Studying Intellectual Property Valuation According To Vietnamese Law

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Abstract:
The objective of the article is to assess the current situation of intellectual property valuation in Vietnam, the reality of Vietnam's law on intellectual property valuation. By qualitative research method based on previous studies, the author has assessed the status of Vietnamese law on intellectual property valuation. The valuation of intellectual property in Vietnam is still very inadequate due to many different reasons. Mainly due to the lack of State regulations and the lack of consistency among laws.

Keywords: *Intellectual property valuation, Vietnam law*

1. Introduction

Intellectual property is an intangible asset which cannot be determined by its own physical characteristics but has great value and is capable of making a profit. Intellectual property is a measure of business efficiency, competitiveness and the ability of enterprises to grow in both the present and the future. Therefore, valuing intellectual property is a very important job, helping businesses know the value of their intellectual property, from which there are appropriate policies, strategies and business plans.

In the trend of economic integration, the competitive pressure on Vietnamese enterprises is increasingly fierce. In order to improve competitiveness, ensure the existence and development, businesses are forced to increase investment in science and technology, application of intellectual property to improve quality and lower costs. product. Intellectual property must become one of the important sources of capital in production and business activities of enterprises.

However, the absence of complete legal documents on intellectual property valuation is one of the causes causing difficulties for the implementation of investment and business activities ... related to intellectual property, does not realize its full potential in creating business opportunities.

The article evaluates the current situation of intellectual property valuation according to Vietnamese law. The composition of the article in addition to the introduction includes: Overview of research, Vietnamese laws on intellectual property valuation, some specific cases and conclusions.

2. Literature review

2.1. Asset

Property is the core center of all social relations in general and the legal relationship in particular. The concept of property has long been mentioned in practice as well as in legal science.

In the most general sense, property is understood as "material or spiritual wealth valuable to the owner." According to this definition, the scope of the property is not clearly defined. Along with the change of time, of social conditions, of human perception of material values, the scope of assets over each period is viewed at different angles.

In accounting terms, assets are understood as resources owned or controlled by an enterprise, formed from the results of past business activities and intended to bring future economic benefits to the enterprise. enterprise. This definition outlines the basic characteristics of assets within the relationship with the enterprise: it is under the control of the enterprise, formed from past transactions and is likely to benefit. business, to help identify and record assets on the accounting books of the business.

In the legal documents, the concept of property is stipulated in Article 163 of the 2005 Civil Code: "Property includes objects, money, valuable papers and property rights". According to this regulation, assets exist only in one of four categories: objects, money, valuable papers and property rights. Regarding the provisions of Article 163, a number of other articles providing for the classification of properties in the Civil Code such as Article 174, Article 175, Article 176, Article 177, Article 178, Article 179, Article 180 and Article 181. Through the provisions of these laws, it can be seen: the concept of property is given in a manner that lists the types of assets, without defining the scope of the assets; regulations listing types of assets not yet specified in terms of money and valuable papers; the scope of property rights is not well defined and ownership regulations seem to be separate from properties.

Thus, it can be seen that the understanding of assets differs according to each approach. This difference comes from the practicality of the concept of property. Property is an instrument of social life, serving the production and consumption needs of society. Therefore, depending on the angle of approach, each purpose of use, the concept of assets and the classification of assets varies. However, lawmakers also need to develop a definition of property, stating the basic characteristics of the property to have a basis for determining the scope of the property.

From a legal perspective, ownership is considered as one of the basic characteristics of an asset. Resources are considered to be an asset to an organization or an individual only if that organization or individual has ownership (that is, possession, use and disposition) of that resource. Ownership is the basis for organizations and individuals to exploit the values of assets and prevent infringement of other entities on their properties. Therefore, the concept of assets from a legal perspective can be understood as resources of physical or spiritual value owned by an organization or individual, recognized and protected by law.

2.2. Intellectual property

Assets of a business are generally divided into two categories: tangible assets - including factories, machines, finance and infrastructure, intangible assets - including human resources and technical know-how. Ideas, strategies, business plans, brands, designs and other intangible results are created by the company's creative and innovation talents. Traditionally, tangible assets are the main value of a company and are considered to be crucial in determining the competitiveness of a business in the market. In recent years, intangible assets, including intellectual property, are becoming more and more valuable than tangible assets.

Intellectual property is a capital of the production cycle, created by humans through thinking and creative activities in the fields of industry, science, literature and the arts.

Regarding the concept of intellectual property, in legal documents as well as in practice, there are the following terms: Intellectual property, Intellectual property rights.

As defined by the World Intellectual Property Organization: Intellectual property is a term referring to creative products of the brain such as inventions; literary and artistic products; and logos, names and images used in commerce. Intellectual property is classified into two types:

- Industrial property: including inventions, trademarks, industrial designs and geographical indications.

- Copyright: includes literary works (such as novels, poems, plays), movies, music, works of art (drawings, paintings, images and sculptures) and designs architectural design.

In the book "WIPO Intellectual property handbook" of the World Intellectual Property Organization, intellectual property in the broadest sense is understood as follows: "Intellectual property is the legal right stemming from intellectual activities in the fields of industry, science, literature and the arts. ”

Thus, it can be understood that intellectual property is the possession of intellectual property.

However, the core issue in this concept is that "ownership" must be legal, that is, must be recognized by the State. The fact that the State recognizes a certain subject as an author / owner of intellectual property and grants the author / owner of such intellectual property rights a right to an intellectual property called intellectual property rights wisdom. Intellectual property rights allow creators or owners of inventions, trademarks or copyrights to exploit the benefits of using or investing in those assets.

The 2005 Intellectual Property Law (amended and supplemented in Law No. 36/2009 / QH12 amending and supplementing a number of articles of the Intellectual Property Law) stipulates: "Intellectual property rights are the rights of organizations. , individuals with respect to intellectual property, including copyrights and copyright-related rights, industrial property rights and rights to plant varieties”

- Subjects of copyright and rights related to copyright: literary, artistic and scientific works; cavalcade; audio recordings, video records, broadcasts, encrypted satellite signals of the program.

- Objects of industrial property: inventions, industrial designs, semi-conductor integrated circuit layout designs, trademarks, trade names, geographical indications, business secrets.

- Type of tree.

Joint Circular No. 39/2014 / TTLT-BKHCN-BTC dated 17 December 2014 stipulating the valuation of results of scientific research and technological development and intellectual property using the state budget. Intellectual property is as follows:

Intellectual property is an intangible, creative, identifiable, controllable asset that is capable of bringing economic benefits to its owner. Intellectual property includes objects that are protected and objects not protected according to the provisions of intellectual property law such as inventions, business secrets, layout designs of semiconductor integrated circuits, industrial designs. industry, trademarks, trade names, plant varieties, computer programs, scientific works, innovations, animal breeds, technical designs.

As such, Vietnamese law recognizes that intellectual property is a type of property associated with creative human achievements. Those creative achievements, or the assets derived from creative activities in the field of literature and art (literary, artistic and scientific works), may also be properties from technical creative activities (inventions, utility solutions, semi-conductor integrated circuit layout design), either from applied art creation activities (industrial designs) or from activities creativity in business (brands, trade names, business secrets, ..).

The concept of intellectual property is not identical with the concept of "intellectual property". In addition to intellectual property objects protected by intellectual property rights, intellectual property also includes objects not protected under intellectual property law such as technical designs. , initiative, pet breeds, ...

When considering intellectual property from the perspective of an enterprise's asset type, it is identified in the concept of intangible assets. According to the provisions of the Criteria of asset price appraisal No. 13 on Valuation of intangible assets (issued together with the Circular No. 06/2014 / TT-BTC of January 7, 2014 of the Minister of Finance): Intellectual property and intellectual property rights are an intangible asset.

2.3. Characteristics of intellectual property

Intellectual property is a form of intangible fixed assets, so it has all the basic characteristics of the form of intangible fixed assets:

- Intangibility: intellectual property exists mainly in the form of information and knowledge, so it is difficult to perceive the existence of this property by human senses but only by perception. Intellectual property is usually realized when applied to produce or attach to goods and services in the course of production and business.

- Determination: Intellectual property is a type of intangible asset that is identifiable. Intellectual property is usually expressed in defined physical forms (descriptions, lists, formulas, drawings, etc.), so that humans have the ability to recognize and spread without. limited and may be owned by more than one person. At the same time, each intellectual property is an independent object, has a defined content / nature, has a defined function / utility / meaning, or even has a defined value.

An intellectual property can be identified separately when the business can lease it to sell, trade, or gain specific economic benefits in the future. Assets that only generate future economic benefits when combined with other assets but are still considered separately identifiable assets if the enterprise can ascertain future economic benefits due to assets that bring.

Control ability: Because intellectual property is capable of being materialized, it is subject to the intentional human influence, such as control, production, exploitation / use, maintenance, storing, developing, buying, selling, exchanging, leasing, contributing capital ... in order to bring certain results, the most important of which is to create value. An enterprise retains control over an intellectual property if it has the right to obtain future economic benefits that it brings, and also has the ability to restrict the access of other entities to the benefits. Useful. The firm's ability to control future economic benefits from intellectual property typically originates from intellectual property rights over such assets.

- Profitable characteristics: Due to the nature of the assets, the intellectual properties are capable of generating profits (creating value), that is, when being exploited, used, sold, leased, exchanged, assets Intellectual property has the ability to bring income in cash or other assets to the person who controls that property. According to the International Federation of Accountants (IFAC), in 1998, about 50% to 90% of the value created by a company is due to the management of intangible assets.

In addition, intellectual property has its own characteristics, distinguished from other forms of intangible fixed assets in creativity and innovation.

- Creativity and innovation: Intellectual property is the result of creative thinking activities, an innovation based on existing knowledge. It is the result of innovative innovations that have worked in the past, or innovative new representations of old ideas and concepts. The unlimited development of intellectual property is due to the creation and innovation itself.

2.4. Valuation of intellectual property

There are many reasons for the need for valuation of intellectual property in economic and legal activities such as mortgage and deposit, insurance, business restructuring (dissolution, merger and acquisition). , equitization), dispute resolution, accounting of the company's financial balance sheet, pricing and methods of intellectual property transactions, management information and business planning, etc. require pricing with its own approach, issues and related considerations even though it is possible to use the same valuation methods. Intellectual property valuation activities are mainly applied in the following cases:

- Transferring, licensing, franchising, ... intellectual property:

As a form of property, intellectual property may be transferred in whole or in part, through transactions such as buying, selling, licensing, joint ventures or doing business in relationships. inside the business or with other businesses. In most of these situations an understanding of the value of intellectual property is required. In order to set a reasonable transfer fee, intellectual property needs to be priced. The intellectual property owner wishes to have the necessary income level based on the calculation of past expenses spent on building intellectual property, and opportunity costs for exploitation of intellectual property. The assignee wishes to find out how much the value of the intellectual property can create benefits for production and business activities. When the transfer value is related to cross-border payments, tax problems often arise. At present, intellectual property transactions have reached nearly half of the total global transaction value.

Valuation of intellectual property is also a content in accounting activities of enterprises. Accounting for corporate finance must be conducted in accordance with accounting standards, including the accounting of intangible assets such as intellectual property. The valuation of intellectual property is difficult to achieve accuracy and changes frequently, thus leading to the instability of the balance sheet, even when a certain discount rate is applied. Failure to adequately reflect such factors will create unrealistic values, i.e., announcements of the financial situation of the company to the tax authorities and the shareholders of the business will not be accurate. US Federal Accounting Standard (FAS) 141 and 142, issued in 2001, apply to all forms of intangible assets that give rise to rights protected by laws and regulations. contractual rights. The impact of these standards is enormous, for example, Boing, which applied FAS 142 in the first quarter of 2002, required a record value of US $ 2.4 billion for those subject to this standard. The International Accounting Standard (IAS) 38 of Europe for the accounting of intangible assets was issued in 1998, the British financial reporting standard is FRS 10 on "reputation and intangible assets". 1997 all required intangible asset valuation. Vietnamese Accounting Standard No. 04 deals with intangible fixed assets, guides the principles and methods of determining the value of intangible fixed assets (including intellectual property) when making a balance sheet. accounting of the business.

2.5. Methods of pricing intellectual property

The value of intellectual property is based on current and future returns, so determining the value of intellectual property is more difficult and complex than in other forms of intangible assets. Economists have studied to find suitable valuation methods, but so far there has been no conclusions about the most appropriate and accurate valuation methods. In general, the following 3 valuation methods are commonly recognized in the valuation of intellectual property:

Cost-based method: A cost-based pricing method that creates an intellectual property that is similar to the asset to be valued to estimate the market value of the asset to be valued. Using this method, one either identifies and synthesizes past costs incurred during the creation and development of the intellectual property, the total cost considered as the value of such intellectual property. ; or, identify and synthesize the costs needed to create a potentially profitable future intellectual property like the asset being valued.

- Income method: A valuation method based on the conversion of future net income streams that can be obtained from the exploitation of intellectual property which needs to be valued into the current capital value of assets to Estimate the market value of the intellectual property to be assessed. This method focuses on assessing the profitability of intellectual property. The basic principle is that the value of intellectual property can be measured by the present value of net profit assuming that intellectual property can generate income. This method is widely recognized as reliable in valuation of intellectual property.

- Market method: A valuation method based on the analysis of prices of intellectual properties similar to assets which need to be priced successfully traded or being purchased or sold on the market at the time of valuation. price or near the time of valuation to estimate the market value of the assets to be valued.

3. Vietnamese law on valuation of intellectual property

Pricing intellectual property is a complex and relatively new issue in Vietnam. Current laws governing this field have not been codified, but are scattered in many different legal documents, spread over the fields of business, finance, science and technology, etc. an institution that controls the value of intellectual property, the law on intellectual property valuation has provided for basic issues in intellectual property valuation activities, initially creating a legal basis to regulate adjusting intellectual property valuation activities such as when to set prices, how to set them, and those who set prices.

Basic contents of the current law on intellectual property valuation include:

- Group of legal provisions on cases of valuation of intellectual property:

In fact, there are many reasons leading to the need to value intellectual property. Therefore, current laws regulating cases in which intellectual property valuation is needed are also quite diverse, including: determining the value of assets contributed as capital and determining the value of enterprises' assets on the balance sheet.

accounting, determining the value of equitized enterprises, determining the value of state-owned intellectual property when assigning ownership. The above cases of valuation of intellectual property are prescribed in legal documents on enterprise establishment, accounting standards, documents on equitization of enterprises, and legal documents on science. and technology. Each re-valuation case has its own provisions on methods of determining the value of intellectual property and the subject matter of the valuation.

- Group of legal provisions on methods of pricing intellectual property:

Methods of pricing intellectual property are prescribed in the system of Vietnam valuation standards. Valuation Criteria No. 13 on valuation of intangible assets has outlined approaches in determining the value of intellectual property, including: the approach from cost, the approach from the market and approach from income. Each approach includes multiple pricing methods. Depending on the characteristics of the object of valuation, the purpose of the valuation may be selected by the valuation method.

- Group of legal provisions on organizations and individuals providing intellectual property valuation services:

Intellectual property valuation service is a conditional business in Vietnam. Organizations and individuals wishing to provide intellectual property valuation services must comply with the conditions for establishment and operation prescribed in legal documents in the fields of appraisal of prices and science and technology. There are two models for organizing intellectual property valuation: valuation enterprises in accordance with the law on valuation and support centers for intellectual property valuation in accordance with the law on organizing scientific services. study and technology. Depending on the operating model (whether a business or a science and technology service organization), an IP asset valuation organization must meet different operating conditions. The law also stipulates the professional conditions for price appraisers and ethical codes of practice in asset valuation. These regulations have created a legal basis for the development of the type of intellectual property valuation service in Vietnam.

4. Some specific cases of Vietnamese law on intellectual property valuation

4.1. Valuing intellectual properties to serve the purpose of equitizing state enterprises

Equitization is the abbreviation for the conversion of 100% state-owned enterprises into joint stock companies in Vietnam. This is a process that started to be tested in Vietnam in the early 1990-1991 period and officially started in 1992.

An extremely important stage in equitization is that the enterprise must determine the value of its assets to calculate into the stock value of its shareholders upon equitization. The determination of the right enterprise value on the one hand ensures the practical benefits of the State and its members when equitizing State enterprises, and on the other hand also creates the confidence of individuals and organizations. when buying shares of enterprises. The first legal documents on equitization mainly focused on the valuation of tangible assets and land use rights, without the provisions on the valuation of other intangible assets. That has intellectual property. This has reduced the value of equitized enterprises, especially for businesses with large amounts of intellectual property and high income streams.

In fact, the process of equitisation has shown that, for the majority of enterprises in the process of valuing businesses, they often do not consider intellectual properties. There are also enterprises when equitization takes into account the value of intangible assets but does not have a specific definition but only put in the item called "advantages of the enterprise". This has reduced the value of enterprises when equitizing. The equitization of Trang Tien Joint Stock Company in 2000 caused a stir when the value of the company's assets was priced too low compared to the brand value as well as the value of land use rights of the company. . Founded in 1959, Trang Tien Ice Cream of the Company has become a famous culinary brand not only in Hanoi but also a brand known nationwide. However, the real value of this brand is not only that but also in the 1,500m2 land area located in the heart of Hanoi city. However, the company's asset value was only 3.2 billion VND in 2000. This is a figure that is very controversial at the moment. Besides the value of land use rights, the issue of trademarks and trade names of the company is an issue with many different points of view. So far, the equitization case of Trang Tien Joint Stock Company is a typical example of the low possibility of real estate valuation and branding of State-owned enterprises when equitization. In addition, there are also businesses who have early realized the position and value of intellectual property in their asset structure such as the case of the "Da Lan" toothpaste brand sold by Son Hai Company. back to Colgate Palmolive (United States) for US $ 3 million in 1995, higher than the value of the Company's tangible assets; P / S toothpaste brand of P / S chemical company is valued and bought by Unilever (UK - Netherlands) for more than 5 million USD (equivalent to the whole factory's value in the above examples. The above examples show that the undervaluation and undervaluation of intellectual property when equitizing enterprises have reduced the value of enterprises, damaging the interests of The state and negatively affect the operation of enterprises after equitization.

4.2. Valuation of intellectual property for accounting, accounting, financial statements and monitoring of asset fluctuations throughout the business process

In the structure of an enterprise's assets, intellectual property is a type of intangible fixed asset and listed in the concept of intangible fixed assets, including: trademarks, computer software, copyrights and patents (Decision No. 149/2001 / QD-BTC dated December 31, 2001 of the Minister of Finance promulgating Vietnamese Accounting Standard No. 04 on intangible fixed assets).

As a basis for recognition and accounting on accounting books, intangible fixed assets must be determined with their initial values at cost: are all expenses incurred from the time the intangible assets are met. defined and navigated

standards for recognizing intangible fixed assets until intangible fixed assets are put into use. Historical costs of intangible fixed assets created from within an enterprise include:

- Cost of raw materials, materials or services used in the creation of the property;
- Salaries, wages and other expenses related to hiring employees directly involved in the creation of assets;
- Other costs directly related to the creation of the property, such as expenses for registration of legal rights, depreciation of invention patents and licenses used to create such assets;
- General production costs are amortized on a fair and consistent basis in assets (for example, depreciation of buildings, machinery and equipment, insurance premiums, factory rent, equipment).

Costs that bring future economic benefits to enterprises include the cost of establishing a business, the cost of training employees and advertising expenses incurred in the period before the operation of the newly established enterprise, Costs for the research period, etc. are not included in the determination of historical cost of intangible fixed assets, but are recorded as operating expenses in the period or gradually allocated to production and business costs. for a maximum period of no more than 3 years. Trademarks, distribution rights, customer lists and similar items formed within an enterprise are not recognized as intangible fixed assets. Comparing with the international accounting standards on intangible fixed assets (IAS 38), the accounting standard No. 04 inherited the provisions of IAS 38 on how to determine the cost of intangible fixed assets. . The construction is based on the international accounting standards IAS 38 on intangible fixed assets, which ensures the Vietnamese accounting standards system to be more open and transparent in the financial statements of enterprises. , reflecting the transactions of the market economy, meeting the requirements of international integration.

Circular No. 45/2013 / TT-BTC dated April 25, 2013 of the Ministry of Finance guiding the regime of management, use and depreciation of fixed assets that has added the objects of intellectual property considered are intangible fixed assets, including: invention patents, literary, artistic, scientific, product works, results of art performances, phonograms, video recordings and broadcasting programs. waves, coded satellite signals, industrial designs, semiconductor integrated circuit layout designs, business secrets, trademarks, trade names and geographical indications, plant varieties and objects propagation materials (Article 6). This provision has quite a complete list of intellectual property objects protected by intellectual property rights in accordance with the Law on Intellectual Property, creating conditions for enterprises to recognize and record all subjects. His intellectual property is in accounting books.

Regarding the management and depreciation of intellectual property during use, Circular No. 45/2013 / TT-BTC stipulates: during the use process, the remaining value in the accounting books of intellectual property is determined on the basis of cost less the accumulated depreciation of assets (Article 5). The time of depreciation of intellectual property protected intellectual property rights is the protection period inscribed in the protection title as prescribed (excluding the extended term). For unprotected intellectual property, the time of depreciation is determined by the enterprise itself, but not more than 20 years (Article 11).

On the basis of reference to international accounting standards on intangible fixed assets, the law of Vietnam has allowed the recognition of intellectual property as a type of intangible fixed asset on the balance sheet of business. Karma. The law has detailed and specific provisions on the determination of the original cost of intellectual property, instructions on how to depreciate the asset and determine the value of the intellectual property during its use. Karma. This is the basis for businesses to identify and manage their intellectual property in accounting books as well as perform activities related to intellectual property.

5. Conclusion

Continuing to improve Vietnam's legal system of valuation of intellectual property is not only one of the tasks of completing the specialized legal system of intellectual property and intellectual property rights. It is also a requirement of the economy, business environment and business activities of enterprises.

Current Vietnamese law provides for the valuation of intellectual property in documents in different fields. This is one of the causes leading to inconsistencies in the law on valuation of intellectual property (the list of valuation intellectual property objects, methods of valuation in documents is not unified). Therefore, in order to create a consistency in the system of legal documents on intellectual property, to create favorable conditions for the study and application of the law on intellectual property valuation, regulations on valuation of intellectual property in a unified document: developing a Government decree regulating intellectual property pricing. This solution not only resolves contradictions and inadequacies in the valuation of intellectual property, but also is a standard for the valuation of intellectual property in the future to be more synchronized. Objects governed by this Decree are types of intellectual property protected by intellectual property law and transferable in civil transactions.

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