

Protecting your IPR in Vietnam – A Guide to the VIPRI's Services and Expertise

To enforce rights over an industrial design, trademark, or patent in Vietnam, IPR holders must prove that there is an **“*infringing element*”** - specifically, whether the alleged infringer's conduct is likely to cause consumer confusion regarding the origin of the goods or services. Given the technical nature of such assessments, Vietnamese enforcement authorities and IPR holders frequently rely on expert opinions issued by the **National Institute of Intellectual Property (NIIP)**, formerly known as the **Vietnam Intellectual Property Research Institute (VIPRI)**.

These expert opinions serve as pivotal evidence in both administrative and judicial proceedings. Although non-binding, they carry substantial weight in guiding enforcement agencies such as the Ministry of Science and Technology Inspectorate, Market Surveillance Department, and customs authorities in determining whether to initiate enforcement actions. Courts also frequently rely on [NIIP/VIPRI's assessments](#) to substantiate claims of infringement, especially in cases involving complex technical comparisons or likelihood of confusion.

KENFOX IP & Law Office provides comprehensive guidance on understanding and applying the NIIP/VIPRI opinion process to strengthen IPR holders' legal position and pursue effective remedies, whether through cease-and-desist measures, administrative penalties, or civil claims for damages.

1. What services does the National Institute of Intellectual Property (NIIP), formerly, the VIPRI offer?

The National Institute of Intellectual Property (**NIIP**), formerly known as the Vietnam Intellectual Property Research Institute (**VIPRI**), is a specialized research body under the Ministry of Science and Technology. It plays a key role in supporting intellectual property enforcement by issuing expert opinions in cases involving industrial property rights - particularly in relation to inventions, industrial designs, geographical indications, and trademarks.

IPR holders facing potential infringement may request [NIIP](#) to conduct technical assessments that clarify the scope of protection, evaluate similarity between subject matter, identify infringing elements, and estimate damages. These expert opinions are frequently used as supporting evidence in administrative and judicial proceedings.

Due to resource constraints, NIIP's current services are limited to the above-mentioned subject matters. It does not provide assessments on **trade names, trade secrets, unfair competition, or copyright-related issues**.

2. Why to obtain the NIIP's expert opinions before petitioning Vietnamese enforcement bodies to handle alleged IPR infringement?

- **Highly persuasive, though not binding:** Although NIIP's/VIPRI's expert opinions are not legally binding, they are strongly recommended when initiating enforcement actions. As an accredited institution under the Ministry of Science and Technology, the NIIP/VIPRI is widely recognized for its technical expertise in intellectual property. Its assessments are considered credible and often carry substantial weight with enforcement bodies and courts.
- **Influential in administrative and judicial proceedings:** Vietnamese enforcement agencies such as the [Market Management Bureau](#), [Economic Police](#), [Inspectorate of the Ministry of Science & Technology](#) frequently rely on the NIIP's/VIPRI's opinions to evaluate the merits of infringement claims. Given the complexity of IP law, these expert assessments help clarify technical issues, guide enforcement decisions, and support judicial reasoning.
- **Strategic tool for IPR holders:** The NIIP's/VIPRI's expert opinions can be used proactively to resolve disputes and deter infringement. Many IPR holders include these assessments in Cease & Desist Letters ([C&D Letter](#)), which often prompt infringers to voluntarily cease their activities.

KENFOX IP & Law Office has handled numerous cases where NIIP-backed evidence led to swift and favorable outcomes without the need for formal proceedings.

- **Should not be deemed as the end of the road:** Not all of the NIIP/VIPRI's opinion/assessment conclusions that there is no infringement will result in Vietnamese enforcement authorities refusing to handle a trademark infringement case. The authorities may still view the case as an infringement, regardless of VIPRI's assessment. Vietnamese enforcement authorities may not always follow its assessment conclusions. In addition, the scope of protection for IPRs may vary depending on the specific facts and circumstances of each case, and VIPRI's assessment conclusions may not necessarily apply to every situation.

3.1. What steps does the NIIP/VIPRI take to determine there is an IPR infringement over “a registered trademark” in Vietnam?

In Vietnam, the NIIP ([formerly VIPRI](#)) issues expert opinions, known as “assessment conclusions,” which serve as crucial evidence for courts and enforcement bodies when evaluating trademark infringement disputes. Although not legally binding, these conclusions carry significant persuasive weight.

The NIIP/VIPRI typically follows a **four-stage process**:

Step 1: Verification of rights and legal framework

- Confirm that the requester holds a valid [trademark registration in Vietnam](#).
- Define the scope of protection (mark elements, designated goods/services in NICE classes).
- Ensure the assessment is grounded in the IP Law (2005, amended 2022), Decree 65/2023/ND-CP (Article 77), and Circular 11/2015/TT-BKHCN (Article 13).

Step 2: Examination of evidence

- Review the evidence provided by the requester, including samples of the allegedly infringing sign.
- Identify the goods/services on which the disputed sign is used, and collect any supporting market or distribution information.

Step 3: Comparison and Likelihood of Confusion Analysis

This is the **core of the assessment**, where the NIIP/VIPRI applies a structured comparison methodology:

- **Visual, phonetic, and conceptual comparison of signs:** Examine shape, letters, design, color, pronunciation, syllable structure, and conveyed meanings. Priority is given to distinctive and dominant elements, while minor descriptive/generic differences are disregarded.
- **Comparison of goods/services:** Assess whether the goods/services are identical, similar, or related, considering nature, function, purpose, manufacturing process, distribution channels, and consumer groups.
- **Likelihood of confusion:** Determine if similarities between the signs and goods/services could mislead consumers as to the origin. Under Article 13, confusability is judged by the scope of protection (whole or part), distinctiveness of components, consumer perception, level of attention, sales/distribution practices, and optionally, actual confusion evidence.

Special rules:

- If signs and goods/services are identical, confusion is presumed.
- For well-known marks, infringement may extend to [dissimilar goods/services](#) if use causes confusion or misleading impressions of association.

Step 4: Issuance of Expert Opinion

- The NIIP/VIPRI issues a written assessment report.
- The report cites relevant legal provisions, details the comparison process, explains the reasoning, and concludes whether the disputed sign contains infringing elements (i.e., identical or confusingly similar to the registered mark).

3.2. What challenges does the NIIP/VIPRI face when assessing the scope of protection for trademarks, and how does it address these challenges?

In practice, the NIIP/VIPRI faces several **challenges** when assessing the scope of protection for trademarks. These stem from the inherent complexities of trademark law and Vietnam's enforcement environment. Some of these challenges include:

- **Ambiguity in distinctive elements:** Some trademarks consist of both distinctive and non-distinctive components (e.g., descriptive words + stylized elements). The challenge lies in defining which elements deserve stronger protection and which should be disregarded in the comparison.
- **Overlap of goods/services:** The Nice Classification system groups goods/services broadly. However, real-world overlaps (e.g., "beverages" vs. "alcoholic drinks") create difficulty in deciding whether they are "similar" enough to cause confusion.
- **Similarity vs. Imitation:** Determining whether two marks are merely similar or actually confusingly similar often involves subjective judgment. Slight design or phonetic differences can make the boundary unclear.
- **Well-known marks & dilution Issues:** When assessing well-known trademarks, protection may extend beyond the registered classes. The challenge is in applying criteria for "well-known" status (e.g., recognition, scope of use, advertising, consumer surveys).
- **Limited precedent and inconsistent enforcement:** Vietnam lacks a rich, consistent case law system. Courts and administrative bodies sometimes issue divergent decisions on similar cases, making it hard for VIPRI to maintain uniform standards.
- **Evolving market practices:** With the rise of online platforms, cross-border e-commerce, and social media, infringing use often occurs outside traditional categories of goods/services, complicating the scope of assessment.

3.3. How do trademark owners in Vietnam use the NIIP/VIPRI's assessment conclusions to protect and enforce their trademark rights?

Trademark owners in Vietnam can strategically use [VIPRI's assessment conclusions](#) to strengthen their IP protection and enforcement efforts across multiple stages:

- **Trademark registration strategy:** The NIIP/VIPRI's assessments help evaluate the distinctiveness and registrability of a proposed mark, as well as identify potential conflicts with existing trademarks. This insight enables owners to refine their applications before filing with the Intellectual Property Office of Vietnam, increasing the likelihood of successful registration.
- **Opposition to conflicting applications:** When third parties attempt to register marks that are identical or confusingly similar, the NIIP/VIPRI's conclusions can serve as persuasive evidence in opposition proceedings. These assessments support arguments that the new application may cause consumer confusion or infringe upon existing rights.
- **Legal enforcement against infringers:** In cases of unauthorized use, the NIIP/VIPRI's expert opinions can substantiate claims of infringement by demonstrating similarity and likelihood of confusion. These conclusions are often used in administrative or civil proceedings to validate ownership and support enforcement actions.
- **Cease and Desist letters (C&D Letter):** VIPRI's assessment conclusions serve as a powerful tool for resolving trademark infringement disputes without resorting to immediate litigation. A strategically crafted cease-and-desist (C&D) letter, delivered to the alleged infringer, demands the prompt termination of all infringing activities. Crucially, this letter is supported by VIPRI's official expert opinion, which provides compelling evidence of the infringement. Together, they affirm the trademark owner's legal rights and signal a clear intent to enforce them - often leading to a prompt resolution and preventing costly legal proceedings.
- **Licensing and commercial negotiations:** The NIIP/VIPRI's assessment conclusions can be used to negotiate licensing agreements with third parties who wish to use the trademark. The assessment conclusions can be used to establish the value and scope of the trademark, as well as the conditions under which it can be licensed.

4. How does the NIIP (formerly, VIPRI) reach an expert opinion that there is an infringing element to a “patented invention” in Vietnam?

In Vietnam, the NIIP (formerly VIPRI) is empowered to issue expert opinions (“assessment conclusions”) on whether a patented invention has been infringed. These assessments, though not legally binding, carry significant weight before [enforcement authorities](#) and courts. The process is structured under the IP Law (2005, amended 2022), Decree No. 65/2023/ND-CP (Article 74), and Circular No. 11/2015/TT-BKHCN (Article 11).

The NIIP/VIPRI typically follows a **four-stage process**:

Step 1: Verification of Patent Validity and Scope

- Confirm that the patent is valid, in force, and enforceable at the time of the alleged infringement.
- Define the scope of protection from the claims, specification, and drawings.
- Identify the essential technical features of the patent claims that form the basis of protection.

Step 2: Examination of the Alleged Infringing Product/Process

- Analyze the product or process accused of [infringement in detail](#), using documents, specifications, or physical/technical evidence.
- Identify its technical features and functional elements to establish a comparison baseline.

Step 3: Comparison with Patent Claims

This is the core of the assessment, where the NIIP/VIPRI determines whether the disputed product/process contains all essential technical features of the patented invention:

- **Identical features:** where both share the same nature, utility, method of use, and relationship with other features.
- **Similar features:** where they are interchangeable and essentially serve the same utility and method of use.
- **Missing features:** if the product/process lacks even one essential technical feature of a claim, it is not deemed identical or similar under that claim, and no infringement is found.

In addition, the NIIP/VIPRI may interpret the scope of patent claims carefully, analyzing the language used and considering relevant prior art to determine whether the allegedly infringing product/process falls within the scope.

Step 4: Issuance of Expert Opinion

- Based on the above analysis, the NIIP/VIPRI issues a written assessment report.
- The report cites relevant laws, explains the reasoning, and concludes whether the disputed product/process incorporates the patented invention's essential features, thus constituting infringement.

5. How does the NIIP (formerly, VIPRI) reach an expert opinion that there is an infringing element to a “protected industrial design” in Vietnam?

In Vietnam, [the NIIP \(formerly VIPRI\) issues expert opinions](#) (“assessment conclusions”) on whether a protected industrial design has been infringed. While not legally binding, these opinions are highly valued by enforcement authorities and courts. The assessment is based on the IP Law (2005, amended 2022), Decree No. 65/2023/ND-CP (Article 76), and Circular No. 11/2015/TT-BKHCN (Article 12). The central inquiry is whether the allegedly infringing product **replicates or substantially replicates** the combination of visual shaping features of the protected design.

The NIIP/VIPRI typically follows a **four-step process**:

Step 1: Examination of the industrial design: The NIIP/VIPRI reviews the registration certificate, drawings/photographs to determine the scope of protection and identify the industrial design's visual shaping features - both functional and non-functional. Functional shaping features (e.g., configuration, patterns, correlations, colors) are those easily perceived and remembered, distinguishing the design as a whole.

Step 2: Analysis of the allegedly infringing product or design: The allegedly infringing product or product part is examined in detail to identify its external appearance, including both functional and non-functional shaping features.

Step 3: Comparison of features: A side-by-side comparison is carried out between the protected design and the product in question:

- If the product incorporates all functional and non-functional shaping features of the protected design, it is regarded as a **replication**.
- If the product incorporates all functional shaping features and differs only in shaping details that are not easily noticed or remembered, it is deemed a **substantial replication**.
- In cases of a **set of products**, replication or substantial replication of even one product in the set may [constitute infringement](#).

Step 4: Determination and Expert Opinion

The similarities and differences in external appearance are carefully documented. Priority is given to features that are distinctive, easily identifiable, and memorable to consumers. Minor or inconspicuous differences do not negate replication if the overall impression remains the same

Based on the identification of similarities and differences, the NIIP/VIPRI formulates its expert opinion. If the allegedly infringing product is found to replicate or substantially replicate the protected industrial design's visual shaping features, it is deemed to contain infringing elements.

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