



INTELLECTUAL PROPERTY RIGHTS COULD PROMOTE SOCIAL INNOVATION IN VIETNAM

DIREITOS DE PROPRIEDADE INTELECTUAL PODEM PROMOVER INOVAÇÃO SOCIAL NO VIETNÃ

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ABSTRACT

Promoting innovation and protecting intellectual property rights are the top priorities of Vietnam's policy. Intellectual property rights are used to protect innovators' rights for rewarding their innovation effort. Social innovation means that all innovations must be for the purpose of both economic growth and social advancement. Social innovation is for better use of assets and resources. Keeping balance of benefits of intellectual asset owners and the society is the key connection between social innovation and intellectual property rights protection. In this paper, the authors firstly focus on a brief overview of the concept of social innovation, the characteristics of social innovation as well as policy issues of concern. In the next content, the report focuses on discussing the legal rules and policy regarding the protection of intellectual property rights for promoting social innovations and its challenges in Vietnam.

Keywords: Social, innovation, intellectual property rights, Vietnam.

RESUMO

Promover a inovação e proteger os direitos de propriedade intelectual são as principais prioridades da política do Vietnã. Os direitos de propriedade intelectual são usados para proteger os direitos dos inovadores para recompensar seus esforços de inovação. Inovação social significa que todas as inovações devem ter o propósito de crescimento econômico e avanço social. A inovação social é para melhor uso de ativos e recursos. Manter o equilíbrio dos benefícios dos proprietários de ativos intelectuais e da sociedade é a conexão fundamental entre a inovação social e a proteção dos direitos de propriedade intelectual. Neste artigo, os autores se concentram primeiramente em uma breve visão geral do conceito de inovação social, as características da inovação social, bem como questões políticas de preocupação. No próximo conteúdo, o relatório se concentra em discutir as regras legais e políticas relativas à proteção dos direitos de propriedade intelectual para promover inovações sociais e seus desafios no Vietnã.

Palavras-chave: Social, inovação; Direitos de propriedade intelectual; Vietname





1. INTRODUCTION

On 22nd December 2024, in the context of the industrial revolution 4.0, in Vietnam, for the first time in Resolution 57-NQ/TW¹, science and technology along with innovation and digital transformation are placed at the "top important breakthrough" position with unprecedented goals and drastic solutions. Under the Resolution 57-NQ/TW, the Vietnam Parliament and Government is developing policies of breakthroughs in the development of science, technology, innovation and national digital transformation with a series of pilot policies to remove obstacles in science, technology and innovation activities.

Due to an innovation, we could think about a new product or a new way of doing things applied in practice. The innovation has always played an important role in socio-economic development; however, this terminal "innovation" has only been developed in the last 60 years. In the recent-literature, the definition of "social innovation" has emerged as part of an effort to find new ways to coordinate and solve global and local problems in every country, as mentioned in the Sustainable Development Goals of the United Nations. Social innovation is one of the terms that receive a lot of attention from policy researchers, innovation practitioners as well as government agencies in many countries around the world. In Vietnam, although the term "social innovation" has been well received in recent years, but to systematize and study its concept the characteristics related policy issues are still missing. Therefore, the notion of "social innovation" is quite new while "intellectual property rights" are rather popular in Vietnam. Especially, under the context of broad and deep international integration, policies and laws for the protection of intellectual property rights become more and more important in Vietnam. Keeping balance of benefits between innovators and the society, the protection of intellectual property rights for promoting social innovation need to pay more attention and research. In the first part of this paper, the authors conduct a brief overview of social innovation, mentioning the essence of the concept as well as the difference of social innovation from other types of innovation. And the second part is about policy, laws and issues related to the protection of intellectual property rights for promoting social innovation in Vietnam. There is not any detailed publication relating to the protection of intellectual property rights for social innovations

¹ Resolution 57-NQ/TW dated 22nd December 2024 by the Politburo on breakthroughs in the development of science, technology, innovation and national digital transformation.





in Vietnam. The methodology of this papers is the literature review - the research of available publications to analyze the meaning of “social innovation” which is quite new in Vietnam and the policy review - the research of laws and policies (doctrinal research review) relating to the protection of intellectual property rights for promoting social innovations in Vietnam.

2. LITERATURE REVIEW

Social innovation has been positioned over the past decades in the programs and agendas of many actors in the public, private, educational, nonprofit, and many other sectors. During the 1970s, there were a number of scholars including Taylor (1970) who identified innovation as a new way of working with special interest to social needs, such as poverty or crime. Durkhem (1975) and later Weber (2004) mentioned that this type of innovation was about a new social order on the basis of their impact on social changes, society and technology. However, in the twentieth century, the perspectives on innovation have mainly focused on economics or, in other words, the study of how companies have created new products to better meet customer needs (Martin and Osberg, 2007), increasing the profitability and productivity of an organization (Cajaiba-San-tana, 2014). European Commission, 1995 argues that innovation is a social phenomenon since it is realized and developed to affect society, not because of those change created. Since the 1990s, this concept has begun to become more widespread, appeared in many studies and reflected different fields of the social sciences, such as public administration, history, style, social science, social movements, administration, social psychology, economics, and social entrepreneurship (Cajaiba-Santana, 2014). Social innovation can be defined as changes in the cultural, normative or regulatory structure (or classes) in society that enhance collective power and improvement of economic and society (Heiskala, 2007). As the concept of Mulgan and Pulford (2010), social innovation is innovation that is social both in terms of their ends and means. The Young Foundation (2012) developed the TEPSIE (theoretical, empirical and policy basis for building social innovation in Europe) project, funded by the European Commission, which stated: the creations of social innovation are new ones (products, services, models, markets, processes, etc.) that simultaneously meet social needs (more effectively than existing solutions), create capabilities, better relationships and better use of assets and resources. In other





words, social innovation is good for society and enhance the capacity of society to act. Also in the report, The Young Foundation indicated that there are different approaches of social innovation, the four main elements are generally: satisfying needs, innovating solutions, changing social structure and relationships, and an increase in the capacity of society to act. Polman et al. (2017) denoted that social innovation involves reconfiguring social practices to deal with social challenges, in order to improve outcomes on social well-being and necessarily include the participation of members of civil society. In this point of view, social innovation often leads to the emergence of new networks, the building of an environment of partnerships, and the creation of new values, rules and governance arrangements (Sarkki et al., 2021).

Derbez (2019) argues that social innovation contributes to solving social problems facing humanity in a more scientific way on the basis of exploiting the diversity of society's resources, building capacity towards empowerment of vulnerable populations and systemic change of social, economic and institutional structures. In terms of a new update, social innovation can be in the gradual (if based on what already exists) or radical form (comprehensive transformation of approaches and situations) (Carvalho, 2017).

Social innovation also needs to be distinguished from other innovation concepts. Phillips et al. (2015), showed that, while economic innovation seeks to generate commercial or financial benefits, social innovation seeks the social changes. The logic of economic innovations is that of competition among actors, while social innovations promote cooperation. Yunus (2010), comparing social innovation and basic innovations, showed that these types of innovation all share the intention to change the society, people's living conditions and sometimes even the gap between population groups. The Portales (2017) research argued that the impact of social innovation depends on social transformation rather than generation, and focuses on the change of a particular market such as destructive innovations. The publication of (Kahle, 2017) stated that although destructive innovations appeared in the economic field, in recent times they have been related to social innovation. These innovations create low-cost products and services that have the opportunity to benefit a specific area (Barki, 2017). Social innovation is similar to programs that are concerned with other social issues, as it is concerned with solving a specific social problem. However, the difference between these concepts is that these programs do not have innovative solutions that aim at social transformation and focus on solving a particular social problem, delineating a





specific group. or offer temporary solutions but seek to create new social structures.

Social innovation can originate from many sectors in society, such as non-profit organizations, public/private and informal sector (Young Foundation, 2012). Subjects of social innovation can be individuals (social entrepreneurs or social organizations), social groups (collectives), private organizations (NGOs, companies or cooperatives) or public organization (Government Organization) that systematically seeks, by some form of business or initiative, a response to a social problem and to an unmet social need. Portales (2017) argued that the context includes cultural factors, material conditions and relationship types occurring in a certain territory that can lead to the decision of innovation to take place.

Regarding the main features of social innovation, the report of The Young Foundation (2012) focuses on five relevant contents: satisfaction of demands, novelty of solution, product or action, effectiveness and participation and action capacity of the society. Among them, the satisfaction for society demands are considered as *raison d'être* and mission of institutions. Novelty of solutions is to create something absolutely new or new at some degree (Carvalho, 2017), which means that the novelty is “new” at present or could be disappeared in future. The third factor is type of product, service, process, model, market and other contents relating to concrete actions, results which are brought from the social innovation at present (Mulgan và cộng sự, 2007). The fourth factor focuses on the effectiveness of social innovation. Social innovation is not only the satisfaction of one demand but also the action of less resources using and the more effective impact than the present solution. The fifth factor is the final product of social innovation that creates or consolidates capacity and relationships in the society in a systematic way to meet requirements in future. (Baker & Mehmood, 2015). This factor focuses on the empowerment for excluded and vulnerable groups (Mulgan, 2006).

In brief, social innovations could be “social” in the meaning that they are served for raising social benefits. Social innovations address really more human demands than needs of normal consumers, such as health, safety, education, against crimes, environmental protection, race and sex discrimination, and unfairness of economic opportunities. Moreover, social innovations have “social” character because their outputs are widespread for the whole society in general or targeted community in particular. Furthermore, social innovations could change interactions between individuals and social relationships. According to Derbez (2019), this awareness about





social innovations makes their relevance degree in social, economic, environmental and institutional fields raised. Under the context of global challenges of society, environment, demographics, etc., during recent decades, and during the last two years with the great pandemic of Covid-19 in particular, many available social, economic and institutional programs could not resolve. Therefore, the set up of replacement and innovation systems to resolve these matters in systematic way become more and more imperative. Social innovations also contribute to use assets and resources for society from the point of view of multidisciplinary and multiplex. This point of view shows the sharing capacity of agents in the society in resolving social issues that were attributed to the State or third sector's responsibilities earlier. Each entity in the society could directly show its role in the social changes.

3. RESULTS AND DISCUSSION

Intellectual property rights protection for promoting social innovations in Vietnam

Vietnam is the 16th-rank country in the world in the field of population with the rapid increase rate, from 78 million people in 2000 up to about 100 million people in 2024¹. Eventhough Vietnam is classified in the group of developing countries, this country is one of the countries having the most rapid economic growth in South East Asia. According to the World Bank, Vietnam's competiton capacity was increased seven steps, from the rank of 74 in 2017 to the rank of 67 in 2019 among ranked countries²; her Global Innovation Index was increased eleven steps in the period 2016-2022, to the rank of 48/132 ranked countries³.

Under the rapid and broad Industrial Revolution 4.0 context, Vietnam has been conducting big strategic tasks to restructure her economy, foster growth and shift from broad growth model to broad-deep balance growth model focusing on quality and

¹ Data based on the latest *United Nations Population Division*, accessed date 18th February 2025, <https://www.worldometers.info/world-population/population-by-country/>

² Open data of the World Bank Group on Global Competitiveness Index 4.0, accessed date 18th February 2025, <https://prosperitydata360.worldbank.org/en/indicator/WEF+GCI+GCI4?countryCode=VNM>

³ Open data of the World Bank Group on Global Innovation Index 4.0, accessed date 18th February 2025, <https://prosperitydata360.worldbank.org/en/indicator/WIPO+GII+235?countryCode=VNM> and World Intellectual property Organization (WIPO) on Global Innovation Index 2022 results, accessed date 18th February 2025, <https://www.wipo.int/documents/d/global-innovation-index/docs-en-wipo-pub-2000-2022-section3-en-gii-2022-results-global-innovation-index-2022-15th-edition.pdf>





effectiveness. In 2021, National General Assembly of Vietnam launched its Resolution to approve the plan to restructure the economy during the period 2021-2025 with the general objective to “Form a reasonable and effective structure in each industry and field; between industries, fields and the whole economy; develop many national products based on new and high technology; creating a breakthrough in the competitiveness of a number of key economic sectors and making real, clear changes in growth models, productivity, quality, efficiency, competitiveness, improving the autonomy, adaptability, and resilience of the economy.”¹

The Industrial Revolution replaced the simple economy of small scale, based on handy labor, with industrial production and machine manufacture of big scale, which brings a lot of challenges for vulnerable people in the society [26]. In particular, Covid-19 pandemic affected badly the social-economic situation of countries in the world including Vietnam. Under this hard context, the use of assets and social resources with innovations is very necessary to help Vietnam overcome this situation, ensure social balance and fairness. However, according to the Report of Social Innovation and Higher Education in Vietnam within the framework of cooperation between British Council, Northampton University and University of Economy, Hochiminh city, the ecosystem of social innovation in Vietnam is only at the first step eventhough it has been supported more and more by the Government. According to Sengupta và Sahay (2017), the most popular type of social innovation in South East Asia is social startup and enterprise.

According to Report “Fostering and developping enterprises having social impact in Vietnam”, conducted in 2018 by Center for Social Innovation and Entrepreneurship under National Economy University, there are about twenty two thousand enterprises having impact in the society, which accounts for 4% of total number of enterprises in Vietnam. The report of UNDP on Vietnam’s inclusive innovation policy conducted in June 2020, considers that social innovation has been promoted as a means to instigate novel ways of solving environmental and societal challenges. Promoting social innovation, the novel, often-community based approaches to social challenges, involved the use of awards, prizes and competitions, offering public funding for collaborative social innovation, and facilitating the physical co-location of social and technological innovators in the same space. However, this

¹ Resolution No. 31/2021/QH15 on the Economic Restructuring Plan for the 2021-2025 by the 15th National Assembly





report did not mention on the protection of intellectual property rights as the mean to promote social innovations in Vietnam.

In brief, there is not any publications revealing the importance of intellectual property rights protection in promoting social innovations in Vietnam. According to authors' research, there is not any separate policy to support social innovations in Vietnam. Moreover, this policy to promote social innovations is stipulated in various laws and legal regulations of Vietnam such as Law on Intellectual Property in 2022, Charter of Initiative in 2012, Law on Science and Technology in 2017 and many other relevant sublaws. This papers will focus on the legal rules and policies relating to the protection of intellectual property rights under the context of widespread social innovations.

"Innovation" is not new in Vietnam. *Innovation* means "the creation, application of achievements, technical, technological and management solutions, to enhance the efficiency of socio-economic development, increase productivity, quality and added value of products and goods", according to Article 3.16, Law on Science and Technology in 2013. Innovation is understood to include new and useful technical and social innovations. But there is not any definion of social innovation from Vietnam's laws.

"Intellectual property rights" is also not new in Vietnam. *Intellectual property rights* means "rights of an organization or individual to intellectual assets comprising copyright and copyright related rights, industrial property rights and rights to plant varieties", pursuant to Article 4.1, Law on Intellectual Property in 2005, amended in 2009, 2019, 2022.

The Vietnamese Government launches in principle the good policy and laws relating to the intellectual property rights protection for promoting social innovations via a balance of interests and benefits between different entities in the society. For example, according to the Article 7.3, the Government may prohibit or restrict the exercise of intellectual property rights owners thereof or may compel such intellectual property rights holders to license one or more of their rights to other organizations or individuals on appropriate terms to assure objectives of national defence and security, the people's livelihood and other interests of the State. Moreover, the Government confirms that the main objective of intellectual property rights policy is to recognize and protect intellectual property rights of organizations and individuals on the basis of harmonizing the interests of intellectual property right holders and the public interest,





according to Article 8.1, Law on Intellectual Property of Vietnam,

In details, the Government prevents the use of intellectual property rights from the other people's activities such as training, education, reserach, testing, import, export of lawfully-availabe products on the market, prior use rights, etc., which are for the sake of society and for non-commercial purposes. According to Article 125.2, Law on Intellectual Property, intellectual property rights holders shall not have the right to prevent others from performing the following acts: a) Using inventions, industrial designs or layout designs in service of their personal needs or for non-commercial purposes, or for purposes of evaluation, analysis, research, teaching, testing, trial production or information collection for carrying out procedures of application for licences for production, importation or circulation of products; b) Circulating, importing, exploiting utilities of products which were lawfully put on the market including overseas markets, except for products put on the overseas markets not by the mark owners or their licensees; c) Using inventions, industrial designs or layout designs only for the purpose of maintaining the operation of foreign means of transport in transit or temporarily staying in the territory of Vietnam; d) Using inventions or industrial designs by persons with the prior use right according to the provisions of article 134 of this Law; d) Using inventions by persons authorized by competent State bodies according to the provisions of articles 145 and 146 of this Law, etc.

In principle, the prevention of others by intellectual property rights holders from circulating, importing, exploiting utilities of products which were lawfully put on the market including overseas markets, except for products put on the overseas markets not by the mark owners or their licensees is pursuant to provisions of TRIPS Agreement on the exhaustion of rights (Articles 6, 16, 26 and 28), which lets members to have freedom in deciding mechanism allowing parallel import or not.

Moreover, to balance the legitime benefits of intellectual property right holders (via the protection standard of intellectual property rights) with the common interest of the entire community, Law on Intellectual Property of Vietnam also stipulates separetely the cases in which the patent holders have to transfer in a non-voluntary way their patent to serve the public society, the entire community with some appropriate conditions and terms and the principal invention owners have to permit other entitites in the society to use the principal invention for implement the dependent invention.

Regarding the right to use patents on behalf of the State, Article 133.1 and





Article 136.1, Law on Intellectual Property confirm that ministerial-level competent bodies shall have the right, on behalf of the State, to use or permit other organizations or individuals to use patents for public and non-commercial purposes, national defence and security, disease prevention, and treatment and nutrition of the people, and to meet other urgent social needs without having to obtain permission of patent owners or their licensees under exclusive contracts in accordance with articles 145 and 146 of this Law.

Relating to the obligation to authorize the use of principal invention for the purpose of using dependent inventions, Article 137.2, Law on Intellectual Property says that if the owner of a dependent invention (means an invention created based on another invention) can prove that his or her invention makes an important technical advance as compared with the principal invention and has great economic significance, he or she may request the owner of the principal invention to license such principal invention at a reasonably commercial price and conditions. Moreover, if the owner of a principal invention fails to satisfy the request of the owner of a dependent invention without justifiable reason, the State relevant competent authorities may license such invention to the owner of the dependent invention without permission from the owner of the principal invention in accordance with the provisions of articles 145 and 146 of this Law.

These legal regulations on the compulsory licensing of patent and the permission of principal invention use for development of dependent invention for technical progress in the society are appropriate with international principles and laws. Paris Convention on the protection of industrial property rights in 1883 [30]. According the Article 5A (2) of this Convention, each Member country has the right to issue legal rules on compulsory licensing if the patent holders could not use or use ineffectively patent or for the sake of the public interest or for the sake of dependent inventions serving for technical advancement. In a same way, TRIPS Agreement in 1995 with the establishment of WTO (World Trade Organization), Article 31 allows any Member country to authorise any third party to exploit patent in a involuntary way with some commercial terms and conditions.

Regarding the commercial terms and conditions by which the patent non-voluntary licensing is made without permission from the holder of the exclusive right, the Article 145 and Article 146, Law on Intellectual Property allows the non exclusive compulsory licensing of patent only in the cases for public and non-commercial





purposes or in service of national defence and security, disease prevention, and treatment and nutrition of people or other urgent needs of society; and if the patent owner fails to fulfil the obligations to use such invention upon the expiration of four years as from the date of patent filing, or the expiration of three years as from the date of granting the patent; and where a person who wishes to use the patent fails to reach an agreement with the patent owner in spite of efforts made within a reasonable time for negotiating a satisfactory commercial price and conditions; and within a scope and duration sufficient to achieve the licensing objectives, and largely for the domestic market. Moreover, the licensee must pay the patent owner a satisfactory compensation depending on the economic value of such use right in each specific case, and compliant with the compensation framework stipulated by the Government.

Similarly, for the case using principal invention for the development of dependent invention for technical advancement and social progress, Article 146, Law on Intellectual Property only allows that the use of the principal invention shall be licensed to use dependent inventions on reasonable terms; and the licensee must not assign such right, except where the assignment is effected together with all rights to the dependent inventions.

4. CONCLUSION

It cannot deny that the Government of Vietnam launches good policy and laws on the protection of intellectual property rights for promoting social innovations via a balance of benefits between different entities in the society. However, we could draw some important main issues for discussing in making more effective these good laws:

- Firstly, the allowance of intellectual property rights holders for others to make circulating, importing, exploiting utilities of products which were lawfully put on the market including overseas markets, except for products put on the overseas markets not by the mark owners or their licensees is helpful for social innovations. This regulation helps the protection of public health and nutrition, in particular the accession to cheap drug by accepting the pharmaceutical parallel import according to TRIPS Agreement. However, there are not any detailed requirements for member states to change laws and practices of new pharmaceutical products. Therefore, the provisions of parallel import for pharmaceutical drugs are temporarily “freezed”, it does not mean that member countries could be accessible to cheap drugs. In fact, in order to protect





foreign intellectual property rights holders, foreign countries could use their laws and practices to invalidate this regulation in protecting and preventing new pharmaceutical drugs from competition with original drugs.

- Secondly, the obligation of patent owners to authorize the use of principal invention for the purpose of using dependent inventions is necessary and useful for promoting social innovations. However, the provision of full principal invention information from patent owner is crucial for the implementation of dependent invention, which depends mostly on patent owners' will. Therefore, if there are not appropriate commercial terms and conditions, the information of principal invention is not fully provided or is not provided.

- Thirdly, the compulsory licensing made by the ministerial-level competent bodies to use or permit other organizations or individuals to use patents for public and non-commercial purposes, national defence and security, disease prevention, and treatment and nutrition of the people, and to meet other urgent social needs without having to obtain permission of patent owners or their licensees under exclusive contracts is necessary for promoting social innovations. However, the evidences as grounds for non-voluntary licensing are not easily evaluated and certified. The procedures for evaluation and certification are also very complicated, not only depending on functions of ministerial-level competent bodies (ministries and ministerial equivalent authorities). Therefore, it requires to have the good cooperation between various relevant State competent organs.

- Fourthly, a satisfactory compensation of the licensee for the patent owner from non-voluntary licensing and from allowance using principal invention for the development of dependent invention is necessary. However, there is not any detailed regulations on what is "satisfactory compensation". Moreover, the understanding about what is satisfactory compensation is different between the Governments of each party. Therefore, it is not easy to achieve this compensation.

- Finally, a compulsory licensing is conducted within a scope and duration sufficient to achieve the licensing objectives, and largely for the domestic market. In particular, the making generic drug (the drug is made without the permission of patent owner) is very useful for the society. The generic drug is used largely for the domestic market. However, in the international integration, the relationship between countries is dependent and mutual to against social challenges in the new era. The export of generic drug from this country to others with less conditions may be unavoidable.





Therefore, the exploitation of compulsory-licensing patents needs to be broader, could be in reciprocity principle.

In conclusion, The strict protection of intellectual property rights is necessary for rewarding the innovators. Social innovation is a rather new concept but it has been attracting a lot of attention in Vietnam in recent years. Social innovation means that all innovations must be for the purpose of both economic growth and social advancement with better use of assets and resources. Keeping balance of benefits of intellectual property rights holders and interests of the whole society is very important for intellectual property rights protection for promoting social innovation. Vietnam has good legal rules and policy regarding the protection of intellectual property rights for promoting social innovations. However, there are some challenges to practice these laws in Vietnam, which needs to overcome for promoting social innovations. In near future, Vietnam could have more detailed legal rules to protect intellectual property rights to promote social innovation.

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