

The Secret Behind the Assessment Conclusion of VIPRI: 5 Questions That Cannot Be Ignored

While not legally binding, the [assessment conclusions](#) from the Vietnam Intellectual Property Research Institute (VIPRI) can profoundly influence the initial perspectives of Vietnamese enforcement authorities, particularly in regions where officers might not have extensive experience with intellectual property rights (IPR). KENFOX IP & Law Office offers in-depth answers to five crucial questions about VIPRI's assessment conclusions. This guidance aims to deepen IPR holders' understanding and assist them in developing successful strategies to effectively protect and enforce their rights amidst the increasingly complex landscape of IPR infringement in Vietnam.

1. Obtaining a favorable VIPRI's Assessment Conclusion: What strategic approach?

IPR holders or the concerned party is just required to submit, among others, a petition for VIPRI's assessment conclusion, along with the evidence of IP ownership and the alleged infringement. VIPRI will then conduct assessment to work out if there exist an infringement. However, to truly optimize the chances of a positive outcome, simply filing these documents is not enough.

To significantly boost the chances of a favorable outcome, it's crucial to go beyond the standard submission. It is advisable to submit a written document alongside the VIPRI petition. This document should explain any details of the case and provide a more thorough analysis, such as presenting a claim chart and infringement analysis in a [patent infringement](#) case. In instances where it is beneficial to illustrate the distinctive nature of a trademark or design, submitting a market survey that shows various third-party marks can help reinforce the uniqueness of the rights holder's trademark or design. Additionally, providing information on the well-known or widespread use and recognition in Vietnam of a trademark or design can also support the VIPRI petition and may be persuasive.

However, it is important to note that documents manifesting well-known or widespread use status of a mark have only supporting value. VIPRI does not assess well-known status for assessment purposes. This is primarily because **(i)** well-known marks have not been officially recognized by any Vietnamese authorities, and **(ii)** VIPRI lacks the competence to recognize a mark as well-known in Vietnam. Therefore, VIPRI cannot base its assessment on the premise that the trademark is well-known. Instead, VIPRI can only rely on trademarks that have been registered in Vietnam for assessment purposes."

2. Taking enforcement actions against IPR infringement in Vietnam: Is obtaining a VIPRI's Assessment Conclusion necessary?

The Vietnamese authorities are working to improve training for court officials, judges, customs authorities, and other IP enforcement agencies. However, inconsistencies still exist in court decisions, particularly influenced by the geographic location of the court handling the legal action. In many cases, judges in rural areas may face challenges due to varying levels of experience and legal training, which can impact the fairness of judgments in accordance with Vietnamese law. Therefore, it is strongly recommended to obtain a favorable assessment for IPR holders before proceeding with enforcement actions.

In principle, industrial property right holders are entitled to file an infringement suit without a VIPRI opinion. Nevertheless, although not mandatory, obtaining a VIPRI's Assessment Conclusion is crucial for [patent infringement](#) lawsuits in Vietnam. This necessity arises because **(i)** there is currently no specialized IP court in Vietnam, and **(ii)** IP-related lawsuits, especially those involving patent matters, are relatively new and complex for many Vietnamese judges or other administrative enforcement officers, who may have limited experience in handling such disputes. Therefore, a VIPRI opinion, if favorable to the IPR holders, will strengthen their arguments against IPR infringement and is highly recommended.

3. Must the Vietnamese enforcement authorities be bound by the VIPRI's Assessment Conclusion?

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.

VIPRI's Assessment Conclusion serves as evidence submitted by the IPR holders and/or relevant parties and is reviewed by the Vietnamese enforcement authorities during proceedings. The Vietnamese enforcement authorities are not statutorily bound by VIPRI's Assessment Conclusion. Both under law and in practice, the Vietnamese enforcement authorities may, if deemed necessary, independently gather documents and evidence through prescribed procedures, such as soliciting expert assessments or requiring individuals or organizations to provide relevant evidence. Therefore, VIPRI's Assessment Conclusion can significantly influence the Vietnamese enforcement authorities' initial perspective on the case, as well as the stance of experts, individuals, or organizations that they may consult, especially considering the challenges some enforcement officers face with IPR-related matters in Vietnam.

4. Should IPR holders continue enforcement action if VIPRI's Assessment Conclusion is unfavorable?

Many rights holders are discouraged from pursuing an infringement action when an unfavorable VIPRI opinion is issued. However, it's important to note that VIPRI's Assessment Conclusion serves only as an expert opinion and is not binding on Vietnamese enforcement authorities. Therefore, in the case of an unfavorable VIPRI's Assessment Conclusion, the following actions should be considered: **(a)** provide new evidence and arguments and request an "additional assessment" or "re-assessment" from the VIPRI; **(b)** seek expert opinions from the Intellectual Property Office of Vietnam on another legal matter, such as [unfair competition](#); and **(c)** continue to submit a petition for handling IPR infringement to the Vietnamese enforcement authorities, who have the discretion to act independently of the VIPRI opinion.

5. "Additional assessment" or "Re-assessment": When is it possible to request?

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. Please refer to our article titled "[Understanding IP Law in Vietnam: Why Selling Genuine Products Might Still Be Infringement?](#)" for more details on "re-assessment".

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 [Vietnamese enforcement authorities](#) and/or the stakeholders have the right to decide whether to file an assessment request /solicitation, as well as whether to use the results stated in the assessment conclusion document.

A VIPRI's Assessment Conclusion, 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's Assessment Conclusion can provide persuasive evidence that may influence the court to rule in favor of the rights holder.

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