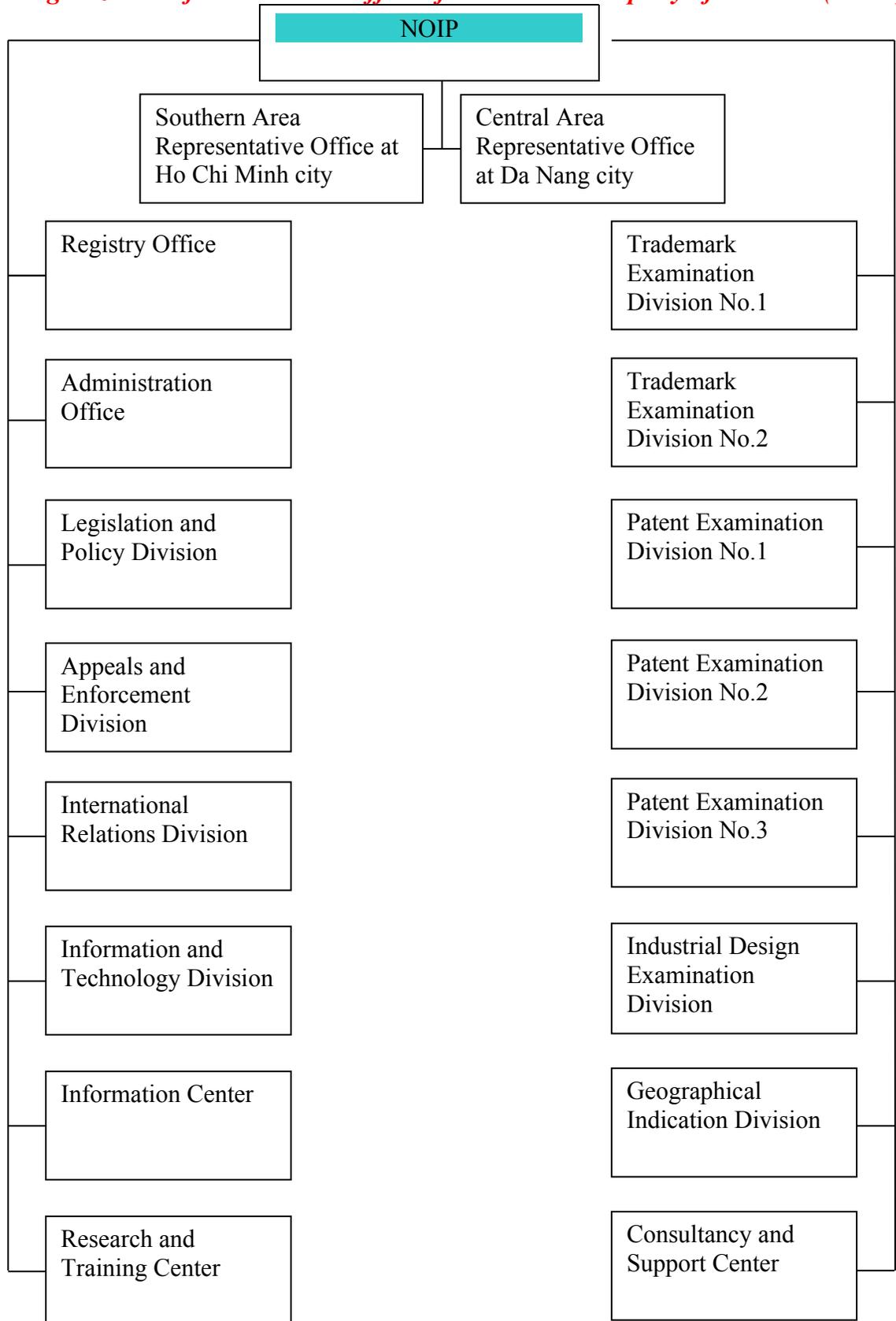
1. General structure of IP administration system in Vietnam

The IP administrative system of Vietnam includes three branches corresponding to three branches of intellectual property rights as defined in the Intellectual Property Law: copyrights and related rights, industrial property rights, and rights over new plant varieties. The organization chart of the IP administration system can be illustrated as follows:

The IP management organization system of Vietnam



The organization of the National Office of Intellectual Property of Vietnam (NOIP)



2. Overview of the NOIP and the national intellectual property system

The NOIP was established in 1982 under the name of the National Office of Inventions. For the development of its organization and operation, it was renamed the National Office of Industrial Property in 1993 and the National Office of Intellectual Property in 2003.

At present, the NOIP has 271 staffs, including 36 patent examiners working at three Patent Examination Divisions and 47 trademark examiners working at two Trademark Examination Divisions, 12 industrial design examiners, 5 geographical indication examiners, and 171 officials and support staffs.

Vietnam joined the major international IP treaties: the Paris Convention since 1949; the Madrid Agreement since 1949; the Madrid Protocol since 2006; the Berne Convention since 2004; the PCT since 1993.

Recently, the number of international trademark applications filed with the NOIP is increasing in both routes: foreign applicants registered their trademarks in Vietnam and domestic applicants registered their trademarks in other countries through the Madrid system.

Since 2005 Vietnam has introduced the significant changes in the IP law system. The new IP law (IP Law 2005) has been effective since 1st July 2006. This is an important event to the national IP system. The new IP law introduced the significant changes to the national IP protection and enforcement framework towards the international standards provided in the TRIPS Agreement.

A series of governmental regulations were issued to provide the instructions for the implementation of the new IP law. Among others, the important instructions include Decree No.100/2006/ND-CP (dated 21 Sept. 2006) on copyrights and related rights, Decree No.103/2006/ND-CP (dated 22 Sept. 2006) on industrial property rights, Decree No.104/2006/ND-CP (dated 22 Sept. 2006) on new plant variety rights, Decree No.105/2006/ND-CP (dated 22 Sept. 2006) on State management and enforcement of IP rights, Decree 106/2006/ND-CP (dated 22 Sept. 2006) on administrative sanctions on IPR infringement. The governmental regulations clarified the principles and provisions enshrined in the IP law and in fact they brought the IP law into effect.

A new and comprehensive procedural rule (Circular No.01/2007/TT-BKHCN dated 14 Feb. 2007) was issued by the Ministry of Science and Technology to give detailed guidelines to applicants and the NOIP in performance of IPR establishment proceedings. This procedural rule is applicable to patent applications, trademark applications, industrial design applications and geographical indication applications in general. It replaced several rules which were separately applied to applications of each IP subject-matter in the past.

The NOIP is an exclusive office in Vietnam having competence and responsibility for receiving patent and trademark applications and granting the titles of protection to the applicants. For all kinds of application except topography applications, including invention applications, utility solution applications, industrial design applications, trademark applications and geographical indication applications, the NOIP performs two stages of examination: formality examination and substantive examination. Regarding industrial

design applications and trademark applications and geographical indication applications, the substantive examination is compulsory. It is automatically conducted by the NOIP after the application satisfied the formality requirements. Regarding invention applications and utility solution applications, the substantive examination is conducted upon the request of the applicants within the time-limits stipulated by the IP Law (42 months for the invention applicants and 36 months for the utility solution applicants). The topography applications are only subject to the formality examination.

The number of IP applications filing with the NOIP is remarkably increasing for the time being. The average growing rate of applications is around 20% annually. The volume of applications that the NOIP processes every year is increasing accordingly. This situation is reflected by the following data tables:

Table 1: The number of IP applications received by the NOIP for the period of 2005-2007

No.	Applications	2005	2006	2007
1	Inventions	1,952	2,173	3,080
2	Utility Solutions	249	238	
3	Industrial Designs	1,338	1,604	1,908
4	Trademarks	17,975	23,086	27,074
5	International registration trademarks under the Madrid system	3,895	4,071	4,920
6	Geographical Indications	2	5	4
7	Topographies		1	1
8	Total	25,440	30,944	36,987

Table 2: The number of patents and certifications granted by the NOIP for the period of 2005-2007

No.	Applications	2005	2006	2007
1	Invention Patents	668	669	792
2	Utility Solution Patents	74	70	
3	Industrial Design Patents	726	1,475	1,360
4	Trademark Certifications	9,760	8,840	15,622
5	International registration trademark acceptance under the Madrid system	3,507	3,417	4,422
6	Geographical Indication Certifications	1	2	4
7	Topographies			
8	Total	14,737	14,473	22,203

Apart from the performance of IPR granting procedures, the NOIP plays an important role in improving the IPR enforcement situation of the country. The NOIP has supported actively the enforcement agencies in fighting against IPR infringement acts by the following activities:

- Co-organizing the IP training courses and workshops for the staffs of enforcement agencies;
- Providing the IP lectures and experts to the training courses organized by the customs offices and market management agencies;
- Providing data search services and professional opinions on the questionable issues in handling the infringement cases to the courts and other enforcement agencies as well as to IP owners upon their request;
- Co-editing the scenarios for propagandizing the IP law to the public through the mass communications.

Generally, IP owners and applicants have good comments on the new IP law. From the perspective of IP owners, the new IP law covers a broad range of IP subject matters to be protected. This provides more opportunities to the IP owners in seeking the legal protection for their IP assets in Vietnam. In addition, the new IP law introduces the stronger measures of IPR enforcement under civil procedures, administrative procedures and border control measures, particularly the remedies against the counterfeiting and pirated goods. The IP owners therefore are equipped with the more effective weapons to enforce their IPRs. Upon the request of IP owners, the local courts and administrative bodies should take the appropriate measures to repress the infringement acts as spelt out by the IP law.

From the view of applicants, the new IP law contains more clear and systematic provisions on the substantive standards and formal requirements as well as the procedures for filing and examining of applications. The standardization of the application forms helps the applicants saving much time and costs in preparing and pursuing their applications. Especially, the new IP law shortens the time-limits of both formal and substantive application examinations. This certainly makes the applicants more satisfied with the effect of the new IP law.

3. Challenges to the NOIP

The changes to the legal framework in the coming time place the main focus on the improvement and strengthening of IPR enforcement system in civil, administrative and criminal procedures.

The challenges that the NOIP is coping with are the following:

The first challenge is the overload in examining IP applications in general or the backlog of patent and trademark applications in particular. Although the capacity of the NOIP is much upgraded, it seems to be incompatible with the speedy increase of IP application volume at the NOIP in recent years. While the backlog of applications filed under the old law has not been resolved, the new IP law cut down the time-limits for the NOIP examiners to deal with the applications filed under the new IP law. It really places the greater challenge to the staffs of the NOIP in fulfilling their duties mandated by the law for the present.

The second challenge is the limitation of the resources to level up the NOIP capacity in dealing with the overload situation of the office. While the number of experienced examiners is very limited, it takes time to train the new recruits to be the qualified examiners. The NOIP meets with many difficulties in recruiting the new staffs. The paradox occurs when the heaviness of the jobs in the NOIP is going up and the amount of wages given to the workers cannot be increased to the same extent. Because the NOIP is an administrative organ, it is limited by the law in deciding the financial matters in negotiating and concluding employment agreements with employees.

The third challenge is the backward of technologies and technical equipment using in the process of receiving and examining applications as well as in storing and searching data served examinations. Many stages of examination and transfer of applications are carrying out in manual manners. This affects significantly the speed of handling applications in general.

4. Strengthening of the NOIP capacity

In the past two years the NOIP has introduced certain reforms within its office to assist the IP owners in acquiring the proper protection for their IP assets. The notable reforms included the following:

- The three functional units were newly established within the NOIP: the Consultancy and Support Centre (CSC), the Research and Training Centre (RTC) and the Geographical Indication Division (GID). The main function of the CSC is to provide the professional advice and necessary assistance to IP owners and applicants in acquisition of legal protection for their IP assets. The function of the RTC is to provide the IP training courses to the governmental and local administrations as well as to the enterprises and schools.

- In addition to the establishment of the representative office of the NOIP in the southern area of the country (the NOIP Representative Office at HoChiMinh City), another representative office of the NOIP was set up in the central area of the country (the NOIP Representative Office at DaNang City). These representative offices would help IP owners and applicants to be more comfortable in conducting the transactions with the NOIP.

In the next year, the NOIP continues to initiate some further internal reforms to assist the IP owners as well as to upgrade the NOIP capacity itself. The biggest reform should be the re-structuring of the NOIP organization and functions. Accordingly, the NOIP would be re-organized to fulfil two clarified functions, that is the State management function of an administrative agency and the business function of a business unit. The clarification of the functions is considered as a basic step for the subsequent internal reforms of the office.

The NOIP is running some projects to deal with the above-mentioned challenges:

Firstly, the IP procedural regulations need to be reviewed and improved as much as possible to simplify procedures of IPR establishment. This would help to reduce the burdensome for both applicants and examiners.

Secondly, the number of staffs needs to be increased to such an extent sufficient to deal with the backlog and overload situation of the office. The new staffs should be trained extensively to be able to act as the qualified examiners after a short apprentice period.

Thirdly, the legal status and the organizational structure of the NOIP need to be revised and modified to enable it to have autonomy in negotiating and deciding the amount of wages provided to employees. The increase of the human and financial resources should go along with the improvement of technical and technological conditions to strengthen the capacity of the office. In addition to the pending project for building up an IP digital library at the NOIP, the application handling process shall be computerized and automatized step-by-step.

5. Improvement of the national IP system towards TRIPS/WTO mandate

Vietnam has joined almost fundamental international treaties on IPR protection and enforcement, including those standing for the substantive standards such as the Paris Convention, the Bern Convention and the TRIPS Agreement, and those for simplification of the registration procedures such as the PCT Treaty, the Madrid Agreement and the Madrid Protocol. Vietnam is also considering the possible adoption of the Hague Convention on International Registration of Industrial Designs and Models. In that context, the IP owners have multiple options to acquire the protection of their IPRs in Vietnam.

The government is paying much attention to the IP matters to secure the good environment for foreign investors. The NOIP itself is launching many projects to help IP owners finding their comfort in registration of their IPRs in Vietnam. Currently, all legal documents and application forms have been published in the website of the NOIP (<http://www.noip.gov.vn>). IP owners and applicants can also access to the IP digital library in this website to make a search and find out the necessary information.

For many changes happening to the national IP law system, IP owners should consult frequently with the IP Representative Service Agents in Vietnam to clarify and update the IP related information and take the best option for their request of IP protection in Vietnam.

Vietnam has been a WTO member since 2006. This event produces certain impact on IP owners. The good impact could be seen in the view that they become more confident of the adequate protection of IPRs in Vietnam. It is evident that Vietnam has recently approved to join a number of IP international treaties, especially those concerning copyrights and related rights. As committed at the time of joining the WTO, Vietnam has made much progress in the national legislation of IPR protection and enforcement.

However, the existent concerns of IP owners are of the IP enforcement challenges to Vietnam, as required by the TRIPS/WTO and mandated by the new IP law. In this respect, the government and the enforcement agencies are engaging many projects of strengthening the IP enforcement efficiency in the country, aiming at an “effective enforcement” system as inscribed in the TRIPS Agreement./.

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