

Opposing an Industrial Design Application in Vietnam:

What secrets to Successful Opposition?

Upon identifying an industrial design ("ID") application filed by a competitor that could potentially harm or negatively impact your interests, you have the right to file a Notice of Opposition, officially voicing your objection to the granting of a protection certificate for that ID application. To ensure the success of your Opposition, it is crucial to follow specific steps and implement effective strategies aligned with Vietnam's IP Laws.

With 15 years of experience in advising and handling complex Intellectual Property ("IP") disputes, KENFOX IP & Law Office provides valuable recommendations to assist you in effectively opposing ID applications in Vietnam. Our aim is to protect your legitimate interests and prevent these designs from negatively impacting your business operations

1. Right to file an Opposition

Any individual or entity has the right to file an Opposition against an ID registration if they believe that the design in question does not meet the criteria for protection.

2. Deadline for filing an Opposition

An Opposition must be submitted to the Intellectual Property Office of Vietnam ("IP VIETNAM") within 04 months from the date of publication of the ID application in the Industrial Property Gazette (*Article 112a.1(b) of the Intellectual Property Law*). This implies that the deadline for filing an Opposition is strict, and prompt action is necessary upon identifying a competitor's ID application that could potentially impact your business. An Opposition Petition against the grant of an ID exclusive right must be filed within the legally prescribed timeframe. Failing to meet the deadline results in the forfeiture of the right to oppose.

3. Legal grounds

A Notice of Opposition against an [ID application](#) can be filed with IP VIETNAM based on the following grounds:

- **Ownership rights:** Demonstrate your legitimate ownership of the ID (through relevant patent or trademark registration documents. Evidence of use, production, or commercialization of your ID (invoices, receipts, images, videos, etc.)).
- **Priority rights:** Provide evidence of priority rights, if applicable.
- **Protection conditions (novelty, creativeness, and industrial applicability):** Prove that the opposing party's ID does not meet the protection conditions, such as lacking novelty or creativity (by directly comparing your ID and your competitor's ID. Demonstrate similarities in design, features, or other elements. Analyze any differences (if any) and explain their insignificance). Ensure that all documents and evidence used for Opposition are available or created before the competitor's ID application filing date.
- **Other issues related to the ID application:** ID harming order, security, national defense, social safety.

4. Assessing the grounds and validity of an Opposition

An Opposition is considered to have grounds if accompanied by valid supporting documentation. For issues related to protection conditions, the Opposition must demonstrate:

- **Disclosure:** You must provide sufficient documentation to prove that the ID for registration has been [disclosed or published before the filing date or priority date](#) of the opposed application.
- **No significant difference:** Demonstrate that the opposed ID does not differ significantly from the prior ID.

An Opposition is considered to have "merits" if:

- The opposition has grounds, and your arguments are sound.
- The legal basis is accurate, and you cite the appropriate legal provisions.
- The cited ID is relevant and has the potential to affect the protectability of the opposed ID.

An Opposition is considered to lack "merits" if:

- It lacks grounds or the arguments are unsound.
- The legal basis is inaccurate or you cite incorrect legal provisions.
- The cited ID is irrelevant and does not affect the protectability of the opposed ID.

5. Examination of the Opposition

IP VIETNAM will assess the validity of the evidence and arguments presented in the Opposition.

- If the Opposition is deemed to have grounds, IP VIETNAM will issue a Notice and send it to [the ID applicant](#), requesting their response within 02 months. If necessary, IP VIETNAM may inform you of the ID applicant's response and request your further response within two months from the notification date.
- If the Opposition is deemed to lack grounds, IP VIETNAM will notify you of the reasons for rejecting the Opposition.

If necessary or upon request from both parties, IP VIETNAM may invite the applicant and you to a direct dialogue to clarify the Opposition issue.

Handling disputes related to the right to file an Opposition

- If your Opposition concerns the applicant's "[registration rights](#)" and IP VIETNAM cannot determine whether your Opposition has grounds, you will be notified to file a petition for dispute resolution with the Court.
- If you do not file a lawsuit within 02 months and do not submit a copy of the Court's case acceptance notice to IP VIETNAM, it will consider you to have withdrawn your Opposition and will proceed with processing the application as if there is no Opposition. If receipt of a copy of the case acceptance notice from you within this period, IP VIETNAM will suspend the processing of the application to await the outcome of the dispute resolution from the Court and then process the application according to that outcome.

Final thoughts

The business "playing field" always contains inherent risks, especially when [competitors "spy on" and copy](#) your ideas. Unauthorized industrial design applications are the "weapon" they use to "seize" your creative achievements. Therefore, filing an Opposition is an effective way to protect your rights.

To increase the chances of success in opposing an industrial design application, you need to provide sufficient evidence and solid arguments. Using specific examples, citing precedents, and presenting convincing documentary proof can add weight to your argument. Timely responses to notifications or opinions from IP VIETNAM and the ID applicant will help IP VIETNAM have a more comprehensive and multi-dimensional view of the industrial design application, better understand the aspects related to the ID being applied for, and, on this basis, make accurate decisions regarding the protection or rejection of the ID application.

QUAN, Nguyen Vu| Partner, IP Attorney
HUONG, Ngo Thu| Partner
Ly, Dinh Trang| Associate

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