

The CTMO Clarifies the Division of Partially Refused Trademark Applications

China IPMT Client Alert – 4 September 2014

The CTMO has recently started examining some of the new applications filed under the new Trade Mark Law which went into force from 1 May 2014. As we receive more information, we will report on new practices and nuances, some of which are yet to be clarified.

The division of trademark applications

On 20 August 2014, the Chinese Trademark Office ("CTMO") issued a notification aimed at clarifying the procedural aspects of the "division of trademark applications".

This is a new feature under the new law, which introduces multi-class filings. It refers to the procedure whereby a trademark applicant can remedy a partial rejection of an application by choosing to divide said application into two applications, one for the preliminarily approved portion, and the other for the rejected portion of the goods/services.

Consequently, the divided application for the preliminarily approved portion can proceed to publication, while the application for the rejected portion can be brought before the TRAB for a review procedure. Importantly, the filing date of the initial application will be maintained for both divided applications.

The actual scope or operation of the procedure was unclear before the issuance of this notification. E.g. was a division within a class possible? Could it be requested during examination/opposition etc.?

Procedure

The division procedure has now been clarified as follows:

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- The CTMO issues a "Notification of Partial Refusal" along with an "Application Form for the Division of a Trademark Application".
- Within 15 days, the trademark applicant (or his agent) may submit the appropriate "Application Form for Division" with the CTMO.
- The application relating to the approved portion will be assigned a new application number and proceed to publication, while retaining the original filing date. The application relating to the rejected portion on the other hand retains the old application number, and can be brought before the TRAB for a review procedure.
- After a brief examination, the CTMO divides the existing trademark application into two applications: one for the approved portion and another one for the rejected portion of the goods/services.

Other remarks

- We understand that the division procedure shall apply to both multi-class and single class applications, though this is not expressly stated in the Implementing Regulations.
- The application for division can only be filed once for an application, i.e. at the stage of being partially rejected. It cannot be divided if a multi-class application is being opposed only with respect to part of the class(es).
- The application for division cannot be withdrawn.

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- The division procedure shall not apply to international applications designating China as territorial extension.

The operation of the practice is new and will need time. We will continue monitoring future developments in this area, and will issue further updates as they arise.

Further information

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