

学校编码: 10384

分类号: _____ 密级: _____

学 号: 32520120154108

UDC: _____

厦 门 大 学

博 士 学 位 论 文

越中两国商标注册制度的比较研究

A Comparative Study on the Trademark Registration
System between Vietnam and China

LE LUONG THINH

指导教师姓名: 林秀芹 教授

专 业 名 称: 知识产权法学

论文提交日期: 2016 年 6 月

论文答辩时间: 2016 年 7 月

学位授予日期: 2016 年 9 月

答辩委员会主席: _____

评 阅 人: _____

2016 年 7 月

厦门大学学位论文原创性声明

本人呈交的学位论文是本人在导师指导下，独立完成的研究成果。本人在论文写作中参考其他个人或集体已经发表的研究成果，均在文中以适当方式明确标明，并符合法律规范和《厦门大学研究生学术活动规范（试行）》。

另外，该学位论文为（ ）课题（组）的研究成果，获得（ ）课题（组）经费或实验室的资助，在（ ）实验室完成。（请在以上括号内填写课题或课题组负责人或实验室名称，未有此项声明内容的，可以不作特别声明。）

声明人（签名）：

年 月 日

厦门大学学位论文著作权使用声明

本人同意厦门大学根据《中华人民共和国学位条例暂行实施办法》等规定保留和使用此学位论文，并向主管部门或其指定机构送交学位论文（包括纸质版和电子版），允许学位论文进入厦门大学图书馆及其数据库被查阅、借阅。本人同意厦门大学将学位论文加入全国博士、硕士学位论文共建单位数据库进行检索，将学位论文的标题和摘要汇编出版，采用影印、缩印或者其它方式合理复制学位论文。

本学位论文属于：

（ ） 1.经厦门大学保密委员会审查核定的保密学位论文，
于 年 月 日解密，解密后适用上述授权。

（ ） 2.不保密，适用上述授权。

（请在以上相应括号内打“√”或填上相应内容。保密学位论文应是已经厦门大学保密委员会审定过的学位论文，未经厦门大学保密委员会审定的学位论文均为公开学位论文。此声明栏不填写的，默认为公开学位论文，均适用上述授权。）

声明人（签名）：

年 月 日

厦门大学博硕士学位论文摘要库

摘 要

越南和中国都是实行注册取得商标权的模式的国家。因此，商标注册制度在越中两国商标保护体系中都有着重要的意义。商标注册制度不仅是商标专用权的确立基础，而且还是保护商标权的主要依据。两国的商标注册制分别受各自社会经济条件、法律实践和立法观点等因素的影响和支配。两国同样采用注册取得商标权的模式，与此同时两国在商标设立与商标注册具体制度方面存在诸多差异。据此，本文拟从比较法的角度对越中两国商标注册制度进行研究，以期越南向中国在商标法领域的法律移植提供法理依据及政策参考。

本文的创新点主要通过两国商标注册制度的比较，对两国商标注册制度的差异之处进行分析、评价其各方面的影响，并借鉴各自具有参考价值的规定和实践经验，结合运用相关的理论基础，从而对两国商标注册制度尚未完善之处提出了思考与建议。具体创新点体现如下：

首先，提出了完善越南商标注册制度的具体建议。鉴于越南现行立法缺乏对区别性的标志类型和商标构成要素类型的规定，越南应该考虑引入商标区别性理论、非功能性理论和颜色穷尽理论来完善这些规定；考虑引入保护他人先在权利的原则和防止商标抢注行为的原则并详细规定不得与他人先在民事权相冲突的条件、不得与他人先在的著作权相冲突的条件、不得与在合同关系、业务往来关系或其他关系中明知或应知的商标相冲突的条件；以在先使用原则为辅助来克服申请在先原则和优先权原则的不足之处；以防止恶意异议行为的原则来完善异议的主体和事由。

其次，提出了完善中国商标注册制度的建议。中国可以考虑借鉴商号确权原则来完善对抗申请商标的商号的条件。同时，中国也应考虑尊重商标注册申请人的自由意志权的原则，通过审查商品质量管理的实效以评估强制注册制度的必要性。

最后，基于越中两国商标注册制度的差异，本文还对越中两国的企业投资提出了具体的指导与建议，有利于两国企业了解两国制度的差异，从而更好地保护企业的商标权。

关键词：商标注册制度；商标注册程序；商标异议制度。

ABSTRACT

Vietnam and China all adopt model of acquisition of trademark right through registration. Therefore, registration system plays an important role both in Vietnam and China. Registration system is not only the base of acquisition of trademark, but also the base of trademark protection. Registration system is subject to different social and economic conditions, legal practice and legislation views of Vietnam and China. Both countries share the same model of acquisition of trademark right through registration, however there exist substantial differences in establishment and registration system of trademark. Therefore, both countries' trademark registration system will be studied from the perspective of comparative law, in order to provide legal base and policy guidance for legal transplantation of Vietnam from China on trademark law.

Innovative points of this article are as follows: differences of two countries' trademark registration system will be analyzed and assessed based on comparative law, reasonable legislation and practice will be used as reference, and the drawbacks of both countries' trademark registration systems will be reflected and refined.

Firstly, detailed suggestions to Vietnam's trademark registration system will be provided. Considering lack of legislation on category of distinctive mark and category of trademark constituent in Vietnam, it is advised to introduce theory of trademark distinctiveness, non-function theory and color exhaustion theory; it is also suggested to introduce protect other's prior right rule and no-rush registration rule, and provide detailed regulation as to the condition of no conflict with other's prior right, other's prior copyright, and no conflict with trademark which should be known through prior contractual relation, business relation or other relations; it is also advised to use prior use rule to over the drawbacks of registration first rule and priority rule; no-malice challenge rule should be introduced to refine the regulation on the scope of subject and reason of challenge.

Secondly, suggestions as to improve Chinese trademark system are also be provided. China can consider to use corporate name right affirmation rule as reference to improve the conditions to challenge corporate name which is used for trademark registration. Meanwhile, China should consider respect free will of trademark registration applicant, and assess the necessity of compulsory registration system through review the effect of product quality management.

Finally, based on differences of both countries' trademark registration system, detailed guidance and advices to both countries' companies are also be provided in this article, which is beneficial for deep understandings of differences of both countries' system, in order to protect trademark rights of companies better.

Keywords : trademark registration system; trademark registration procedure; trademark objection system.

目 录	
引 言	1
一、研究目的与意义	2
二、研究综述	6
三、研究方法	7
第一章 越中两国商标注册制度的理论基础	9
第一节 商标权取得模式的概述	9
一、使用取得商标权的模式	10
二、注册取得商标权的模式	12
三、商标权取得的混合模式	16
第二节 越中两国商标注册制度的概念以及特点	17
一、商标注册制度的概念	17
二、越中两国商标注册制度的特点	18
第三节 越中两国商标注册制度的地位以及意义	21
一、越中两国商标注册制度的地位	21
二、越中两国商标注册制度的意义	21
第四节 越中两国商标法的起源与发展	24
一、越南商标法的起源与发展	24
二、中国商标法的起源与发展	37
三、越中两国商标法起源与发展的比较	47
本章小结	52
第二章 越中两国商标注册绝对条件相关规定比较研究	54
第一节 越中两国商标注册绝对条件的含义以及特征	54
一、商标注册绝对条件的含义	54
二、商标注册绝对条件的特征	55
第二节 越中两国商标区别性的条件之比较	56
一、商标区别性的含义	56

二、越南商标区别性的条件	59
三、中国商标区别性的条件	77
四、越中两国商标区别性条件之比较分析	89
第三节 越中两国商标构成要素的条件之比较	97
一、越南的商标构成要素的条件	97
二、中国的商标构成要素的条件	102
三、越中两国商标构成要素的条件之比较分析	106
第四节 越中两国不得使用的标志条件之比较	110
一、越南不得使用的标志条件	110
二、中国不得使用的标志条件	115
三、越中两国不得使用的标志条件之比较分析	119
本章小结	125
第三章 越中两国商标注册相对条件相关规定比较研究	127
第一节 越中两国商标注册相对条件的含义以及特征	127
一、商标注册相对条件的含义	127
二、商标注册相对条件的特征	127
第二节 越中两国关于不得与他人民事权相冲突的条件之比较	129
一、越南关于不得与他人民事权相冲突的条件	129
二、中国关于不得与他人民事权相冲突的条件	131
三、越中两国关于不得与他人民事权相冲突的条件之比较分析	136
第三节 越中两国关于不得与他人知识产权相冲突的条件之比较	137
一、越南关于不得与他人知识产权相冲突的条件	137
二、中国关于不得与他人知识产权相冲突的条件	145
三、越中两国关于不得与他人知识产权相冲突的条件之比较分析	150
第四节 越中两国关于不得与他人商标权相冲突的条件之比较	154
一、越南关于不得与他人商标权相冲突的条件	154
二、中国关于不得与他人商标权相冲突的条件	165
三、越中两国关于不得与他人商标权相冲突的条件之比较分析	176

本章小结	180
第四章 越中两国商标注册的原则和程序相关规定比较研究	182
第一节 越中两国关于商标注册的原则之比较	182
一、越南商标注册的原则.....	182
二、中国商标注册的原则.....	187
三、越中两国关于商标注册的原则之比较分析.....	192
第二节 越中两国关于商标注册的程序之比较	196
一、越南商标注册的程序.....	196
二、中国商标注册的程序.....	206
三、越中两国关于商标注册程序之比较分析.....	213
本章小结	218
第五章 越中两国商标异议制度相关规定比较研究	220
第一节 越中两国商标异议制度的含义及其作用	220
一、商标异议制度的含义.....	220
二、商标异议制度的作用.....	221
第二节 越南商标注册的异议制度	223
一、异议人的主体资格.....	224
二、商标异议的对象.....	224
三、商标异议的期限.....	225
四、商标异议的事由.....	225
五、商标异议的受理和审理.....	226
六、商标异议的救济途径.....	228
第三节 中国商标注册的异议制度	228
一、异议人的主体资格.....	229
二、商标异议的对象.....	230
三、商标异议的期限.....	230
四、商标异议的事由.....	230
五、商标异议的受理和审理.....	231

六、商标异议的救济途径.....	233
第四节 越中两国商标异议制度的比较分析.....	234
一、越中两国商标异议制度的相同之处.....	234
二、越中两国商标异议制度的差异之处.....	235
本章小结.....	238
第六章 越中两国商标注册制度相关建议与启示.....	239
第一节 越中两国商标注册制度的借鉴建议.....	239
一、越南商标注册制度相关思考与建议.....	239
二、中国商标注册制度相关思考与建议.....	254
第二节 对于越中两国企业的启示.....	257
一、越南企业在中国注册商标需要注意的问题.....	257
二、中国企业在越南注册商标需要注意的问题.....	262
结束语.....	266
参考文献.....	268

CONTENTS

Introduction.....	1
Section 1 Purposes and Meanings of Research.....	2
Section 2 Research Review.....	6
Section 3 Research Method.....	7
Chapter 1 Theoretical Bases of Trademark Registration System of Vietnam and China.....	9
Subsection 1 Summary of Trademark Right Acquisition Model.....	9
Section 1 Model of Trademark Right Acquisition Through Use.....	10
Section 2 Model of Trademark Right Acquisition through Registration.....	12
Section 3 Mixed Models of Trademark Right Acquisition.....	16
Subsection 2 Definition and Characters of Trademark Registration System of Vietnam and China.....	17
Section 1 Definition of Trademark Registration System.....	17
Section 2 Characters of Trademark Registration System of Vietnam and China.....	18
Subsection 3 Roles and Meanings of Characters of Trademark Registration System of Vietnam and China.....	21
Section 1 Roles of Trademark Registration System of Vietnam and China.....	21
Section 2 Meanings of Trademark Registration System of Vietnam and China.....	21
Subsection 4 Origin and Development of Trademark Law of Vietnam and China.....	24
Section 1 Origin and Development of Trademark Law of Vietnam.....	24
Section 2 Origin and Development of Trademark Law of China.....	37
Section 3 Comparasion of Origin and Development of Trademark Law of Vietnam and China.....	47
Chapter 2 Comparasion Study of Absolute Conditions of Tradamark Registration of Vietnam and China.....	54
Subsection 1 Definition and Characters of Absolute Conditions of Tradamark Registration	

of Vietnam and China.....	54
Section 1 Definition of Absolute Condition of Trademark Registration.....	54
Section 2 Characters of Absolute Condition of Trademark Registration.....	55
Subsection 2 Comparasion of Trademark Distinctiveness of Vietnam and China.....	56
Section 1 Definition of Trademark Distinctiveness.....	56
Section 2 Condition of Trademark Distinctiveness of Vietnam.....	59
Section 3 Condition of Trademark Distinctiveness of China.....	77
Section 4 Comparasion Study of Condition of Trademark Distinctiveness of Vietnam and China.....	89
Subsection 3 Comparasion of Conditions of Trademark Constituent of Vietnam and China.....	97
Section 1 Condition of Trademark Constituent of Vietnam.....	97
Section 2 Condition of Trademark Constituent of China.....	102
Section 3 Comparasion of Conditions of Trademark Constituent of Vietnam and China.....	106
Subsection 4 Comparasion of Trademark Condition of Prohibition of Use of Vietnam and China.....	110
Section 1 Trademark Condition of Prohibition of Use of Vietnam.....	110
Section 2 Trademark Condition of Prohibition of Use of China.....	115
Section 3 Comparasion of Trademark Condition of Prohibition of Use of Vietnam and China.....	119
Chapter 3 Comparasion Study of Relative Conditions of Trademark Registration of Vietnam and China.....	127
Subsection 1 Definition and Character of Relative Conditions of Trademark Registration of Vietnam and China.....	127
Section 1 Definition of Trademark Relative Conditions.....	127
Section 2 Character of Trademark Relative Conditions.....	127
Subsection 2 Comparasion of Conditions of No-Conflict with Other’s Civil Right of Vietnam and China.....	129

Section 1 Condition of No-Conflict with Other’s Civil Right of Vietnam.....	129
Section 2 Condition of No-Conflict with Other’s Civil Right of China.....	131
Section 3 Comparasion of Conditions of No - Conflict with Other’s Civil Right of Vietnam and China.....	136
Subsection 3 Comparasion of Conditions of No-Conflict with Other’s Intellectual Property Right of Vietnam and China.....	137
Section 1 Conditions of No-Conflict with Other’s Intellectual Property Right of Vietnam.....	137
Section 2 Conditions of No-Conflict with Other’s Intellectual Property Right of China.....	145
Section 3 Comparasion of Conditions of No - Conflict with Other’s Intellectual Property Right of Vietnam and China.....	150
Subsection 4 Comparasion of Conditions of No-Conflict with Other’s Trademark Righ of Vietnam and China.....	154
Section 1 Conditions of No-Conflict with Other’s Trademark Righ of Vietnam.....	154
Section 2 Conditions of No-Conflict with Other’s Trademark Righ of China.....	165
Section 3 Comparasion of Conditions of No-Conflict with Other’s Trademark Righ of Vietnam and China.....	176
Chapter 4 Comparasion research on Principle and Procedures of Trademark Registration System of Vietnam and China.....	182
Subsection 1 Comparasion Principles of Trademark Registration of Vietnam and China.....	182
Section 1 Principles of Trademark Registration of Vietnam.....	182
Section 2 Principles of Trademark Registration of China.....	187
Section 3 Comparasion of Trademark Registration System of Vietnam and China.....	192
Subsection 2 Comparasion of Registration Procedures of Trademark of Vietnam and China.....	196
Section 1 Registration Procedures of Trademark of Vietnam.....	196
Section 2 Registration Procedures of Trademark of China.....	206

Section 3 Comparasion of Registration Procedures of Trademark of Vietnam and China.....	213
Chapter 5 Comparasion Study of Objection System of Trademark of Vietnam and China.....	220
Subsection 1 Definition and Functions of Objection System of Trademark of Vietnam and China.....	220
Section 1 Defintion of Objection System of Trademark.....	220
Section 2 Functions of Objection System of Trademark.....	221
Subsection 2 Objection System of Trademark of Vietnam.....	223
Section 1 Subject Matter of Challenger.....	224
Section 2 Object of Trademark Objection.....	224
Section 3 Duration of Trademark Objection.....	225
Section 4 Reason of Trademark Objection.....	225
Section 5 Filing and Review of Trademark Objection.....	226
Section 6 Remedy of Trademark Objection.....	228
Subsection 3 Objection System of Trademark of China.....	228
Section 1 Subject Matter of Challenger.....	229
Section 2 Object of Trademark Objection.....	230
Section 3 Duration of Trademark Objection.....	230
Section 4 Reason of Trademark Objection.....	230
Section 5 Filing and Review of Trademark Objection.....	231
Section 6 Remedy of Trademark Objection.....	233
Subsection 4 Comparasion Study of Objection System of Trademark of Vietnam and China.....	234
Section 1 Similarities of Objection System of Trademark of Vietnam and China.....	234
Section 2 Differences of Objection System of Trademark of Vietnam and China.....	235
Chapter 6 Suggestions and Inspirations of Trademark Registration System of Vietnam and China.....	239

Subsection 1 Suggestions of Trademark Registration System of Vietnam and China.....	239
Section 1 Suggestions of Trademark Registration System of Vietnam.....	239
Section 2 Suggestions of Trademark Registration System of China.....	254
Subsection 2 Inspirations to Companies of Vietnam and China.....	257
Section 1 Dos and Don't of Vietnam Companies.....	257
Section 2 Dos and Don't of China Companies.....	262
Closing Marks.....	266
Bibliography.....	268

厦门大学博士论文摘要库

Degree papers are in the “[Xiamen University Electronic Theses and Dissertations Database](#)”.

Fulltexts are available in the following ways:

1. If your library is a CALIS member libraries, please log on <http://etd.calis.edu.cn/> and submit requests online, or consult the interlibrary loan department in your library.
2. For users of non-CALIS member libraries, please mail to etd@xmu.edu.cn for delivery details.