



**WINCO VIETNAM - INTERNATIONAL  
PATENT, TRADEMARK &  
COPYRIGHT LAW FIRM**

**HEAD OFFICE:**

343 Doi Can Street, Ba Dinh District,  
Ha Noi, Viet Nam  
Tel : (84-4) 7628119 - (84-4) 7628185  
Fax : (84-4) 7628120 - (84-4) 7628526  
E-mail: [winco@fpt.vn](mailto:winco@fpt.vn)  
Website: [www.wincolaw.com.vn](http://www.wincolaw.com.vn)

**BRANCH OFFICE:**

2nd Floor, Harbour View Tower,  
35 Nguyen Hue Street, District No.1,  
Ho Chi Minh City.  
Tel : (84-8) 8218291  
Fax : (84-8) 8218292  
E-mail: [info@winco.com.vn](mailto:info@winco.com.vn)  
Website: [www.wincolaw.com](http://www.wincolaw.com)

## Latest documents on the protection of IP right in Vietnam

- [Number of applications filed to the Vietnam National Office of Industrial Property \(NOIP\) in the 9 months of 2003 up to 18/09/2003.](#)
- [Industrial Property Legislation.](#)
- [Industrial Property issues in the Bilateral Trade Agreement between the Socialist Republic of Vietnam and the United States of America on trade relations.](#)
- [Protection of industrial property rights to new objects.](#)
- [Provisions on Intellectual Property rights in the Customs law.](#)
- [Protection of New Plant Variety and Semiconductor integrated circuit layout designs.](#)

**Statistics:**

**Number of applications filed to the Vietnam National Office of Industrial Property (NOIP) in the 6 months of 2003 up to 18/09/2003:**

|  |      |
|--|------|
| Applications for invention:                        | 668  |
| Applications for utility solution:                 | 75   |
| Applications for trademark through national route: | 7425 |
| Applications for trademark by Madrid Agreement:    | 2241 |
| Applications for industrial design:                | 430  |
| Applications for assignment and license:           | 222  |
| Petitions:   | 334  |
| Applications for renewal of certificate:           | 1996 |
| Applications for amendment of certificate:         | 1264 |

### Industrial Property Legislation

In the year 2001-2003, the development of Viet Nam IP law system is as follows:

- On December 28, 2001, the National Assembly ratifies the Vietnam-US Bilateral Trade Agreement (BTA) in which IP issue occupies a large portion: some 40% of the Agreement;
- On February 1, 2001 the Government issued Decree No. 06/2001/ND-CP amending and supplementing a number of articles of Decree No. 63/CP;
- On April 20, 2001 the Government issued Decree No. 13/2001/ND-CP on Protection of New Plant Variety;
- On September 14, 2001 the Ministry of Science, Technology and Environment issued a Circular amending and supplementing a number of articles of Circular No. 49/2001/TT-BKHCHNMT;
- On September 29, 2001 the National Assembly passed the Customs Law in which the Custom Agency is assigned by the Government to deal with violations in the fields of Industrial property at National entries.

- On May 2, 2003 the Government issued Decree No. 42/2003/ND-CP on the protection of industrial property rights over semiconductor integrated circuit layout designs.

### **Industrial Property issues in the Bilateral Trade Agreement between the Socialist Republic of Vietnam and the United States of America on trade relations.**

The Agreement between the Socialist Republic of Vietnam and the United States of America on Trade relations was signed on July 13, 2000 in Washington.

The Agreement between the Socialist Republic of Vietnam and the United States of America on trade relations is a rather perfect international treaty, including trade in goods, trade in services, Intellectual Property (IP), and Investment Relations of which the IPR is a center of importance as stipulated in Chapter II of the Agreement which includes 18 Articles providing various issues under IP protection on the basis of economic-commercial relations between the 2 nations.

The Agreement also includes provisions on implementation of Intellectual Property right in general and Industrial Property right, in particular, the concrete regulations on procedures and penalties in civil and administrative procedures, interim measures and criminal penalties, protection of IPR at national border, existing subjects, technical cooperation.

### **Protection of industrial property rights to new objects**

*On 3/10/2000 the Government approved the Decree No. 54/2000/ND-CP on the protection of industrial property rights to some new objects:*

The Decree 54/2000/ND-CP prescribes in detail the protection of industrial property rights to some new objects, including business secrets, geographical indications and commercial names and the protection of the right against industrial property-related unfair competitions.

The term “**business secrets**” are “investment yields” in form of information that satisfy 3 conditions: being those other than general knowledge, being applicable to business activities and when being used, such information may render advantages, being kept secret by their owners with necessary measures. The specific term was not prescribed in the Decree, but it is provided that rights of owners of industrial property rights to business secrets shall be protected as long as such business secrets satisfy all three aforesaid conditions. Industrial property rights to business secrets may be transferred or inherited.

**Geographical indications** are information on geographical origins of goods being expressed in a word, expression, sign, symbol or image used to indicate a nation or a territory or a locality belonging to a nation in order to indicate that such goods have the origin from a nation, territory or locality, whereas the quality, prestige and reputation or other properties of such goods are principally attributed to their geographical origin. The right to use geographical indications shall not be transferable. The right to use the geographical indications shall be protected as long as all the specific conditions regarding geographical indications and the conditions regarding manufacturing activities of those entitled to use geographical indications.

**Commercial names** are the proper name of an organization or individual used in the business activities. Commercial names are a combination of alphabetical letters, which can be accompanied with numerals and pronounceable. Commercial names are capable of distinguishing the business subject bearing such name from other business subjects in the same business field. Commercial names, which cause confusion with others' commercial names, which have previously been used in the same locality and in the same business field, or cause confusion with others' trademarks, which have already been protected, shall not be protected as commercial names. Commercial names are transferable or inheritable provided that the transfer must be effected together with the entire business establishments and business activities under such commercial names.

The industrial property rights to business secrets, geographical indications and commercial names shall be automatically established when there exist all the conditions prescribed without having to make registration.

When exercising the right to request the handling of infringing acts, the owners of above three industrial property objects, shall be obliged to prove the conditions for establishing their right and the scope thereof; clearly state the names and addresses of persons who have committed infringing acts; and supply evidences of scope and seriousness of such infringements. The competent authorities will handle the acts of infringing upon industrial property rights to these objects according to the order and procedures for handling acts of infringing upon other industrial property rights.

One other right protected under the Decree 54 is **protection of the right against industrial property-related unfair competitions**. Acts of industrial property-related unfair competition include using commercial instructions to mislead the perception and information about business subjects, business, establishments, business activities, goods and/or services for the purpose of damaging other people, appropriating and using investment yields of others without their permission. Organizations and individuals that suffer from damage or are in danger of suffering from damage shall be entitled to request the competent State bodies to force to stop acts of industrial property-related unfair competition, claim damages; administratively handle or examine for penal liability. When exercising such a right, organizations and individuals shall be obliged to prove the fact that their legitimate rights

and interests of those organizations and individuals they are representing are infringed upon or in danger of being damaged.

This Decree shall apply to domestic and foreign organizations and individuals conducting business activities on the Vietnamese territory. This Decree shall also apply to organizations, individuals that have their industrial property rights protected under provisions of international multilateral, bilateral agreements which Vietnam has signed or acceded to. In cases where an international agreement which Vietnam has signed or acceded to, contains provisions different from those of this Decree, the provisions of such international agreement shall apply.

### **Provisions on Intellectual Property rights in the Customs law**

On September 29, 2001, at the 9<sup>th</sup> session of 10<sup>th</sup> National Assembly legislature, the Customs Law has been approved by the National Assembly. The Customs Law consists of 8 chapters, 82 articles, and taking effect as from January 1, 2002. The Customs Law prescribes relations in the operation of the Customs service including the matters of intellectual property. On this part, we would like to introduce articles 57, 58, 59 of Chapter III, Section 5 of the Customs Law: "Temporary postponement of customs procedures completion for export and import goods upon requests for protection of intellectual property rights".

Article 57: Principles for Temporary Postponement of Customs procedure completion.

Article 58: Conditions for requesting the Temporary Postponement of Customs procedure completion.

Article 59: Specific provisions on the Temporary Postponement of Customs procedure completion.

Pursuant to this Law and other provisions of law, the Government shall prescribe in detail the temporary postponement of Customs procedures completion for export and import goods upon requests for protection of Intellectual Property Rights.

### **Protection of New Plant Variety and Semiconductor integrated circuit layout designs**

According to Decree No. 13/CP-2001/ND dated April 20, 2001 of the Government on protection of new plant variety, a new plant variety will be protected if it meets the following criteria.

- It belongs to the species of plant protected by the State.
- It possesses commercial novelty, i.e. it has never been used for sale.
- It's name is in compliance with the regulation of variety name.
- It is distinctive with the different varieties of the same species (Distinctness)
- Plants of the population of new variety must be uniform (Uniformity).
- Stability must be maintained in continuous generations of new variety (Stability).
- The technique criteria are defined based on the result of the test on Distinctness, Uniformity, Stability of which the abbreviation is DUS test.

Decree No. 42/2003/ND-CP was issued by the Government on May 2, 2003 on the protection of industrial property rights over semiconductor integrated circuit layout designs.

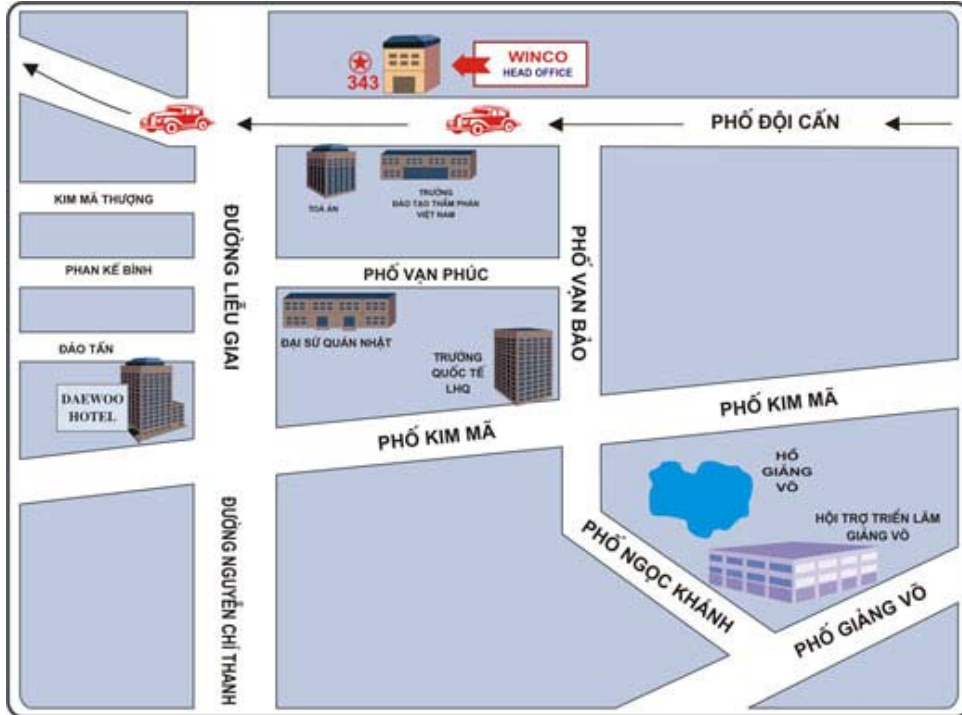
"Semiconductor integrated circuit layout designs" is a three-dimensional disposition of circuit elements and their interconnections in semiconductor integrated circuits.

The certificate of registration of semiconductor integrated circuit layout designs was issued by the National Office of Industrial Property and the valid duration is 10 years, as from the date of issuance of the title, and 15 years, as from the date of layout design creation. All organizations and individuals, both Vietnamese and foreigners have the right to submit an application (according to international regulations Vietnam has signed or been part of). Every foreign individual, legal entity, that doesn't have business or manufacturing foundation in Vietnam has to submit an application via Representative Industrial Property organizations such as WINCO.

## CONTACT US

### HA NOI:

343 Doi Can Street, Ba Dinh District,  
Ha Noi, Viet Nam  
Tel : (84-4) 7628119 - (84-4) 7628185  
Fax : (84-4) 7628120 - (84-4) 7628526  
E-mail: [winco@fpt.vn](mailto:winco@fpt.vn)  
Website: [www.wincolaw.com.vn](http://www.wincolaw.com.vn)



### HO CHI MINH CITY:

2nd Floor, Harbour View Tower,  
35 Nguyen Hue Street, District No.1,  
Ho Chi Minh City.  
Tel : (84-8) 8218291  
Fax : (84-8) 8218292  
E-mail: [info@winco.com.vn](mailto:info@winco.com.vn)  
Website: [www.wincolaw.com](http://www.wincolaw.com)

