

# Startups in Vietnam and Intellectual Property

**Dinh Manh Tuan**

Ph.D, Institute of European Studies, Vietnam Academy of Social Sciences

Email: tuaneu@yahoo.com

Received 3 April 2019; published 18 September 2019

**Abstract:** *The boom of startups in Vietnam has led to an upward trend for intellectual property rights (IPRs) registration since 2014. However, the IPRs registration in Vietnam remains a challenge. The article discusses the importance of intellectual property to Vietnamese startups and brings forward some recommendations to improve the effectiveness of IPRs registration.*

**Key words:** Intellectual Property, Startups, Vietnam

## 1. Introduction

Promotion of startups in the recent years has gained significant attention of the Communist Party, the central government, and the public in Vietnam. As prescribed in the 2017 Law on Support to Small and Medium-sized Enterprises (SMEs), “small and medium-sized startups are the SMEs established for the realization of initiatives based on the application of intellectual property, technology, new business models and are able to grow quickly”. Along with the expansion of newly established businesses, there is also an increasing awareness of the importance of intellectual property (IP) for startups.

However, many startups in Vietnam still focus more on business establishment, investment attraction, product development and launching rather than paying attention to IP and IP management strategies. The proportion of startups registering IP is low and IP-related disputes remain popular. Meanwhile, IP protection has a very important role for startups, management authorities and communities.

IP is an intangible property which creates high commercial value for the owner. Once IP protection is granted, the IP owner enjoy certain rights to the property, which are known as IP rights, and the IP after that becomes an important and a valuable asset.

## 2. Intellectual property of startups

Despite an upward trend in the absolute number of newly established enterprises in Vietnam in recent years, its growth rate is slowing down. In 2018, the number of newly established enterprises and the

---

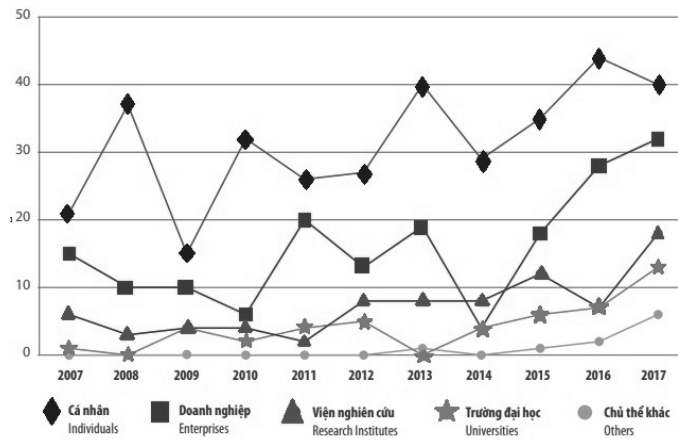
<sup>1</sup> The article is a part of the research project “Protection and development of intellectual properties in the Central Highlands in the new context of integration” (Code TN17/X04) led by Vu Tuan Hung, Ph.D, Institute of European Studies.

**Table 1: Annual rates of newly established and dissolved enterprises in Vietnam in 2014-2018**

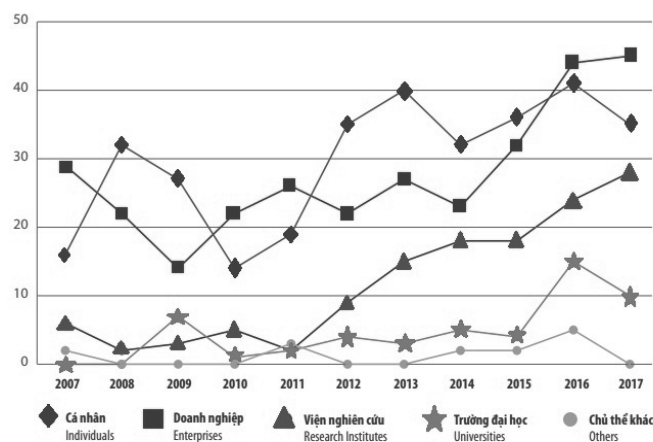
Year	2014	2015	2016	2017	2018
Growth rate (%)	-2.7	26.6	16.2	15.2	3.5
Number of enterprises	74,842	94,754	110,100	126,859	131,275
Dissolution rate (%)	-2.2	-0.63	31.8	-2.9	34.7

Source: Business Registration Management Agency (2014, 2015, 2016, 2017, 2018).

total registered capital were both record high with 131,275 businesses and VND 1,478,101 billion respectively (Business Registration Management Agency, 2018). Whereas, the number of dissolved enterprises is still comparatively high, particularly for the years of 2016 (31.8%) and 2018 (34.7%) (Table 1).

**Figure 1: Number of patents by groups of Vietnamese applicants, 2007-2017**

Source: NIPO Vietnam, 2018: 75.

**Figure 2: Number of useful patented inventions by groups of Vietnamese applicants, 2007-2017**

Source: NIPO Vietnam, 2018: 75.

Registration Management Agency, 2018). Whereas, the number of dissolved enterprises is still comparatively high, particularly for the years of 2016 (31.8%) and 2018 (34.7%) (Table 1).

One reason attributed to the situation is the policies for promoting the establishment of enterprises while not ensuring their development sustainability, particularly the policy of upgrading business households to enterprises and the startups movement in major cities like Ho Chi Minh City and Hanoi (Phuong Dong, 2018).

IP is in fact considered as a driving force to promote innovation and creative activities for the development of national IP, both in terms of quantity and quality, to contribute to the improvement of the creative capacity and the formation of a healthy competitive environment (Dinh Huu Phi, 2019).

Statistics show an increase in the number of registered IPs in Vietnam since 2014 together

with the expansion of newly established enterprises. In the 2013-2017 period, the average growth rate of invention/patent applications to the National Intellectual Property Office of Vietnam (NIPO Vietnam) was 6.5% per annum. In the same period, the number of processed applications, including approved and rejected cases, by the NIPO Vietnam increased significantly at 11.2% annually (NIPO Vietnam, 2018: 34) (Figure 1, Figure 2). This has proved an increasing awareness of business in general and startups in particular of IP protection in doing business and of the IP value and profitability through trading, exchanging, franchising, leasing, capital contribution, or creating competitive advantages.

However, startups in general have not paid much attention to investment for IP development and application in doing business. Some business owners are still not fully aware of IPRs in order to protect their rights and not to infringe upon the others (*Tin Tuc*, 2018).

The typical mistake that startups encounter is selecting the registered brandnames for their business or products and thus violate unintentionally the protected IPRs. There are cases where the illustration of some registered and protected brandnames are similar to the designs of existing products, leading to disputes between rights holders (Nhat Minh, 2017). Also, many technology-based startups do not study thoroughly the markets and fail to have their products registered since the same types are already available and protected.

In addition, it is also common that some entrepreneurs lack of solid knowledge and

practice about legal tools for the protection of their projects. As a result, they could not be able to defend their rights legally when being infringed, and then have to suffer losses and discouragement to continue their investment and business.

Many startups focus only on launching their business and investment attraction without considering or being afraid of IP registration for many reasons (Van Anh, 2018). Some business founders believe many difficulties hinder starting a business, such as administrative procedures, marketing expenses, governance strategies, or human resources. Startups think they would have to pay unnecessary fees that make up “intangible costs” for consultancy or IP registration (Vietnam Business Forum, 2017).

In fact, for many startups, only when they have started and introduced their products in the markets and called for investments, would they think of IP registration. However, without protected IPRs, their ideas/products are easily copied, stolen or used, leading to obstacles in marketing their own products, or IP-related disputes where startups (either they are the plaintiff or the defendant) would more or less bear losses. Whereas, startups often do not have enough resources and sometimes evidences to pursue IP dispute cases.

Very few rights holders in Vietnam register for IP protection abroad, even when their products are already available in foreign markets<sup>1</sup>. It is partly due to the legal process of IP registration overseas is relatively

---

<sup>1</sup> There were only 38 patents and 523 brands registered for IPRs protection in 2013-2017. (Nguyen Duyen, 2017).

complicated, costly and time consuming<sup>1</sup>. Indeed, many unregistered Vietnamese brands have been lost to other foreign IP holders and Vietnamese enterprises have to bought back the brands at very high prices. In some cases, unregistered brands also hinder the brand owners in penetrating their products in foreign markets, such as the cases of Buon Ma Thuot or Trung Nguyen coffee, Vinataba tobacco, Phu Quoc or Phan Thiet fish sauce.

Startups generally lack IP management strategies and do not associate IP management with their business activities and strategies. Therefore, there are overlaps in research and development among enterprises, leading to resource waste. Startups also lack capabilities in selecting competent research partners or identifying the subjects for IP protection. It stems from limited capacity of startups as well as their unclear business strategies. Very few enterprises have an IP management department while many of them do not take initiative in training employees for IP activities.

Besides, Vietnam's legislations on IP are still intricate and cumbersome. Despite a large number of instruction documents for execution, they still lack uniformity and consistency. Several regulations are not detailed and very ambiguous, leading to different interpretations and application, not to mention the low feasibility of some regulations since they are not really appropriate in Vietnam's current socioeconomic context (Dinh Huu Phi, 2019).

<sup>1</sup> IPRs registration in the United States is very costly and could be up to USD 100,000 - a huge amount of money for a startup (Pham Hung, 2018).

IP registration also takes long time to process due to the complicated specification form and time-consuming procedures<sup>2</sup>. The counterfeiting and piracy of protected products has not yet been fully dealt with while the sanctions are not strong enough and the financial penalties remain much lower than the earnings from counterfeiting.

### **3. Recommendations for improvement of IP registration and IPRs for startups**

#### *\* Central and local governments*

The central government should continue its policies for the development of an ecosystem and a favorable environment for startups. It requires the completion of an IP legal framework where IP regulations prescribe clear protection principles and are able to stop and prevent IPRs infringements. They need to satisfy the requirements in international treaties on IP protection. Exclusive licenses also should be selectively granted.

In order to enhance the state management of IPRs, it is necessary to have the effective coordination between government authorities and concerned organizations and individuals for perfecting IP legislations towards the improving transparency, longer duration of IP protection, stronger enforcement of IPRs in the digital environment, and strengthening civil measures for a gradual replacement of administrative measures.

Local governments should have policies and plans for IP sustainable development

<sup>2</sup> An IPRs registration process for a brandname at NIPO Vietnam could last up to 12 months (as prescribed), However, it could take enterprises an actual processing time of 18 to 24 months (My Huyen, 2018).

in the context of international integration. It is necessary for authorities at all levels to pay more attention, create a more favorable environment, and take effective measures to protect enterprises with their registered IPRs. At the same time, the IP officials should be trained for professional knowledge and understanding of international laws regarding IP protection and commercial and civil dispute settlement.

*\* Communities and consultants*

Many startups are not well aware of the importance of IPRs due partly to their lack of knowledge on IP protection. It is thus necessary to promote social awareness on IPRs, innovations, and the relations between IPRs and innovations among the communities of undergraduates and graduates as they are the next generations for startups.

In addition to the role of government authorities, the startup communities are also very important for direct support to startups. There should be policies and measures that facilitate the cooperation and connection between these communities for better supporting each other and creating a solid and sustainable foundation for the development of startups. A network of IP and technology transfer centers at universities, research institutions, and enterprises should be set up to strengthen the linkages between these entities.

Startups at their early stages are faced with obvious difficulties, particularly when they lack a legal background. These would hinder startups from shortening their product launching stage and moving forward with their business models. Thus, the establishment of professional consultancy

services is needed for supporting startups in their IP development and management.

*\* Enterprises*

IPRs should be the very first issue to be taken care of when a startup forms and develops their ideas. To avoid potential problems and disputes, it is necessary to keep the ideas confidential until the official launching time, or gradually disclose them to partners through non-disclosure agreements (Khoa Hoc Tre, 2016). Alternatively, startups could register their IPRs for their business ideas right before bringing them public or registering their business (*Tin Tuc*, 2018). Startup owners could register their brandnames, copyrights, inventions, industrial designs, etc. under their personal names to prevent infringements or at least to avoid potential IPRs violations while running their business in the future (Van Anh, 2018). When registering for IP protection, startup owners should concurrently introduce similar alternatives, both in terms of design and brandname, in order to prevent counterfeiting (Khoa Hoc Tre, 2016). In case of IPRs infringements, enterprises should know how to protect their legitimate rights and take legal measures by requesting concerned agencies to handle cases with administrative, civil or criminal measures (Minh Thuy, 2017). Each startup must be aware of the IP importance to the development of its business and know well about its IPRs.

Enterprises need to not only invest properly in the research and development and IP protection, but equip themselves and their employees with IP knowledge also for better use of the IP. Registration without using IP would be meaningless,

costly and wasteful for enterprises. The development of an IP management strategy helps enterprises minimize risks during the exploitation of their IPs, develop partnerships and improve their competitiveness. Enterprises might manage the IPs by themselves or rely on legal services (or lawyers) through IP management contracts. In the process of international integration, Vietnamese enterprises have to participate in an international competition with strict requirements on the enforcement of IP regulations. Businesses therefore need to register their IPs to protect their rights and minimize IP related risks.

Vietnam is now the member of the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty (PCT), the Madrid Agreement Concerning the International Registration of Marks. Therefore, businesses need to know about IP registration for the proper protection of their brands and products both at home and abroad. Nevertheless, businesses need to focus their resources on the potential export markets for better efficiency. They could rely on the information from management authorities, professional associations and IP communities for appropriate IP solutions that are suitable for their development strategies.

### Conclusion

Many startups are not fully aware of the importance of IPRs and rather focus on business establishment and investment attraction, which is originated from the limited capital investment of businesses and also due to bulky IP legislations and time-consuming procedures in

Vietnam. Therefore, in order to promote IP registration among startups, it is necessary to set up a uniform system of IP legislations and measures in cooperation with IP consultancy organizations, startup communities and enterprises. Particularly in the context of international integration with the new-generation free trade agreements, there are strict requirements on IP management at a higher and more comprehensive level. The enforcement of IPRs thus need to be tightened through with administrative, civil and criminal measures □

### References

1. Van Anh (2018), *The Ignorance of Startups about Their own Intellectual properties*, <https://vov.vn/khoi-nghiep/doanh-nghiep-khoi-nghiep-con-tho-o-voi-tai-san-tri-tue-cua-minh-853792.vov>
2. Tin Tuc Journal (2018), *Startups Still Pay no Attention to IPRs Registration*, <https://baotintuc.vn/kinh-te/doanh-nghiep-khoi-nghiep-van-tho-o-voi-viec-dang-ky-so-huu-tri-tue-20181226081627682.htm>
3. Business Registration Management Agency (2014a), *Current Situation of Business Registration in December 2014*, <https://dangkykinhdoanh.gov.vn/vn/tin-tuc/598/4113/tinh-hinh-chung-ve-dang-ky-doanh-nghiep-thang-12-va-nam-2014.aspx>
4. Business Registration Management Agency (2014b), *Businesses of Dissolution, Suspension and Returning to Operation in 2014*, <https://dangkykinhdoanh.gov.vn/vn/tin-tuc/598/4114/>

- tin-hinh-doanh-nghiep-giai-the--tam-ngung-hoat-dong-va-quay-tro-lai-hoat-dong-nam-2014.aspx
5. Business Registration Management Agency (2015a), *Current situation of Business Registration in December 2015*, <https://dangkykinhdoanh.gov.vn/vn/tin-tuc/598/4181/tinh-hinh-chung-ve-dang-ky-doanh-nghiep--thang-12-va-nam-2015.aspx>
  6. Business Registration Management Agency (2015b), *Businesses of Dissolution, Suspension and Returning to Operation in 2015*, <https://dangkykinhdoanh.gov.vn/vn/tin-tuc/598/4182/tinh-hinh-doanh-nghiep-giai-the--tam-ngung-va--quay-tro-lai-hoat-dong-thang-12-va-nam-2015.aspx>
  7. Business Registration Management Agency (2016a), *Current Situation of Business Registration in December 2016*, <https://dangkykinhdoanh.gov.vn/vn/tin-tuc/598/4253/tinh-hinh-chung-ve-dang-ky-doanh-nghiep--thang-12-va-nam-2016.aspx>
  8. Business Registration Management Agency (2016b), *Businesses of Dissolution, Suspension and Returning to Operation in 2016*, <https://dangkykinhdoanh.gov.vn/vn/tin-tuc/598/4252/tinh-hinh-doanh-nghiep-quay-tro-lai-hoat-dong--tam-ngung-va-giai-the-thang-12-va-nam-2016.aspx>
  9. Business Registration Management Agency (2017a), *Current Situation of Business Registration in December 2017*, <https://dangkykinhdoanh.gov.vn/vn/tin-tuc/598/4337/tinh-hinh-chung-ve-dang-ky-doanh-nghiep--thang-12-va-nam-2017.aspx>
  10. Business Registration Management Agency (2017b), *Businesses of Dissolution, Suspension and Returning to operation in 2017*, <https://dangkykinhdoanh.gov.vn/vn/tin-tuc/598/4338/tinh-hinh-doanh-nghiep-quay-tro-lai-hoat-dong--tam-ngung-va-giai-the-thang-12-va-nam-2017.aspx>
  11. Business Registration Management Agency (2018), *Current Situation of Business Registration in December 2018*, <https://dangkykinhdoanh.gov.vn/vn/tin-tuc/598/4897/tinh-hinh-dang-ky-doanh-nghiep-thang-12-va-nam-2018.aspx>
  12. National Intellectual Property Office of Vietnam (NIPO Vietnam) (2018), *Annual Report on Intellectual Property 2017*, [http://noip.gov.vn/noip/resource.nsf/vwResourceList/86BBBBBF8742DE6D-34725834600148D08/\\$FILE/Bao%20cao%20SHTT%202017.pdf](http://noip.gov.vn/noip/resource.nsf/vwResourceList/86BBBBBF8742DE6D-34725834600148D08/$FILE/Bao%20cao%20SHTT%202017.pdf)
  13. Nguyen Duyen (2017), *Brand protection abroad: The cooperation of Multiple Parties*, <https://congthuong.vn/bao-ho-thuong-hieu-o-nuoc-ngoai-can-su-ho-tro-cua-cac-ben-111978.html>
  14. Phuong Dong (2018), *Justifications for the Monthly Termination of 7,000 Enterprises*, <https://vnexpress.net/kinh-doanh/ly-do-7-000-doanh-nghiep-dong-cua-moi-thang-3836155.html>
  15. My Huyen (2018), *Should Startups Avoid Intellectual Property Rights Registration?*, <https://enternews.vn/startup-co-nen-ne-tranh-dang-ky-quyen-so-huu-tri-tue-135463.html>
  16. Pham Hung (2018), *Intellectual Property Rights: The Leverage for the Thrive of Startups*, <https://www.>

- vietnamplus.vn/so-huu-tri-tue-don-bay-giup-doanh-nghiep-khoi-nghiep-lon-manh/503065.vnp
17. Khoa Hoc Tre (2016), *Intellectual Property Rights: the Buffer for Startup Owners*, <http://www.khoahoctre.com.vn/tin-tuc/hoi-thi---giai-thuong/giai-thuong-sv-nckh---eureka/phong-su/hoat-dong-khoa-hoc-cong-nghe/vuon-uom/tin-tuc/nhip-song-tre/hoat-dong-doan---hoi/so-huu-tri-tue:-luoi-phong-ve-cho-nguoi-khoi-nghiep-1470365315.html>
  18. Nhat Minh (2017), *Challenges Facing Intellectual Property Rights Protection*, <http://www.nhandan.com.vn/xahoi/item/32795102-thach-thuc-voi-cac-chu-the-trong-bao-ve-quyen-so-huu-tri-tue.html>
  19. Dinh Huu Phi (2019), *Improving Intellectual Property Protection in Vietnam in the context of Development and International Integration*, <http://www.tapchicongsan.org.vn/Home/Nghiencuu-Traodoi/2019/53690/Nang-cao-hieu-qua-cua-hoat-dong-so-huu-tri-tue-o.aspx>
  20. Minh Thuy (2017), *Law on Intellectual Property Protection for Startups*, <https://khoinghieptre.vn/luat-bao-ho-quyen-so-huu-tri-tue-cho-cac-khoi-nghiep>
  21. Tran Quang Vinh (2018), *Supporting Startups: Untangle the Knots of Intellectual Property Rights*, <https://www.thesaigontimes.vn/274107/Tiep-suc-khoi-nghiep-Go-vuong-quyen-so-huu-tri-tue.html>
  22. Vietnam Business Forum (2017), *Intellectual Property Rights: Paving the Ways for Successful Startups*, <http://vccinews.vn/news/17304/so-huu-tri-tue-mo-loi-cho-doanh-nghiep-khoi-nghiep-thanh-cong.html>