

Do You Really Understand The VIPRI Opinion On Enforcing IP Rights In Vietnam?

1. Assessment of Industrial Property in Vietnam: What is it?

[Intellectual property assessment](#) is a specialized service that provides expert opinions on issues related to intellectual property rights (IP), including the valuation of IP assets and the estimation of damages resulting from IPR violations. In Vietnam, intellectual property assessment is typically carried out at the request of one or both parties to an IPR dispute or at the discretion of the Vietnamese IPR enforcement agencies in order to resolve alleged IPR infringements. The professional responsible for this assessment is called an assessor or assessment expert. Assessors are required to have qualifications appropriate to their area of expertise, relevant training, and the necessary professional skills and experience to provide expert opinions and assist in resolving disputes or addressing IPR infringements.

Intellectual property assessment has been formally established under Vietnam's IP Law. Specifically, as stated in Article 201.1 of the Vietnam IP Law 2022: "*Intellectual property assessment means the use by organizations or individuals of their professional knowledge and expertise to assess and make conclusions on matters related to intellectual property rights*".

As regards assessment of industrial property rights, it is comprehensively detailed in Articles 114-122 of Decree No. 65/2023/ND-CP, covering provisions on **(i)** content and field of assessment of industrial property rights, **(ii)** rights and obligations of petitioners for assessment of industrial property, **(iii)** requesting assessment of industrial property rights, **(iv)** delivering, receiving, and returning assessment subjects of industrial property rights, **(v)** collecting assessment samples of industrial property rights, **(vi)** Implementing assessment of industrial property rights, **(vii)** additional assessment and re-assessment of industrial property rights, **(viii)** documents on conclusions of assessment of industrial property rights and **(ix)** price for service of assessment of industrial property rights.

Under Article 114.1 of Decree No. 65/2023/ND-CP, industrial property assessment encompasses the following four areas:

- (i)** determining the scope of protection for subjects of industrial property rights;
- (ii)** assessing whether the subject meets the criteria for elements of infringement on industrial property rights as outlined in Articles 74-79 of Decree 65/2023/ND-CP, which include patents, layout designs, industrial designs, trademarks, geographical indications, and trade names;
- (iii)** identifying any identity or similarity that could cause confusion, indistinction, or copying between the assessment subject and the protected subject; and
- (iv)** evaluating industrial property rights according to the pricing methods prescribed in price laws and assessing damages as specified in Articles 204 and 205 of the Law on Intellectual Property

Vietnam Intellectual Property Research Institute (**VIPRI**), an institute under the Ministry of Science and Technology, is accredited to deliver expert opinions on IP infringement cases involving industrial property subjects such as inventions, industrial designs, semiconductor circuit layouts, trade secrets, marks, trade names, and geographical indications. Requesters may ask VIPRI to perform assessments in accordance with the aforementioned four areas. However, currently, due to limited human resources, VIPRI only provides assessment services for inventions, industrial designs, geographical indications, and trademarks. VIPRI will not provide opinions on matters related to unfair competition, trade names, or copyright.

2. Industrial Property Assessment Conclusion in enforcement proceedings in Vietnam: How important is it?

In the current practice of IPR enforcement in Vietnam, industrial property assessment is considered an effective tool to protect against IPR infringement and handle related disputes. It makes an important contribution to improving the efficiency of the IPR enforcement proceedings, protects the rights and legitimate interests of the rights holders, creates a fair and equitable business and production environment, and encourages investment and creativity.

2.1. Industrial property assessment: A powerful tool to support the enforcement authorities in resolving IPR infringements and disputes

In principle, to determine whether an infringement has occurred, IPR enforcement agencies—including specialized inspection agencies, customs authorities, market management bureaus, police authorities, and the People's Committees of all levels, along with the court—must first accept the case. They then evaluate the evidence and review all documents provided by the concerned parties. This process allows them to make informed conclusions about IPR infringement and decide on the appropriate measures to handle such infringement.

Assessment organizations and assessors serve the role of rendering their objective opinions based on professional knowledge to assist competent Vietnamese agencies in assessing and concluding acts of infringement, as outlined in Article 201 of the Vietnam IP Law.

An industrial property assessment conclusion is expressed in a document known as the “assessment conclusion document”. This document is a product of the IP assessment organization. As mentioned above, assessment conclusions are formulated based on the assessors' examination of IP rights issues using their professional knowledge and skills. Essentially, *an assessment conclusion is considered an expert opinion or witness*. Therefore, in a dispute or IPR infringement case, while assessment conclusions provide professional assistance to enforcement agencies and related parties, they are not binding on these agencies or parties. Moreover, even though assessment organizations may be state-operated, assessment conclusions are not administrative documents.

“Additional assessment” or “Re-assessment”

In the event that the enforcement agencies and/or the concerned parties do not agree with the assessment conclusions, they may solicit/request the same organization/individual who had previously conducted the assessment or other the organization/ individual to conduct a “[re-assessment](#)” as per Article 120.2, Decree No. 65/2023/ND-CP.

An additional assessment shall be performed in case the assessment conclusion is incomplete or unclear about the content subject to assessment or in case of new details requiring clarification. Any request for additional assessment and the performance of such assessment shall comply with regulations on first-time assessment. If the assessment conclusion is incomplete and unclear regarding the contents subject to the assessment, or in case of new details requiring clarification, enforcement agencies and/or the concerned parties are entitled to request an “**additional assessment**” under 120.1, Decree No. 65/2023/ND-CP.

In light of the foregoing provision, in order to assess and conclude on the elements of IPR infringement, the enforcement agencies and/or the stakeholders have the right to decide whether to conduct an assessment request /solicitation, as well as whether to use the results stated in the assessment conclusion document.

A VIPRI opinion, if rendered in favor of right holders, can be submitted to an enforcement agency such as the Ministry of Science and Technology Inspectorate (IMOST), the Market Surveillance Department (MSD), or customs. Then, based on the non-binding opinion, the enforcement agency may consider proceeding with actions to enforce the IP rights of the complainant, including conducting an administrative raid and issuing sanctions like fines, and seizing and destroying infringing products. Of course, courts can also rule on IP cases; in such instances, a VIPRI opinion can provide persuasive evidence that may influence the court to rule in favor of the rights holder.

2.2 Industrial property assessment: An effective tool for the self-protection of rights holders' industrial property

Per Article 198, Vietnam's IP Law 2022, IPR holders have the right to apply the following measures to protect their IPRs: **(i)** *applying technological measures to protect rights and disseminate information on management of rights, or apply other technological measures to prevent acts of infringing upon intellectual property rights;* **(ii)** *requesting organizations or individuals that commit acts of infringing upon intellectual property rights to terminate such acts, remove and delete infringing contents in the telecommunications network and the Internet, make public apologies or rectifications, and pay damages;* **(iii)** *to request the competent State body to deal with acts of infringement of its intellectual property rights in accordance with the provisions of this Law and other relevant laws; and* **(iv)** *to initiate a lawsuit at a court or a claim at an arbitration centre to protect the legitimate rights and interests of the holder.*

In exercising their right to IPR self-protection, IP right holders and related parties involved in disputes or IPR infringement cases can use IP assessments as tools to resolve these issues independently. Assessment requests are typically filed when disputing parties face difficulties in reaching conclusions about the disputes or determining the elements of infringement. They may also seek expert opinions to better understand the nature of the case or to gather more evidence on issues such as the scope of protection, level of similarity, and elements of infringement. This evidence can help substantiate their arguments before enforcement authorities or alleged infringers.

As a matter of fact, industrial property assessment can be used as an effective tool that enables right holders to exercise self-protection of their industrial property rights and allows related parties to protect their legitimate interests. The main goal of requesting an industrial property assessment is to support enforcement actions. Specifically, it can be used: **(i)** *to submit a petition to handle IPR infringement*, **(ii)** *to issue a warning to the alleged infringer, urging them to voluntarily cease the infringement* or to counter another's allegations of IPR infringement, **(iii)** *to reconsider the validity or the scope of protection for established industrial property rights*, and **(iv)** *for other purposes related to protecting (enforcing) IP rights*.

2.3 Industrial property assessment conclusion: A source of legal evidence

A written assessment conclusion is recognized as one of the ten sources of evidence under Article 94 of the Civil Procedure Code 2015. According to Article 201.5 of Vietnam's IP Law 2022, assessment conclusions serve as one of the sources of evidence for competent agencies to handle cases or matters. As stipulated in Article 121.2 of Decree No. 65/2023/ND-CP, a VIPRI Assessment Conclusion must include: **(i)** the name and address of the assessment organization or the assessor; **(ii)** the name and address of the organization or individual requesting the assessment; **(iii)** the subject, content, and scope of assessment; **(iv)** the assessment method; **(v)** the assessment conclusion; **(vi)** the assessment time, location, and completion. As evidence, IP assessors base their conclusions on their knowledge and expertise, thereby serving as IP expert opinions.

In light of the foregoing, the assessment conclusion document serves as a reference for the competent agency, expressing the objective assessment from either the organization or individual responsible for determining whether an infringement has occurred.

According to Article 26.4, Decree No. 99/2013/ND-CP, which concerns the sanctioning of administrative violations in industrial property, [IPR infringement handling agencies](#) - including specialized inspection agencies, customs authorities, market management bureaus, police authorities, People's Committees of all levels, and courts - are competent to consider and make conclusions on acts of infringement. Their decisions are based on the documents and evidence contained in the case file (*including evidence and documents provided by the parties involved (rights holders, alleged infringers, and related parties), evidence collected by the competent authorities during the settlement process, and assessment conclusions*). These agencies must be liable for their conclusions and decisions regarding the imposition of administrative sanctions.

KENFOX IP & Law Office, with its extensive practical experience and expertise, has successfully assisted various IPR holders in obtaining favourable Assessment Conclusions from VIPRI. Please contact us if you require professional representation against IPR infringement in Vietnam.

**By Nguyen Vu QUAN
Partner & IP Attorney**

Contact

KENFOX IP & Law Office

Building No. 6, Lane 12/93, Chinh Kinh Street, Nhan Chinh Ward, Thanh Xuan District, Hanoi, Vietnam

Tel: +84 24 3724 5656

Email: info@kenfoxlaw.com / kenfox@kenfoxlaw.com