

Venezuela: New Opposition/Cancellation Provisions and Covid-19 Update

By [Sahil Yadav](#)

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Adoption of the 11th edition of the Nice International Classification of Goods and Services

The most integral change implemented by SAPI is the adoption of the Nice International Classification of Goods and Services which will eventually affect all trademark procedures across the board including trademark oppositions and non-use cancellation actions.

The change is important since it will mean that the national classification under the Industrial Property Law will no longer apply. Since 2008, when Venezuela exited the Andean Pact and reinstated its outdated Industrial Property Law of 1956, Venezuela followed a dual-classification system to accommodate both the local classification system and the international classification system. This resulted in trademark owners having to file more than one trademark application to cover a single Nice class for one mark.

The adoption of a single-classification system will enable trademark owners to avoid having to file multiple trademark applications which in turn should reduce the number of oppositions filed.

Introduction of fee for filing oppositions and expedited service for oppositions

Starting from February 10, 2020, SAPI has begun to charge, for the first time, an official fee of roughly US \$120 for filing an opposition against a mark published in the Industrial Property Bulletin. A payment receipt of the official fee must be included with the Notice of Opposition in order for the opposition to be processed.

Further, SAPI has introduced a new expedited service for oppositions on payment of a fee of roughly another US \$120 (based on current market rates) which will ensure a first-instance decision within 120 working days of the opposition filing date. If a decision is not provided within this time, the opposition may be referred to a judicial court. This new service is expected to be made available this current year. The expedited service may be requested for new oppositions as well as for pending oppositions filed between February 16, 2004 and February 17, 2020.

New rules to be introduced in non-use cancellation actions

Currently, to file a non-use cancellation action, the petitioner is required to show a legitimate interest. Under the new provision, the petitioner will not be required to prove any standing or evidence actual interest. In other words, under the new provisions, anyone can bring a non-use cancellation action.

Further, the current provision does not provide the trademark owner with an opportunity to file any evidence. The new provision will provide both the trademark owner and the petitioner an opportunity to file supporting evidence, but it does not expressly place the burden of proof on the trademark owner. The implementation of this change, among others, is part of the final draft of the new Industrial Property Law in Venezuela which is set to undergo a public presentation for comments from interested parties prior to approval.

Comments

While we believe that some of these provisions are much needed and represent a small step towards modernizing Venezuela's trademark laws, this new round of changes leave other aspects of the law unaddressed. For instance, the failure to expressly place the burden of proof on trademark owners to show use in defense of non-use cancellation proceedings puts the petitioner in the position of having to prove a negative, i.e., the owner's nonuse, which can be both difficult and costly to do.

TEMPORARY E-FILING SYSTEM INTRODUCED DURING COVID-19 NATIONAL EMERGENCY

On April 24, 2020, SAPI published a decision announcing the implementation of a temporary e-filing system, starting April 27, 2020, which will remain in place as long as the national emergency remains in effect in Venezuela (at the time of writing, until June 12, 2020, subject to further extensions). The e-filing system may be used for a variety of different trademark-related procedures such as filing trademark applications, requesting official trademark searches, and post-registration amendments. All documents may also be filed digitally during this time. However, SAPI will require originals once it resumes regular operations.