

LAW ON MANAGEMENT AND DEVELOPMENT OF INTELLECTUAL PROPERTY RIGHTS OF SMALL AND MEDIUM ENTERPRISES: A QUALITATIVE CASE STUDY IN VIETNAM

Tran Thanh Khoe¹, Nguyen Thanh Phuong²

^{1,2} Faculty of Law, Nam Can Tho University

Abstract: Innovative start-up activities of business subjects are increasingly popular with many forms, besides developing products, high-quality human resources, mobilizing capital, it can be mentioned the creation of and exploiting intellectual property rights in creative start-ups are receiving high expectations, the most attention is in formulating development policies, it can be said that this is an asset that creates profits. competitive advantage for start-ups in the process of entering and expanding the market, Protecting intellectual property rights well, contributing to attracting investment capital into businesses, limiting risks, and counting prevent the infringement of competitors. However, this activity has not been studied in depth from a legal perspective, especially the lack of a legal framework to support the establishment, exploitation, management and development of intellectual property rights of start-ups. creative. creative.

Keywords: Management, intellectual property rights, small and medium enterprises

1. The role of intellectual property rights in creative startups

Intellectual property assets help startups enter the market. Business entities can participate in the market perfectly if they are properly invested in capital, technology, human resources, as well as benefit from policies to minimize business operating costs. In a business environment with healthy competition, businesses need to build unique product strategies to survive and expand the market. For creative startups, the main strategy is products that are new and useful to consumers. Therefore, creative startups

that exploit intellectual property assets will be a prerequisite for entering the market and at the same time building a foundation for future development.

However, the operations of innovative startups often face high risks. Normally, the start-up phase of a business is often the most difficult period, because the business is just starting to penetrate the market, does not have a large capital source, does not have a stable number of customers and business partners, Lack of experience in business management and business operations. In addition to common difficulties like other newly established businesses, creative startups also encounter unique difficulties, such as: new experiments are often difficult to succeed from the beginning; the market does not accept or is slow to accept new products and services; New ideas, solutions, and business models are easily imitated by other businesses or infringe intellectual property rights. Therefore, creative startups often face many risks in both technical, financial and legal aspects. According to statistics, up to 80% of startup projects fail, 25% of new businesses do not survive more than 1 year; Only 10% of businesses survive after 5 years and only 6% in the 10th year (Phan Vu 2023).

Because creative startups are always associated with creative ideas and new solutions, the process of turning ideas into products and services must happen quickly to capture business opportunities. Reality shows that when many start-up businesses start providing new products and services on the market, only a short time later there are other businesses providing similar products and services.

Intellectual property assets create capacity and competitive advantage for startups. Starting a business by exploiting intellectual property rights can be considered a relatively new reason in startup activities, and is also a factor that brings competitiveness to creative startups when entering the market. market, and at the same time a tool for businesses to achieve high profits and sustainable development. Creative and breakthrough solutions of businesses are a particularly important factor, not only clearly reflecting the characteristics of innovative start-up businesses but also being the deciding factor in the success or failure of the business. startup business.

Startups with new product ideas, creative designs, and attractive brands, when registered to establish ownership as intellectual property assets, will bring many values

and benefits. competitive position for businesses. Establishing ownership of intellectual property assets is important evidence to convince potential investors of a business in the process of raising capital and enhancing competitive resources in the market.

2. Legal regulations on supporting start-up businesses based on the exploitation of intellectual property rights

Innovative start-up enterprise is a new term that has recently appeared in our country, officially defined for the first time in the 2017 Law on Support for Small and Medium Enterprises . Creative startup activities in Vietnam are becoming more and more popular in many diverse forms, and are receiving a lot of expectations and attention in business development policies. Therefore, the Document of the 13th Party Congress set out the requirement to "build and perfect the legal framework, test specific mechanisms and policies to promote... creative startups" in order to "develop and improve the operational efficiency of the innovative, business-centered startup ecosystem." (Communist Party of Vietnam 2021).

Criteria for identifying innovative startups. According to Clause 2, Article 3 of the 2017 Law on Support for Small and Medium Enterprises, "Innovative small and medium-sized startups are small and medium-sized enterprises established to implement ideas on the basis of exploiting intellectual property." intelligence, technology, new business models and the ability to grow rapidly" This explanation is very abstract, especially the phrase: "capable of rapid growth". Currently, there are no regulations explaining what constitutes a creative startup with the ability to grow rapidly. However, in Clause 1, Article 20 of Decree No 80/2021/ND-CP guiding the Law on Support for Small and Medium Enterprises to recognize the identification of innovative small and medium-sized start-up enterprises based on the exploitation of intellectual property assets, specifically such as "production, trading in products formed from inventions, useful solutions, industrial designs, semiconductor integrated circuit layout designs, computer software, mobile phone applications, cloud computing, seeds new livestock breeds, new crop varieties, new aquatic breeds, new forestry crop varieties", so in

practice it is difficult to support small and medium-sized enterprises to start innovative startups because there are no criteria to evaluate the ability to increase grow in the future.

Market entry procedures for innovative startups are still cumbersome. In reality, entities establishing creative startups still have to face many other types of administrative procedures such as procedures for applying for business licenses for conditional investment and business sectors; tax registration and payment procedures; procedures for exporting goods, procedures for registering intellectual property rights, licenses to establish websites, etc. When carrying out these procedures, subjects must prepare many sets of documents and submit them to many different administrative agencies, is time-consuming and causes many individuals with limited ideas and may lose the opportunity to establish innovative start-up businesses.

Lack of legal framework to support market entry for start-up businesses with intellectual property assets (establishment registration, determination of intellectual property asset capital value). Clause 2, Article 3 of the 2017 Law on Support for Small and Medium Enterprises provides a definition of "innovative start-up enterprises are small and medium-sized enterprises established to implement ideas on the basis of exploiting intellectual property." technology, new business models and the ability to grow rapidly. According to *Decree No. 94/2020/ND-CP dated August 21, 2020, it clearly defines a creative startup enterprise as an enterprise established according to the provisions of law to implement ideas on the basis of exploitation. intellectual property, technology, new business models and the ability to grow rapidly.* Thus, a creative startup can be understood as an enterprise that starts business operations on the basis of exploiting intellectual property, technology, creative business models, and has high economic efficiency. It should also be noted that the concept of creative startup enterprise is used not to refer to a new legal form of business organization, but to refer to a number of businesses according to their nature and field of activity. In terms of legal organization form, creative startups can be limited liability companies, joint stock companies, partnerships or private enterprises and they carry all the legal signs of these types of businesses (Hoang Lan Phuong 2021).

However, according to the law, there is currently no set of criteria to determine whether a newly established enterprise owns intellectual property assets and intends to put these assets into exploitation on the market. Because in reality, intellectual property assets are established during the operation, production and investment process of the enterprise. Furthermore, the law does not stipulate the proportion of intellectual property rights exploited when establishing a business, as well as the expected time of bringing intellectual property products to the market to enjoy the following policies: preferential books.

Lack of legal framework for capital mobilization by commitment to intellectual property rights. The law does not yet recognize how to contribute capital with intellectual property rights when establishing a business for entities that have not or cannot establish intellectual property rights, such as business secrets. The value of intellectual property assets contributed as capital is agreed upon and determined by the parties themselves. Acceptance of the value of intellectual property assets is based on the investor's trust in the enterprise. Inaccurate valuation of intellectual property assets will cause damage to other capital contributors, such as failure to determine the product's suitability for the market, or to the subject of trade secrets. It is even more difficult to determine value, especially when products circulating on the market have not yet affirmed their competitive position.

The value of intellectual property assets used to contribute capital to a business is usually determined proportional to the time the product using the intellectual property object is in circulation. For intellectual property assets of new startups used in business, the law has not yet recognized the method of determining value. This is disadvantageous for startups that want to raise capital but have difficulty convincing potential investors. Because intellectual property assets have not been clearly identified in the business's financial balance sheet.

According to the provisions of the 2015 Civil Code, intellectual property rights are property rights, and this right can be mortgaged to secure obligations, so intellectual property rights can become property rights. subject matter of the mortgage contract, except for some subjects such as rights to geographical indications, collective marks,

and certification marks. For intellectual property assets that do not necessarily require registration of ownership according to the provisions of law such as copyright and rights related to copyright because they are protected according to the principle of automatic protection, when To carry out mortgage transactions, the owner must have documents proving legal ownership of these intellectual property assets. As for intellectual property assets that must be registered for protection to become legal owners, such as inventions, trademarks, etc., the title protecting the objects of intellectual property rights is the property. Documents to prove legal ownership of intellectual property assets when mortgaging.

In practice, it is difficult for start-up businesses to access loans from credit institutions when using intellectual property assets as objects to ensure the performance of obligations. The law recognizes that the mortgagee has the right to seize intellectual property assets if the mortgagee becomes unable to pay. In addition, future benefits from exploiting intellectual property assets can be used to pay off debts. However, startups that use intellectual property assets as mortgage must incur higher transaction costs than other startups, because intellectual property assets used as collateral are also considered to be assets. The subject of the guarantee is uncertain, including the expectation of profits from future exploitation of intellectual property rights, because the subject of intellectual property rights is constantly innovating. The appraisal of intellectual property assets used as collateral is still new to credit institutions in Vietnam. Vietnamese law does not have a legal framework for mortgage of intellectual property rights, especially how to determine the price and handle intellectual property assets when due. Furthermore, credit institutions have not yet developed the necessary methods to streamline the assessment of intellectual property assets.

Lack of tax support policy framework for innovative startups. The content of Decree No. 80/2021/ND-CP does not mention tax support during the operation of creative startups, specifically personal income tax for business managers and executives. businesses, especially income tax from investing in stocks in creative start-up businesses, and tax on transferring capital contributions in creative start-up businesses. In Thailand, stock investors are exempt from tax for 10 years if they invest

in innovative startups in food, energy, health, biotechnology, etc. Or in China, a policy of complete tax exemption has been applied if the creative startup is a new graduate (Hanoi Department of Planning and Investment, 2022).

3. Solutions to support start-up businesses based on intellectual property exploitation

Although many countries around the world are heavily affected by the Covid pandemic, since the beginning of 2022, the world economy is undergoing a strong shift, Vietnam's business activities are vibrant again, Vietnam's economy is recovering at a rapid pace, this is an important time for Vietnam to become a science and technology startup center in the region. In order to enhance innovation and transform the digital economy, and bring startups in general and creative startups to success, the Government needs to develop many policies to support startups. businesses, especially innovative startups such as tax incentives, credit policies and a number of other support policies, specifically as follows:

Building a legal framework to support start-up businesses in commercial exploitation of intellectual property assets. In addition to start-up support policies, the state needs to promulgate specific legal policies to support innovative start-up businesses, with the prerequisite that they must have commercialized intellectual property products and must belong to the product group. products associated with economic development orientation in Vietnam (Tran Thi Thu Huong 2016). In order for intellectual property rights products to circulate on the market, there needs to be regulations to support funding for trade promotion activities such as advertising and displaying products that are the result of the process from scratch from the intellectual property of the company. businesses, and at the same time provide financial support for protecting intellectual property rights such as monitoring, tracking and detecting acts of infringement of intellectual property rights of businesses. Localities need to build a policy framework to support startups that exploit intellectual property rights associated with exploiting local products.

Capital support policy for start-up businesses. Building a legal framework for accessing loans from credit institutions through intellectual property assets. Intellectual

property rights are considered an effective tool, creating competitive advantages for the development of businesses, especially for startups in the market economy. In addition to policies to create a favorable legal environment, it is necessary to issue financial policies such as loan and tax incentives for start-up businesses that exploit intellectual property assets. Therefore, in the future it is necessary to supplement the following regulations:

Firstly, rights arising from intellectual property rights, rights and obligations with respect to intellectual property assets and a number of specific regulations in the management, exploitation and valuation of intellectual property assets of individuals and businesses to create a uniform legal corridor for exploiting intellectual property rights in research, development and production and business activities.

Second, specific regulations in accounting for intellectual property assets from which there is a basis for determining enterprise value, specifically regulations on valuation of intellectual property assets during the capital contribution process. Establishing a business and using it as collateral to secure loans.

Third, regulations on interest rate support and guarantees for start-up businesses exploiting intellectual property rights using intellectual property rights as collateral.

It is necessary to build a policy framework to support and tax incentives for innovative startups. Taxes and other costs are financial items that are considered a burden in the early stages of establishment for creative startups. Therefore, to encourage entities to invest in innovative startups, the State needs to promulgate specific legal regulations such as:

First, a five-year tax exemption for innovative startups founded by recent graduates. This regulation aims to encourage students to soon apply the knowledge they have learned into practice, especially creative ideas.

Second, personal income tax exemption for a period of 3 years for stock investors in innovative start-up businesses. Tax exemption for intellectual property transfer transactions at creative startups. Or it is possible to develop legal regulations on tax exemption for specific creative product business activities such as in the fields of

environment, food, health, etc. Investing in creative startups can be considered a risky investment channel because products from creative ideas can be difficult to reach the market, so profits are very little or even non-existent. Therefore, the tax exemption policy in specific cases will encourage investors as well as encourage businesses to boldly develop new products.

It is necessary to include the subject of creative entrepreneurship in the university education program and issue detailed guidelines for establishing businesses in universities, especially public universities. University enterprise is a platform for developing creative ideas of students and researchers. Furthermore, this can be considered a platform for incubating creative businesses for students. In addition, there needs to be a policy on training and fostering knowledge for those who manage and operate newly established creative startups (Tran Le Dang Phuong & Nguyen Thanh Phuong 2022).

It is necessary to more widely propagate legal policies to encourage and support creative startups that use intellectual property assets.

Although in practice there is a policy framework to support innovative startups, its application still has many limitations, especially having to go through many unnecessary procedures, sometimes causing many problems for businesses as well as agency responsible for enforcement. Therefore, in the coming time, it is necessary to reform many administrative procedures in a streamlined direction so that creative startups can easily access resources such as capital, markets, etc.

4. Conclude

Startups that exploit intellectual property rights play an important role in encouraging and promoting rights holders themselves, individuals and legal entities in society to constantly innovate and create objects of ownership. new intelligence. Vietnam has early determined the policy of "using intellectual property tools as a lever to promote innovation activities, improve competitiveness, and contribute to socio-economic development". Hopefully in the near future there will be a legal framework that meets the requirements for market entry and enhances the competitiveness of startups exploiting intellectual property rights. To meet that requirement, the law needs

to stipulate: (i) financial support for startups to enter the market through exploiting intellectual property rights for oriented products; (ii) legal framework for valuing intellectual property assets to easily access loan capital; (iii) legal framework for handling collateral as intellectual property rights; (iv) legal framework on personal income tax exemption and reduction for investors with capital in innovative start-up enterprises; (v) promote propaganda of policies to encourage, support and reform administrative procedures so that creative startups can easily access resources.

LIST OF REFERENCES

1. Communist Party of Vietnam, Documents of the 13th National Congress, Volume I, Publishing House. National Politics Truth, Hanoi, 2021.
2. Civil Code 2015
3. Law on Support for Small and Medium Enterprises 2017
4. Intellectual Property Law 2005.
5. Intellectual Property Law (amended) 2009.
6. Intellectual Property Law (amended) 2019
7. Intellectual Property Law (amended) 2022
8. Circular 06/2022/TT-BKHDT dated May 10, 2022 guiding Decree 80/2021/ND-CP guiding the Law on Support for Small and Medium Enterprises
9. Decree 94/2020/ND-CP regulating preferential mechanisms and policies for the National Innovation Center dated August 21, 2020
10. Decree 80/2021/ND-CP guiding the Law on Support for Small and Medium Enterprises dated August 26, 2021
11. Hoang Lan Phuong (2021), Mortgage of intellectual property rights - Legal and practical aspects, *Vietnam Journal of Science and Technology* , 63 (October 2021)
12. Phan Vu, General awareness of creative startups, https://htpldn.moj.gov.vn/SMPT_Publishing_UC/TinTuc/PrintTL.aspx?idb=

2&ItemID=1853&l=/noidung/tintuc/Lists/Nghiencuutraodoi, [accessed April 10, 2023]

13. Hanoi Department of Planning and Investment (2022). Workshop "Special mechanisms to support local creative startups: World experiences and lessons for Hanoi, October 22, 2022.
14. Tran Le Dang Phuong - Nguyen Thanh Phuong (2022), *Laws on supporting creative startups to exploit intellectual property assets - current situation and solutions*, Proceedings of the international conference: International conference with the topic "Business models and startups based on intellectual property exploitation: current status and trends", National Economics University, December 20, 2022
15. Tran Thi Thu Huong (2016), Lending based on intellectual property collateral - Opportunities and challenges for Vietnamese commercial banks, *Journal of Banking and Business Management* , No. 12.