

How to determine the jurisdiction of the court hearing IPR related cases in Vietnam?

The civil jurisdiction of the court is the right to consider and resolve cases, as well as the power to make decisions when settling such cases in accordance with the court's civil procedure.

In recent years, a number of intellectual property (IP) related cases have been filed with Courts in Vietnam for hearing (see more at <<https://kenfoxlaw.com/claiming-damages-in-ipr-lawsuits-in-vietnam-key-takeaways>>). However, it is not always easy to determine the jurisdiction of the court which is competent to hear a case. In order to protect your intellectual property rights, it is important to know where you can file a complaint. If you are a business owner in Vietnam, it is important to know that **(i)** Vietnam has no specialized IP court, all disputes relating to the IP protection shall fall under jurisdiction of civil courts, and **(ii)** there exists different types of courts in Vietnam from which to choose. The Vietnamese court system is divided into two levels: **district** and **provincial**. First-instance cases are within the jurisdiction of both the District People's Court and Provincial People's Court. The question is when you must file your case with a Provincial People's Court versus a District People's Court. Thus, it is crucial to avoid confusion regarding the court level at which you must file your case without wasting time transferring the case to another court of competent jurisdiction or judicial review (cassation review) procedure if the court has already heard the trial.

03 steps to determine the court's jurisdiction in civil cases

When conducting a dispute resolution procedure (case) or request (case) in court, determining the court's jurisdiction is always the first and most significant step. Here are three steps to help you determine the correct court's jurisdiction under the 2015 Civil Procedure Code (CPC).

Step 1: Determination of the general jurisdiction of the Court

To determine whether this is a civil case or matter and whether it falls within the court's jurisdiction, you must consider the following:

- (i)** Determine whether the content of this case is in dispute or is it simply a petition?
- (ii)** Determine the field to which it belongs?
- (iii)** Is it regulated in any specific law in the Code?
- (iv)** And are there exceptions specified in specialized laws?

Exception example: If a commercial contract stipulates that disputes may be resolved in court or through commercial arbitration, and the dispute is being resolved through commercial arbitration, the court will dismiss resolving this dispute.

If the results you find this case are specifically provided for in one of the laws below, it is inferred that this case falls under the general jurisdiction of the Court (ie the Court has the right to settle, not the court). another subject).

CIVIL CASE	Civil field	The field of marriage and family	Commercial business field	Labor field
Civil lawsuits	Article 26	Article 28	Article 30	Article 32
Civil matters	Article 27	Article 29	Article 31	Article 33

Step 2: Determination of Court-level jurisdiction

The correct determination of court-level jurisdiction in a particular civil case is whether the People's Court at the district level or the People's Court at the provincial level has jurisdiction. To determine whether a particular civil case falls under the jurisdiction of the District People's Court or the Provincial People's Court, you must consult Articles 35 to 38 of the Civil Procedure Code of 2015.

Critical remarks:

Certain disputes, certain petitions (clauses 1 and 2 of Article 35) will, as a rule, fall under the jurisdiction of the District People's Court. However, if disputes and petitions involve parties or properties in foreign countries (e.g

the trademarks, industrial designs, patents registered in Vietnam in the name of foreign entities/individuals) or must be judicially entrusted to Vietnamese representative agencies overseas or to foreign courts/competent agencies, they will fall under the jurisdiction of the **Provincial People's Court**; with the exception of the following:

*[People's Courts of **districts** where Vietnamese citizens reside shall be in charge of cancelling illegal marriage, settling divorce petitions and disputes pertaining to rights and obligations of spouses, parents and children, parents and children adoption and guardian relationship between Vietnamese citizens living in frontier areas and citizens of neighboring countries living near Vietnam according to provisions of this Code and other Vietnam's law provisions]*

Step 3: Determination of territorial jurisdiction of Courts

It can be determined in the following order:

Case 1: In case the object of dispute is immovable property (real estate), only the Court where the immovable property (real estate) is located has jurisdiction to settle the dispute.

Case 2: The involved parties shall have the right to agree with each other in writing to petition the Courts of the localities where the plaintiffs reside or work, to settle civil, marriage and family-related, business, trade or labor disputes prescribed in Articles 26, 28, 30 and 32

Note: Some other exceptions should be noted in Article 40 of the Civil Procedure Code 2015.

Case 3: If the object of the dispute is not immovable property and the plaintiff and defendant have not reached an agreement or the plaintiff does not have the right to choose a court under Article 40, then **the court where the defendant resides or works** has the authority to hear first-instance procedures for civil, marriage- and family-related, business, trade, and labor disputes prescribed in Articles 26, 28, 30, and 32.

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