

Present Situation and Issues of Trademark Opposition Procedure in China and Recommended Improvement Thereof

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The trademark opposition procedure is a procedure in which any natural person, legal entity or any other organisation can present his or its views or opinions about a trademark applied for registration as published in the Trademark Gazette within the statutory time limit, and file requests for adjudication of the mark under opposition according to law. In the Chinese Trademark Law has been provided for the trademark opposition procedure for the public to make comments on trademarks applied for registration to facilitate supervision of Trademark Office's trademark right affirmation in a fair and open manner. In the second amendment to the Trademark Law as of 2001, a procedure for judicial review has been introduced in the trademark opposition procedure, in which a model of four-level examination/review of cases involving trademark opposition is put in place, namely, the Trademark Office's determination, Trademark Review and Adjudication Board's (TRAB) review and adjudication, trial court's decision and final decision by the court of appeal.

The trademark opposition procedure is an important part of the trademark right affirmation procedure. The current opposition procedure, while playing an irreplaceable, important role in trademark right affirmation, is a procedure that usually takes too much time and is very often abused. The third amendment to the Trademark Law has provided a rare opportunity for improvement of the trademark opposition procedure and enhancement of its role in the trademark right affirmation procedure. In line with the trademark practice, this writer will be presenting a line of thinking and recommendations for addressing the issues.

Characteristics and flaws of current trademark opposition procedure

Before the Trademark Law was amended for the second time, the trademark opposition procedure used to be an administrative procedure in which the TRAB's opposition review

and adjudication was final¹, and directly took legal effect, against which an interested party could not bring an administrative action. To satisfy the requirement of the TRIPS Agreement, the Chinese Trademark Law as of 2001 was amended by introducing the judicial review procedure in the trademark opposition procedure. The current trademark opposition procedure has the following characteristics:

1. Pre-opposition procedure required for approval of trademark registration

In China, trademark protection requires registration: a trademark approved for registration by the Trademark Office is a registered mark; the trademark registrant enjoys the exclusive right to use the mark, and his or its right is protected by law². The trademark opposition procedure has to be gone through for approval for trademark registration; to a preliminarily approved trademark, any person may file an opposition within three months from the date of publication³. To a trademark of international registration requesting extended protection within the territory of China, any person may file opposition within three months from the first date of the month following the publication in the International Trademark Gazette in which the WIPO published said mark⁴. A preliminarily approved mark will be approved for registration if no opposition is filed thereto at the expiry of the time for trademark publication; a trademark registration certificate is issued, and the registered mark published. Trademarks of international registration that are not temporarily refused by the Trademark Office (including those refused on account of opposition) within a specified time limit will be granted protection in China, and the Trademark Office will notify the International Bureau of the granted protection⁵.

While not all trademarks applied for registration naturally run into opposition, the opposition procedure is one that has to be gone through in filing a trademark for approval for registration. Even with no opposition filed to a trademark, it is impossible for a trademark published by the Trademark Office upon preliminary approval to be approved for registration before the expiry of the three-month opposition period.

2. Four-level administrative examination and judicial review are likely to cause circuitry of actions

In China, an opposition to a trademark is filed with, and examined by, the Trademark Office. While substantive examination is made by the Trademark Office as to the registrability of a trademark preliminarily approved and published, the examination is one made only of the written material or documents provided by a trademark registration applicant as to

whether a trademark applied for registration is prohibited for use under the provision of the Trademark Law or whether it is in conflict with any prior filed registered marks. It is difficult, in substantive examination, to determine, and then to refuse the applications for registration of trademarks infringing another party's prior rights and those for preemptive registration, in bad faith, of a mark that is already in use by another party and has certain influence. In general, substantive examination is yet to be made by the Trademark Office of a trademark of international registration requesting extended protection within the territory of China published in the International Trademark Gazette. For this reason, when examining cases of opposition, it is not the case that the Trademark Office simply reexamines the preliminarily approved and published trademarks; the opposition procedure provides a chance for other holders of prior rights to claim their rights and for the public to supervise the examination done by the Trademark Office. The Trademark Office examines oppositions filed mainly in writing. In an opposition decision are only presented such matters as the names of the opponent and respondent, requests and grounds for the opposition, presence of the respondent's response; in the presence of such response, indicating the grounds; the ground for making the decision and the law basis; a party's evidence is not listed in detail, nor commented on, nor are reasoning of the decision and detailed grounds presented. The Trademark Office may decide that the opposition is tenable with regard to all or part of the goods in respect of which the mark is to be used⁶. If dissatisfied with the Trademark Office's decision, an interested party may request the TRAB to review the case.

The TRAB, an administrative authority set up under the law, is responsible for handling matters of trademark disputes⁷. The TRAB begins to review a trademark opposition at the request of an interested party. In essence, the TRAB adjudicate a trademark dispute between two interested parties, an action being more of a quasi-judicial nature⁸. The TRAB reviews and adjudicates cases of oppositions in a written form and in open sessions⁹. But as the practice shows, the TRAB rarely reviews opposition in open sessions. The opposition review is not limited to the grounds of the Trademark Office's opposition decision. Rather, review is made of the facts, reasons and requests an interested party has produced in its reexamination application and defence¹⁰. During the time, an interested party may produce new grounds and evidence. If not satisfied with the opposition adjudication, an interested party may bring a lawsuit in the people's court,

and the court should notify the opposite party to the trademark reexamination procedure and involve him or it as a third party to the court procedure¹¹. While the four-level administrative examination and judicial review in the whole opposition procedure enhances the impartiality of the outcome of the opposition review and adjudication, they prolong the procedure for trademark right affirmation, rendering some opposition cases pending for as long as ten years¹².

While mediating between two interested parties, the TRAB is involved as a defendant in the administrative lawsuit directed to opposition review. The court not only procedurally, but also substantively, reviews an opposition review adjudication. If finding the TRAB's administrative action contrary to the law, the court generally does not directly declare on the validity of the trademark under opposition. It, instead, decides to reverse, or partially reverse, the TRAB's adjudication¹³. The TRAB then makes another administrative adjudication on the validity of the trademark in suit in the light of the court's decision. Then, the interested party to whom the administrative adjudication is unfavourable affected may institute a suit again against the administrative adjudication, and the court will, once again, judicially review it. This, in practice, often results in "final decisions not final", and circuitry of actions.

3. No limitation imposed on qualifications of opponents and opposition grounds

The current Trademark Law does not limit the qualifications of opponents or opposition adjudication applicants. An opponent can be one having his or its interests at stake with the respondent or any other party having no interest at stake with the respondent. The grounds for opposition may be all grounds, absolute and relative, for non-registrability of trademarks specified in the Trademark Law.

In the formal examination of an opposition application, the Trademark Office only examines who the opponent is, whether the opposition is filed within the opposition period, and whether there are specified claims and factual basis; the opponent must be a natural person, legal entity or any other organisation of juridical personality; when filing an opposition, it should produce corresponding certificate to prove the authenticity, legitimacy and validity of its identity. For example, a natural person must produce its residential ID, a legal entity a duplicate of its business license, and a copy thereof identical with the original in content, or a copy certified and sealed by the authority issuing the certificate. An opposition application should be unacceptable if a natural person as-

sumes another person's name, or uses a pseudonym or assumed name, or a legal entity furnishes invalid business license and seal due to suspension thereof. Where such an application is accepted, the Trademark Office may close the case on the ground of invalid qualification of the opponent, and approve the registration of the trademark under opposition¹⁴. Even if the opposition grounds are relative ones, it is unnecessary for the opponent to prove that itself or himself is the holder of the prior right or an interested party.

In the latest trademark administrative cases, the courts note that it is not the case that the law places no limitation on the qualifications of opponents at all: an opponent should generally prove that itself or himself is associated with the relative causes when filing an opposition on relative causes, namely, absolute opposition causes are the opposition grounds any party may raise, while relative ones generally claimed by a holder of a prior right or an interested party¹⁵. The holders of prior right or interested parties mainly include the owners of the exclusive right to use prior registered marks or holders of earlier approved trademarks¹⁶, holders of earlier applied trademarks¹⁷, registrants or holders of well-known marks¹⁸, owners of trademarks¹⁹, holders of earlier used trademarks, industrial designs patentees, utility model patentees, copyright owners, and portraiture right owners²⁰, etc.. No limitations are placed on the qualifications of opponents who file their oppositions on absolute grounds. For example, the mark under opposition is a word or device that should not be used as a trademark²¹, or lacks distinctive characters²²; a three-dimensional sign under opposition consisting exclusively of a shape which results from the nature of the goods themselves, the shape of the goods which is necessary to obtain a technical result, or the shape which gives substantial value to the goods²³, or a mark under opposition containing a geographical indication misleading the public²⁴.

Without limitations on the qualifications of opponents and opposition grounds, the circumstances are likely to arise where oppositions are filed in bad faith or trademark opposition procedure is abused. For example, some file oppositions to preliminarily approved trademarks to impede normal registration of trademarks, taking the opportunity to demand a huge amount of money for cancelling opposition. For another example, some attack their competitors by taking advantage of the opposition procedure. Upon knowing the publication of the preliminary approval of the opposite party's trademark, they file an opposition to the trademark to prevent it from being registered, whereby impeding the competitor's normal

business. Opposition filed in bad faith not only does harm to the interests of an interested party, but also disrupts the order of the trademark registration.

4. Outcome of opposition adjudication, retroactivity of trademarks under opposition approved for registration and remedies thereof

Where an opposition is filed to a preliminarily approved and published trademark, the Trademark Office should listen to what the opponent and the respondent have to say about the facts and grounds in connection with the opposition, and make its decision upon investigation and verification²⁵. A respondent's failure to make response does not impact the Trademark Office's opposition decision²⁶. There are only two outcomes of such a decision: where the opposition is tenable (or partially tenable), the mark under opposition is not approved for registration (or partially disapproved for registration); and where the opposition is not tenable, the mark under opposition is approved for registration. The opponent should pay for the opposition fees; the opponent and the respondent respectively bear the corresponding lawyers' fees and other expenses. The Trademark Office has no power to decide that a losing party bears the expenses the other party has paid for.

Where the opposition is tenable upon adjudication and registration is not approved, the opponent cannot request to transfer the mark under opposition to himself or itself. If an agent or representative or holder of the prior right discovers that his or its trademark has been preemptively registered, while filing an opposition to the preemptively registered mark, he or it must file an application for registration of the trademark in his or its own name in order to prevent the respondent from applying again in bad faith or a third party from filing a new application, and to ensure that he or it will obtain registration of his or its own trademark. To date, the Trademark Office has shortened the time for examination of new trademark applications to 10-12 months while that for opposition review is 2-3 years. In respect of newly filed applications, the Trademark Office does not put in place the procedure for suspending examination of new applications; new applications filed by opponents in their own names tend to be refused by the Trademark Office by citing marks under opposition. To maintain the validity of said applications, the opponent can do nothing but apply for refusal of reexamination, and meanwhile, request the TRAB to put off reviewing the case involving the reexamination of the refusal. There is no express provision on suspending review of cases in the

trademark review and adjudication regulations. If examiners do not suspend the review of a case of reexamination refusal to wait for the decisions to be made on a case of opposition, it is quite likely for the new applications filed by an opponent in his or its own name to be refused by the TRAB; the courts take a supportive attitude towards the TRAB's practice of not suspending its review of cases²⁷. Opponents have to start another round of trademark application procedure, thus wasting the administrative and judicial resources.

Where the opposition is not justified upon Trademark Office's decision and the trademark is approved for registration, the date on which the applicant acquires the exclusive right to use the mark is counted from the day three months after its preliminary publication²⁸. Where the registration of a trademark has been approved upon the ruling of an opposition, from the date of expiration of the time for opposition to the date when the ruling takes effect on the opposition, the mark under opposition has no retroactive effect on the use, by another party, of the marks that are identical with or similar to said trademark in respect of the identical or similar goods. However, the user should make compensation for any losses suffered by the trademark registrant as a result of the bad faith on the part of the user²⁹. In China, it is possible only for a registered mark (or unregistered well-known mark) to prohibit another party from using signs identical with or similar to said mark on identical or similar goods; the owner of a trademark under opposition does not enjoy the exclusive right to use the mark before its registration. While it has been provided that compensation should be made for the losses suffered by trademark registrant as a result of the bad faith on the part of the user, it is not easy to prove a user's bad faith. Besides, in general, no compensation is made for the losses as a result of the opposition filed by another party in bad faith and the reasonable fees the respondent has paid for ceasing the use.

Recommendations and reflections

The Chinese Trademark Law is now being amended for the third time. The Draft Amendment to the Trademark Law of the People's Republic of China (the Draft Amendment for comments) issued by the Legal Affairs Office of the State Council on 2 September 2011 still follows the principle of trademark registration and the principle of administrative affirmation of trademark right³⁰; no fundamental changes are made in the current judicial procedure for review of the ad-

ministrative right affirmation when the Patent Law was amended in 2008³¹. Therefore, it is impossible to substantially address the matter of circuitry of actions involving trademark opposition during the amendment to the Trademark Law now underway. However, an opportunity is now provided for the improvement of the trademark opposition procedure. This writer would like to take this opportunity to make the following recommendations with regard to the above-mentioned issues in connection with the existing opposition procedure.

1. Adhering to pre-opposition procedure to ensure stability and authority of registered trademarks

The trademark opposition system in China is a preventive mechanism before registration to provide an opportunity for filing opposition to trademark registration, which is in compliance with the requirement of the TRIPS Agreement³². The following table presents the data of the cases of trademark opposition examination and opposition reexamination made by the trademark administrative authorities from 2008 to 2010:

Year	A No. of preliminarily approved trademarks	B No. of opposition cases accepted	B/A	C No. of closed opposition cases	D No. of opposition reexamination cases accepted	D/C
2008	517265	25240	4.88%	10993	2951	26.84%
2009	1066979	29436	3.7%	25020	5101	20.38%
2010	1243967	48930	3.93%	32447	7431	22.9%

(Source of the data: China Trademark Strategy Annual Development Reports 2008/2009/2010)

The trademark opposition procedure postpones approval of trademark registration. The number of opposition applications, however, takes up less than five percent of the preliminarily approved trademarks; the opposition procedure ensures the fairness and stability of the other over 95% registered trademarks. The Trademark Office examines opposition cases in summary procedure, in which the causes and evidence a defendant produces are generally not cross-examined. For that reason, 75% opposition cases are handled in the opposition procedure, and the remaining 25% complicated cases are filed for reexamination. Besides, opponents may request the Trademark Office for establishment of well-known trademark, when filing oppositions under Article 13 of

the Trademark Law.

To reduce the time of trademark examination and approval, some experts suggest adopting a "post-opposition procedure"³³. To date, the contradiction of excessively long time of examination has been substantially addressed by way of reducing the time for approval of trademark for registration to 10 months. The current pre-opposition procedure has been followed for nearly 30 years. The procedure puts trademarks in a state of publication before approval for registration, which facilitates supervision by prior right owners and the public at large, results in the relatively better function by the Trademark Law to enhance trademark administration and safeguard the interests of consumers, manufacturers and businesses, and, as well, ensures the fairness and stability of trademark registration. Given the fact that unfair competition in trademark registration has been rampant for years in China, the pre-opposition procedure has made available the necessary remedial procedure to prior right owners. For this reason, the pre-opposition procedure should be kept unchanged.

2. Coordinating opposition procedure with dispute resolution procedure, and optimising opposition procedure

The trademark opposition procedure is a dispositional procedure preceding trademark registration. The Trademark Law has also provided for a post-dispositional procedure, i. e. the trademark dispute procedure following trademark right affirmation. If a registered trademark is contrary to the provisions of Articles 10, 11 and 12 of the Trademark Law or the registration of a mark was acquired by fraud or any other unfair means, any person may request the TRAB to cancel such a registered mark³⁴. If a registered mark is contrary to the provisions of Articles 13, 15, 16 and 31 of the Trademark Law or causes dispute with another party's earlier registered mark, the owner of the mark or any interested party may request the TRAB to resolve the trademark dispute³⁵. The grounds in connection with the trademark opposition procedure are also divided into absolute and relative ones. In respect of a trademark approved for registration that is contrary to the law on absolute grounds, any person may request to cancel it, subject to no time limit. If a registered mark is cancelled by the Trademark Office or TRAB as it is registered by unfair means, the exclusive right to use said mark does not exist from the very beginning. What the relative grounds protect are private rights, so only a trademark owner and an interested party may request cancellation of a mark within five years from the date of registration of it. As

these provisions show, the provisions concerning the initiator and grounds for initiation of dispute procedure are exactly the same as those relevant to the trademark opposition procedure. For that matter, we may consider combining the identical functions of the opposition procedure and dispute resolution procedure to avert repeated procedure, so as to fully enable the opposition procedure to protect prior rights.

Specifically speaking, in respect of a trademark not approved for registration on absolute grounds, any party may request cancellation of the trademark any time; the exclusive right to use a registered mark does not exist from the very beginning. Even if registration is approved by the Trademark Office, remedy is made available in the opposition procedure. Therefore, examination may be ruled out of trademarks of the nature in the trademark opposition procedure. As the examination practice in the past shows, there are not many trademarks registered that were contrary to the Law on absolute grounds. That is, registration of such trademarks is detrimental to the social order or public interests, or disrupts the order of registration and administration of trademarks. Even if such marks were approved for registration, the Trademark Office may, *ex officio*, cancel the registration thereof, and any party may request the TRAB to cancel the registration of these marks³⁶; the exclusive right of use of such marks do not exist from the very beginning. Therefore, even if there is no opportunity for opposition under the Trademark Law, remedies are available against registered trademarks contrary to the law on absolute grounds. It is recommended that the opposition procedure be initiated by holders of prior rights or by interested parties. In respect of registration of trademark contrary to the law on absolute grounds upon Trademark Office's substantive examination, any other organisation or individual can seek remedy only through the dispute resolution procedure, rather than the opposition procedure. In this way, it may be avoided that the same ground goes through different examination procedures and opposition procedure overlaps dispute resolution procedure. Accordingly, the doctrine of *no bis in idem* is followed to save administrative resources.

It may be considered to simplify the opposition procedure to address the matter of the present long opposition procedure and opposition review procedure, that is, where opposition grounds are not justified, the mark under opposition is directly approved for registration with no subsequent opposition review and judicial review procedures; where opposition grounds are justified and the mark under opposition

is not approved for registration, the applicant may request judicial review. If an opponent dissatisfies with the approval of registration of the mark under opposition, he or it may, upon the approval of registration of the mark under opposition, raise dispute with the TRAB to request cancellation of registration of said mark. It is possible, on the one hand, for an applicant to have its or his trademark to be approved for registration at an earlier date and have its or his exclusive right to use the mark protected by putting such procedure in place to prevent abuse of the trademark opposition procedure; on the other hand, an interested party may seek remedy through the dispute resolution procedure in respect of an unfairly registered mark even if judicial opposition review is cancelled. By doing so, repeated trademark procedures are avoided, and an interested party may seek judicial review of relevant administrative decision, which is compatible with the provisions of the TRIPS Agreement³⁷.

3. Enhancing function of opposition procedure to protect prior rights, putting limitations on trademark opponents and opposition grounds, and preventing abuse of trademark opposition procedure

The Trademark Law prescribes that any party may file an opposition for the purpose of enhancing transparency of trademark examination and facilitating public supervision and correction of errors within the Trademark Office. However, there is almost no one of the public who is truly willing to pay expenses for supervising the work on trademark examination, and fewer and fewer oppositions are now filed by examiners, which makes it impossible for the legislative aim to be realised³⁸. Furthermore, the provision on "any person" makes it possible for the opposition procedure to be abused and for opposition to trademark applications to be filed in bad faith. It is suggested that when amendment to the Trademark Law is underway, the opposition procedure is put in place as a procedure involving matters of private rights; limitations are imposed on the qualifications of trademark opponents by providing that oppositions may be filed only by holders of prior rights or other interested parties, and on relevant opposition grounds, that is, the grounds for opposition are limited only to circumstance of infringement of the interests of the particular opposite party. When filing an opposition, the opponent must furnish evidence to prove that he or it is a holder of the prior right or an interested party. For example, the opponent owns a mark earlier applied for or registered; the mark under opposition is filed for registration by an agent or representative in his own name without authorisation

from the trademark proprietor; or the mark applied for registration is an imitation of a registered mark which has prominent distinctive character and certain influence in respect of different or dissimilar goods, to mention just a few circumstances. Correspondingly, where the opponent gives preliminary evidence to prove that he or it is a holder of a prior right or an interested party, and the respondent does not respond, the ground for opposition should be deemed to be tenable, changing the current unreasonable practice that even if the respondent does not respond nor claim, the Trademark Office still decides to grant registration of the mark under opposition. In 2007, the British trademark opposition procedure was reformed, in which it was recommended that the opponent was limited to prior trademark proprietors or prior right holders only, in place of “any person”. Consequently, sharp increase of opposition cases has been curbed soon³⁹.

4. Addition of provision on transfer of marks under opposition

In the current opposition procedure, if opposition is tenable, the mark under opposition is not approved for registration, and the registration application therefor is invalid. Even if the opponent can prove that he or it is the prior trademark proprietor, it is impossible for him or it to request returning the mark under opposition to the opponent. Where the opponent needs to obtain the exclusive right to use the mark, he or it can do nothing but file a separate application for registration of the mark. Generally the new application, however, is likely to be refused by citing the reference mark under opposition. As a result, the opponent often ends in a dilemma where he or it has succeeded in the opposition procedure, but it is still impossible to obtain the exclusive right to use said mark. For this reason, only by addition of a provision that an opponent may request to regain the mark under opposition is it possible to realise the final goal to protect the interests of opponents.

The Paris Convention provides that if the agent or representative of the person who is the proprietor of a mark applies, without such proprietor’s authorisation, for the registration of the mark in his own name, the proprietor is entitled to oppose the registration applied for or demand the assignment of the said registration⁴⁰. In a dispute over a domain name, an expert panel, finding a complaint tenable, should decide to cancel the registration of the domain name or return it to the complainant⁴¹. Obviously, this is a more reasonable provision, which may realize the purpose to truly protect

the holders of prior rights. If the provision is added that an opponent may request to regain a mark under opposition in the opposition procedure, an opponent, if his or its opposition is tenable, may regain the exclusive right to use the mark without the need for filing another application for the registration of it, and also effectively prevent a respondent or any third party from applying for registering it in bad faith. ■

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¹ Article 22 of the Trademark Law as of 1993.

² Article 3 of the Trademark Law as of 2001.

³ Article 30 of the Trademark Law as of 2001.

⁴ Article 14 of the Measures for the Implementation of International Registration of Marks through Madrid Registration System as of 2003.

⁵ Starting from 1 January 2011, for trademarks of international registration designating territory extension to China, if not refused within the specified time limit, the Trademark Office will notify the International Bureau of according protection of it. In the past, the Trademark Office did not do so.

⁶ Article 23 of the Regulations for the Implementation of the Trademark Law.

⁷ Article 2 of the Trademark Law as of 2001.

⁸ The IP Tribunal of the Beijing No. 1 Intermediate People’s Court, A Study on Difficult Issues Concerning Administrative Review for Trademark Right Affirmation, the Publishing House of Intellectual Property, 2008, P. 249.

⁹ Article 33 of the Regulations for the Implementation of the Trademark Law.

¹⁰ Article 28 of the Trademark Examination and Adjudication Standards as of 2005.

¹¹ Article 33, paragraph two, of the Trademark Law as of 2001.

¹² It is a case involving opposition of the “BOGE” mark (No. 1692088). The opposition was filed on 6 January 2002; on 15 June 2005, the Trademark Office made its Decision (No. Shangbiaoyizi 01235/2005); on 6 July 2009, the TRAB made the Opposition Reexamination Adjudication (No. Shangpingzi 18158/2009); on 19 March 2010, the Beijing No.1 Intermediate People’s Court made the Administrative Judgment (No. Yizhongzhixingchuzi 37/2010); on 16 August 2010, the TRAB made the Opposition Reexamination Adjudication (No. Shangpingzi 18158/2009) on Review of the Opposition Reexamination Adjudication (No. 342); on 19 August 2011, the Beijing No.1 Intermediate People’s Court made the Administrative Judgment (No. Yizhongzhixingchuzi 428/2011); and to date the case is pending the Beijing Higher People’s Court.

¹³ Article 54 of the Administrative Procedure Law.

¹⁴ Registration and Protection of Trademarks in China, the Publishing House of Intellectual Property, 2004, P.113.

¹⁵ The Beijing Higher People's Court, the Latest Developments in IP Trial in 2010, Section 28 on Determination of Opponents and Grounds for Filing Opposition to Trademark Registration Applications.

¹⁶ Article 28 of the Trademark Law.

¹⁷ Article 29 of the Trademark Law.

¹⁸ Article 13 of the Trademark Law.

¹⁹ Article 15 of the Trademark Law.

²⁰ Article 31 of the Trademark Law.

²¹ Article 10 of the Trademark Law.

²² Article 11 of the Trademark Law.

²³ Article 12 of the Trademark Law.

²⁴ Article 16 of the Trademark Law.

²⁵ Article 33, paragraph one, of the Trademark Law as of 2001.

²⁶ Article 22, paragraph two, of the Regulations for the Implementation of the Trademark Law.

²⁷ The opponent filed an opposition to the "PER UNA" mark (No. 4301675), and up to 31 December 2011, no decision was made on the opposition. But the opponent's international "PER UNA" mark (No. G876856) designating China was refused on account of said mark (No. 4301675) as it was decided in the TRAB's Adjudication (No. Shangpingzi 15903/2010) on review of the refusal that the mark (No. G876856) was not approved for registration. The opponent, arguing that the TRAB should have suspended its review, filed an administrative suit. It was decided in the Administrative Judgment (No. Yizhongzhixingchuzi 528/2011) that "the TRAB is not statutorily obliged to suspend its review of the relevant case before the court made its administrative judgment with regard to the other reference trademark", and the view as supported by the Beijing Higher People's Court's Administrative Judgment (No. Gaoxingzhongzi 1353/2011).

²⁸ Article 34, paragraph two, of the Trademark Law as of 2001.

²⁹ Article 23 of the Regulations for the Implementation of the Trademark Law.

³⁰ Article 3 of the current Trademark Law provides that "a mark approved by the Trademark Office for registration is a registered mark", and Article 2 thereof provides that "the Trademark Office of the Administrative Authority for Industry and Commerce under the State Council shall be responsible for the registration and administration of marks in China". In these provisions have been set forth the principle of trademark registration, authorising the Trademark Office to be the sole administrative authority for approval of trademark registration. No amendment has been made to the two Articles of the Trademark Law in the draft Amendment to the Trademark Law issued for comments.

³¹ For example, Article 46 of the Patent Law regarding the patent invalidation system.

³² Article 15 (4) of the TRIPS Agreement.

³³ Wang Lianfeng, Inspiration of Foreign Practice on Amendment to the Trademark Law in China, published in the China Intellectual Property News on 26, March 2010, P. 8.

³⁴ Article 41, paragraph one, of the Trademark Law as of 2001.

³⁵ Article 41, paragraphs two and three, of the Trademark Law as of 2001.

³⁶ Article 41, paragraph one, of the Trademark Law as of 2001.

³⁷ Article 62 (5) of the TRIPS Agreement.

³⁸ Wang Ze, Reconstruction of Trademark Opposition System, the China Trademarks 2007, Issue 8.

³⁹ Zhang Junqin, Streamlining Procedure to Curb the Sharp Increase of Cases; Adjustment of Trademark Opposition System in the United Kingdom, the China Industrial and Commercial News, 29 November 2007.

⁴⁰ Article 6sexies of the Paris Convention.

⁴¹ Article 14 of the CNNIC Domain Name Dispute Resolution Policy as of 2006.