



The Trademark Prosecution Review

2025

**Vietnam: A fresh take on
third-party observations in trademark
applications**

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Vietnam: A fresh take on third-party observations in trademark applications

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Summary

[IN SUMMARY](#)

[DISCUSSION POINTS](#)

[REFERENCED IN THIS ARTICLE](#)

[THIRD-PARTY OBSERVATION RIGHT](#)

[TIME LIMITS FOR EXERCISING THIRD-PARTY OBSERVATION RIGHT](#)

[PROCEDURE FOR SETTLEMENT OF THIRD-PARTY OPPOSITION](#)

[GROUNDS FOR THIRD-PARTY OPPOSITION](#)

[SURVEILLANCE](#)

[CHOICE OF OPINION OR OPPOSITION](#)

IN SUMMARY

This article explores third-party rights relating to trademark applications, and recent amendments to the 2005 Intellectual Property Law.

DISCUSSION POINTS

- Third-party observation right
 - Time limits for exercising third-party observation right
 - Procedure for settlement of third-party opposition
 - Grounds for third-party opposition
 - Surveillance
 - Choice of opinion or opposition
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REFERENCED IN THIS ARTICLE

- 2005 Intellectual Property Law (the IP Law, as amended in 2009, 2019 and 2022)
 - 2015 Civil Procedure Code
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It's an important development in Vietnam IP law to set up a legal frame ensuring a fair protection to real owners by emphasizing third party observation role in the application examination phase for protection titles.

THIRD-PARTY OBSERVATION RIGHT

Third-party observation in an application's substantive examination phase, by allowing third parties to submit their opinion to the Intellectual Property Office of Vietnam (IPVN) on the grant of protection title to industrial property objects in the application, is mentioned in the IP Law and repeated in the 2009 and 2019 amended versions of it. The role of third-party observation in the IP Law is limited to the submission of a third-party opinion only; no further discussion or communication is permitted between the opposer and the IPVN, as the third-party opinion as filed is treated as a source of information for reference only by the IPVN when it conducts the substantive examination. The IPVN is not obliged or responsible for sending its settlement result to the opposer.

However, the role of third-party observation is emphasised and improved in the latest amended version of the IP Law, which became effective on 1 January 2023. Accordingly, third parties are not only entitled to submit their opinion as previously stipulated in the IP Law's old versions but also given the right to file their opposition to the grant of protection titles to industrial property objects in applications during the substantive examination phase with the IPVN. The IPVN shall be responsible for settling the third-party opposition and sending its settlement result to the opposers. This is one of the most fundamental and important developments in the IP Law's 2022 version in ensuring fair protection to the rights holders.

TIME LIMITS FOR EXERCISING THIRD-PARTY OBSERVATION RIGHT

One of the conditions for exercising the third-party observation right is that the opinion or opposition must be submitted to the IPVN with the time limits set by the IP Law.

As to third-party opinion, it must be submitted to the IPVN after the application publication date and prior to the decision of whether to grant protection title to the application. As to the international trademark application designating Vietnam under the Madrid Agreement and Protocol, the time limit for submitting a third-party opinion is regulated differently. Under article 27.10 of Decree 65, it can be submitted to the IPVN after the publication date of the international application and prior to any of the following dates, whichever comes first: (1) the date on which the IPVN accepts the international application; or (2) the end of 12 months from the International Bureau's notification on the international application designating Vietnam.

As to third-party opposition, it must be submitted within five months of the publication date of the trademark application, which is two months from the date on which the trademark application is legitimately accepted by the IPVN. The trademark application will be checked for its compatibility with the IP Law's requirements within one month of its filing date, not including time for supplements or revisions, or both, at the IPVN's request, if any. Prior to the effective date of the IP Law's 2022 amended version, many third-party opinions were submitted in the form of third-party oppositions within the whole substantive examination duration of nine months from the publication date and prior to granting the protection title to the industrial property objects in the applications.

PROCEDURE FOR SETTLEMENT OF THIRD-PARTY OPPOSITION

Applications for third-party opposition must be made in Vietnamese. No form of the application is stipulated by the IP Law. Accompanying documents of the application may be in a foreign language, but the IPVN may require a Vietnamese translation of any accompanying document to facilitate its settlement.

Once the application dossier for third-party opposition satisfies the statutory requirements, the IPVN shall notify the trademark applicant on the third-party opposition and set a time limit of two months for the owner of the trademark application to give its opinion on the answer to the opposition to the IPVN. If the trademark and the goods or services described in the application are identical to those that are demonstrated and evidenced by the opposer, or if there are firm and clear grounds for the conclusion that the trademark and the goods or services described in the application are or are not confusingly similar to those that are demonstrated and evidenced by the opposer, the IPVN shall settle the third-party opposition alongside the substantive examination of the trademark application that is opposed. The IPVN shall notify its settlement result of the third-party opposition and its substantive examination result of the trademark application to the opposer. In this circumstance, the substantive examination duration will be nine months from the publication date of the application.

After receipt of the trademark applicant's opinion on the answer of the third-party opposition and when it deems necessary, the IPVN may inform the opposer of the trademark applicant's opinion on the answer and set a time limit of two months for the opposer to give its opinion on the feedback to the trademark applicant through the IPVN.

In consideration of information, evidence and arguments provided by the parties on third-party opposition, and the application dossiers as filed, the IPVN will settle the third-party opposition and notify the opposer of its settlement result as well as its substantive examination result of the trademark application that is opposed. During the course of settlement, the IPVN may, at its sole discretion or at the request of the parties, consider organising direct conversations and negotiations between the parties to facilitate the settlement.

If the third-party opposition is on the right to file the trademark application, the IPVN will notify the opposer to bring the case to the court for settlement under the Civil Procedure Code, except in the following cases:

- There are firm and clear grounds to determine that the trademark applicant has no right to file the application in accordance with the IP Law (article 87.4).
- The third-party opposition on the right to file the trademark application consists of geographical signs or other signs indicating the origin of local specialties of Vietnam in the trademark specimen (articles 87.3 and 87.4).

The opposer shall have two months from IPVN's notification date to submit a copy of the court's acceptance notice of the opposer's claim to the IPVN. Once the court accepts to hear the claim from the opposer, the substantive examination process of the trademark application in question will be temporarily suspended from the IPVN's receipt of the court's acceptance notice of the opposer's claim until the court's verdict is issued. The trademark application will then be settled by the IPVN in accordance with the court's verdict. If no court acceptance notice of the opposer's claim is submitted to the IPVN within two months, the opposer's opposition will be considered withdrawn.

GROUND FOR THIRD-PARTY OPPOSITION

The opposer can cite various legal stipulations from the IP Law's 2022 amended version for challenging and opposing the grant of protection title to the trademark application in question: for instance, legal stipulations on the distinctiveness of trademarks identical or confusingly similar to registered trademarks (article 74), right-to-file applications (article 87) or bad-faith filing (article 96). The opposer should contact and request advice from a qualified trademark attorney in Vietnam on legal grounds for undertaking the opposition.

SURVEILLANCE

Trademark owners or opposers can conduct surveillance on trademark applications filed in Vietnam for opposition through searching by themselves or requesting qualified services from local law firms. The following search tools are available for trademark owners and opposers to exploit:

- The IPVN's Industrial Property Gazettes, which are published monthly. The Industrial Property Gazettes are in Vietnamese and only published on a Vietnamese page of the IPVN's [website](#).
- WIPO Publish trademarks and VN Trademarks, which are free-of-charge online search engines. The IP search tools are on an English page of IPVN's [website](#).
- Other international and regional IP information search tools, which can link to or retrieve information from the Vietnam

trademark database, namely <https://patentscope.wipo.int/search/en/search.jsf> and <http://www.asean-tmview.org/tmview/welcome>.

Apart from the above online search tools, trademark owners and opposers can contact and request the relevant services from local law firms for information searches, surveillance and undertaking opposition.

CHOICE OF OPINION OR OPPOSITION

While both opinion and opposition allow opposers to challenge the trademark application, an opposition is a formal, more robust and interactive platform between the parties. An opinion, on the other hand, constitutes an expeditious and less stringent mechanism for an opposer. An opinion necessitates only a written submission substantiated by relevant legal arguments and supporting evidence. In contradiction, an opinion is not subject to a filing fee. The ease and lack of cost associated with filing an opinion could lead to frivolous or strategic filings intended to delay or disrupt the application process. This could become a concern if an opinion becomes more widely used. Furthermore, it is crucial to acknowledge that the IPVN considers an opinion solely as an information reference during the examination process of the trademark application that is opposed. Consequently, it generally does not provide the opposer with formal notification regarding the ultimate outcome of the application's assessment. Therefore, an opinion may not carry the same persuasive influence as an opposition does. Conversely, an opposition requires specific filings, fees and a structured communication process where both parties present arguments. The IPVN is obliged to settle an opposition and notifies its settlement to the opposer alongside the substantive examination result of the trademark application.

Opinion and opposition mechanisms serve as crucial safeguards within Vietnam's trademark registration system. An opinion offers a flexible and cost-effective means for interested parties to bring potential conflicts to the IPVN's attention during the substantive examination of the application. This enables the early identification of issues and potentially smoother registration processes. Conversely, an opposition provides a more structured and formal platform for challenging the trademark application with strong legal grounds. By engaging in opposition proceedings, the opposer can defend its legitimate trademark rights against the conflicting marks as well as prevent the conflicting marks from registration.

The choice of opinion or opposition hinges on a practical consideration – the balance between effort and formality. In simpler situations, or when a quick response from the IPVN is required, the choice of the opinion option might be a suitable way. However, from an efficiency point of view, with a settlement result from the IPVN, the choice of opposition becomes the preferable option. Looking ahead, continued refinement of the legal framework on the option of a third-party opinion or a third-party opposition can further enhance transparency and clarity of the IPVN's trademark system, fostering a more robust environment of protection for intellectual property rights.



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