

## Information on Procedures before the Office of the designated Contracting party for Madrid Protocol Applicants

December 2015

		CHINA (SAIC)
<b>1. When filing an application: Points to be noted when filling an MM2 format</b>		
<b>1.1 Applicant (Item 2 of MM2)</b>		
1.1.1	Points to be noted when writing information about an applicant (Item 2(a), (b) and (f) of MM2 or of any equivalent form or equivalent electronic form)	No points.
<b>1.2 Claim of priority (Item 6 of MM2)</b>		
1.2.1	Is partial priority allowed, which is a claim of priority based on part of a basic application?(Yes/No)	Yes
1.2.2	Are multiple priorities allowed, which is a claim of priority based on multiple basic applications?(Yes/No)	Yes
<b>1.3 Mark (Item 7 to 9 of MM2)</b>		
1.3.1	Category of marks which can be registered (e.g. collective mark, certification mark guarantee mark)	collective mark, certification mark, three-dimensional mark, color combination mark, sound mark
1.3.2	Are there certificates required according to category specified in Item 1.3.1?(Yes/No) If a required certificate exists, time and method of submission	No
1.3.3	Types of non-traditional trademarks that are eligible for registration (three-dimensional, sound, single color, position, trade dress, etc) and their requirements.	Three-dimensional mark, sound mark.
1.3.4	Is description of a mark required?(Yes/No) If yes,	If the applicants apply for the international registration of collective marks, certification marks, three-dimensional marks, color combination marks and sound marks, the following materials should be submitted through the local

	examples of such a description	<p>trademark agency within 3 months from the date of recording the registration of the trademark in the International Register at the IB. If no relevant material is submitted within the time limit, the Trademark Office (hereinafter referred to as “CTMO”) shall refuse such application.</p> <p>i) Three-dimensional mark: (a) a statement in the application; (b) description of the method of trademark use; (c) a reproduction establishing the three-dimensional shape including at least a three-view drawing.</p> <p>ii) Color combination mark: (a) a statement in the application; (b) description of the method of trademark use.</p> <p>iii) Sound mark: (a) a statement in the application; (b) a qualified sound sample described by musical notation or numbered musical notation with explanations; (c) the method of trademark use; (d) If the said sound is unable to be described by musical notation or numbered musical notation, it should be described in words.</p> <p>iv) Collective mark or a certification mark: (a) a statement in the application; (b) documents certifying the qualifications of the applicants; (c) rules on managing the use of the mark.</p> <p>Please see Paragraph 3, Paragraph 4 of Article 13 and Article 43 of the Regulation for the Implementation of the Trademark Law of P.R.China</p>
1.3.5	What an applicant should do if he/she is required to provide a description of his/her mark in question, but such a description cannot be specified in a MM2 format?	Please see 1.3.4
1.3.6	Is there a standard character system?(Yes/No) If yes, what characters belong to the system? (Item 7(c) of MM2)	No
1.3.7	Points to be noted for Item 8 of MM2(COLOR CLAIMED)	Please see 1.3.4.
1.3.8	Points to be noted for Item 9 of MM2 (MISCELLANEOUS INDICATIONS)	Please see 1.3.4.
<b>1.4 Description of goods and services (Item 10 of MM2)</b>		
1.4.1	Points to be noted for describing designated goods and services	Sale, retail, wholesale, gambling and horoscope casting services are not acceptable in China.

1.4.2	A link to a website to verify whether indications of goods and services are acceptable to an Office	Please see 1.4.1
1.5 Declaration of intention to use marks		
1.5.1	Is a declaration of intention to use a mark in question required? (Yes/No) If required, how to submit such a declaration	No
1.6 Additional features		
1.6.1	(If any [ex. Seniority])	No
2. Procedures after a notification of the territorial extension is received at an Office of a Contracting Party		
2.1 Gazettes published by an Office		
2.1.1	Are gazettes published by an Office?(Yes/No)	No
2.1.2	If yes, what are included in gazettes?	
2.1.3	If yes, is there a link to a website?	
2.2 Substantive examination		
2.2.1	Does an Office conduct substantive examination?(Yes/No)	Yes
2.2.2	If substantive examination is conducted, will there be an <i>ex officio</i> examination under i)absolute and ii)relative grounds for refusal be examined by <i>ex officio</i> ?	Yes
2.2.3	Does an Office issue partial refusals?	Yes
2.2.4	Information on examination standards (a link to a website)	<a href="http://www.saic.gov.cn/spw/flfg/200904/t20090408_55188.html">http://www.saic.gov.cn/spw/flfg/200904/t20090408_55188.html</a>
2.3 Opposition		
2.3.1	i) A starting date and ii) a period to file an opposition	Within 3 months from the 1st day of the next month following the publication of the Gazette of International Registration by WIPO. Please see Article 45 of the Regulation for the Implementation of the Trademark Law of P.R.China.
2.3.2	Who can raise an opposition?	A prior right owner or an interested party based on paragraph 2 and 3 of Article 13, Article 15, paragraph 1 of Article 16, Article 30, Article 31 or Article 32 of Chinese Trademark law, or any person based on Article 10, Article 11, or Article

		12 of Chinese Trademark law Please see Article 33 of the Trademark Law of P.R.China.
2.3.3	Can an opposition be filed before or after a statement of grant of protection is sent? Such a statement is based on Rule 18ter of the Common Regulations.	Please see 2.3.1.
2.4 Third party observations/ Information submission system		
2.4.1	Is there third party observations/information submission system?	No
2.4.2	If yes,i) A starting date and ii) a period to submit observations/Information?	
2.4.3	If yes,Person who can submit observations/information?	
2.5 Notification of provisional refusal		
2.5.1	Languages used to notify a provisional refusal	English, French
2.5.2	A period between a day when a notification of territorial extension was sent to an Office and a day when a notification of a provisional refusal is sent (12/18 months)	12 months for the designations under the Madrid Protocol by virtue of Article 9sexies. 18 months for the designations under the Madrid Protocol. Note: According to Rule 17(5)(e), <i>ex officio</i> provisional refusals are not open to review before the Office in China. CTMO issues only a Notification of <i>ex officio</i> refusal for one time. So please ignore 2.5.5, 2.5.6 and see directly 2.6.
2.5.3	Is there a declaration made in accordance with Article 5(2)(c) of the Madrid Protocol? (Yes/No) Note: Notification of that such a provisional refusal may be notified based on opposition after the lapse of period of 18-month	Yes
2.5.4	An average processing time between a day whenterritorial extension is notified and a day	6 - 10 months

	when a First Office Action is made	
2.5.5	<p>i) A starting date, ii) a period and iii) an ending day of a time limit to respond to a notification of a provisional refusal.</p> <p>Note: Examples of “i) a day on which the computation begins” are a day when an Office sent a notification of a provisional refusal; a day when the International Bureau sent a notification of a provisional refusal; and a day when a holder received a notification of a provisional refusal.</p> <p>Note: Examples of “iii) an ending day” are a day when a holder sent his/her response; and a day when an Office received a response.</p>	
2.5.6	Is it possible to extend a time limit to respond to a notification of a provisional refusal? (Yes/No) If yes, how long such a time limit can be extended, and how can such an extension be requested?	
2.5.7	Is it always necessary to arrange a local representative when responding to a notification of a provisional refusal? (Yes/No)	Yes and must.
2.5.8	Can a holder directly submit his/her response to an Office when responding to a notification of a provisional refusal? (Yes/No)	No.
2.5.9	Can submitting a MM6 form to	No.

	request a limitation be regarded as a domestic procedure for amendment? (Yes/No)	
2.5.10	If a MM6 submission is regarded as a response to a provisional refusal, are there any points to be noted such as a time limit for submission? (For example, such points may include that a MM6 form must be filled and submitted to the IB within a time limit to respond to a notification of a provisional refusal, or that a notification of a limitation must be sent from the IB to an Office within a time limit of response.	
<b>2.6 Trial/Appeal against examiner's decision of refusal</b>		
2.6.1	When can demand for an appeal against examiner's decision of refusal be made?	Within 15 days from receipt of the Notification of <i>ex officio</i> Refusal by the applicant. Please see Article 34 of the Trademark Law of P.R.China
2.6.2	What is the competent authority for such appeal?	Trademark Review and Adjudication Board under the State Administration for Industry and Commerce of P.R.China (hereinafter referred to as "TRAB")
2.6.3	Information on appeal against examiner's decision of refusal (a link to a website)	<a href="http://www.saic.gov.cn/spw/flfg/201405/t20140530_145649.html">http://www.saic.gov.cn/spw/flfg/201405/t20140530_145649.html</a>
<b>3. Procedures after confirmation of grant of protection in designated contracting parties</b>		
<b>3.1 Registration</b>		
3.1.1	Other than a statement of grant of protection which is a notification based on Rule 18ter of the Common Regulations, is any notification of a decision of registration sent based on domestic laws? (Yes/No) If yes, to whom (a holder/an IB representative) will it be sent?	Yes. e.g. A Confirmation or Withdrawal of Provisional Refusal based on an Opposition indicating the goods and services protected will be sent to the IB.
3.1.2	i) Is a registration certificate automatically issued? (Yes/No) If yes, to whom (a holder/ an IB	i)No ii) Yes If a holder of the international registration needs the issuance of the Trademark Registration Certification, an application for

	representative) will it be sent? ii) If a certificate is not issued automatically, is it possible to make a request so that a certificate will be issued? (Yes/No) If yes, how will it be requested?	such request should be filed to CTMO through the local trademark agency after the expiration of the period of refusal of application for international registration of the trademark. Please see Paragraph 2 of Article 64 of the Regulation for the Implementation of the Trademark Law of P.R.China. Please download the application form at <a href="http://sbj.saic.gov.cn/sbsq/xshqshsh/">http://sbj.saic.gov.cn/sbsq/xshqshsh/</a>
3.1.3	Points to be noted for registration (For example, payment of fee)	No more fees for registration. For the issuance of the Trademark Registration Certification, 100 RMB is needed for each class.
3.1.4	Points to be noted for the purpose of maintaining the registration such as submitting a affidavits of continued use in commerce	
<b>3.2 Replacement</b>		
3.2.1	Does an Office require a request to operate procedure for ‘taking note’ of an international registration?	Yes.
3.2.2	Timing when a request to operate procedure for ‘taking note’ of an international registration is allowed (while an application being processed, post-registration, etc.)	The trademark holder should file such application to CTMO through the local trademark agency when his application for international registration of the trademark gets registered in China after the expiration of the period of refusal.
3.2.3	Does it cost to “take note”?	No fee.
3.2.4	When will it be decided to replace a registration in question?	Not provided for in the domestic law.
3.2.5	Can a replaced national registration and an international registration coexist?	Yes.
<b>4. Others</b>		
<b>4.1 Trial/Appeal for invalidation</b>		
4.1.1	Time period for filing an invalidation	i) For an international registration of a trademark violating the provisions of Article 10, Article 11, or Article 12 of Chinese Trademark Law, or the registration of a trademark acquired by fraud or any other improper means, CTMO may declare the invalidation. Any other organization or individual may request the TRAB to declare the invalidation of such registered trademark after the expiration of the period of refusal of such application for international registration of the

		<p>trademark. If such application is under review against a refusal or under opposition at the expiration of the period of refusal, the application to declare the invalidation shall be filed to TRAB after the date of the decision to approve the registration by CTMO or TRAB entering into effect.</p> <p>Please see Paragraph 1 of Article 44 of the Trademark Law and Paragraph 2 of Article 49 of the Regulation for the Implementation of the Trademark Law of P.R.China.</p> <p>ii) For an international registration of a trademark violating the provisions of paragraph 2 and 3 of Article 13, Article 15, paragraph 1 of Article 16, Article 30, Article 31 or Article 32 of Chinese Trademark Law, a prior right owner or an interested party may request TRAB to declare the invalidation of such registered trademark within five years after the expiration of the period of refusal of such application for international registration of the trademark. If the international application is under review against a refusal or under opposition at the expiration of the period of refusal, the application to declare the invalidation shall be filed to TRAB within 5 years from the date of the decision to approve the registration by CTMO or TRAB entering into effect. If a registration is obtained in bad faith, the owner of a well-known trademark shall not be bound by this five-year time limit.</p> <p>Please see Paragraph 1 of Article 45 of the Trademark Law and Paragraph 3 of Article 49 of the Regulation for the Implementation of the Trademark Law of P.R.China..</p>
4.1.2	Person who can demand a trial/appeal for invalidation	<p>i) CTMO by <i>ex officio</i> or any other organization or individual</p> <p>ii) a prior right owner or an interested party</p> <p>Please see 4.1.1</p>
4.1.3	What is the competent authority for such trial/appeal?	<p>i) CTMO by <i>ex officio</i> or TRAB</p> <p>ii) TRAB</p> <p>Please see 4.1.1</p>
4.1.4	Procedure relating to a trial/appeal for invalidation (a link to a website)	<p>Following 4.1.1: i) (A) (1) CTMO notifies the party concerned in writing of its decision of the declaration of the invalidation of a registered trademark. (2) If the party concerned is dissatisfied with such decision, an application for review may be filed, within 15 days from the receipt of the notification of the decision, to TRAB. (3) TRAB shall make a decision within 9 months from the date of receipt of the application for review, and notify the party concerned in writing. Where an extension is required due to special circumstances, an extension of three months may be allowed subject to the approval of State Administration for Industry and Commerce under the State Council. (4) If the party concerned is dissatisfied with the decision of TRAB, a suit may be brought to the People's Court within 30 days from receipt of the notification of such decision.</p> <p>(B) (1) If any other organization or individual requests TRAB to declare the invalidation of a registered trademark, the latter shall, after receipt of such application, notify the party concerned in writing and require him to respond within a</p>



		<p>specified time limit. (2) TRAB shall make a ruling to maintain registration or to declare the invalidation of the registered trademark within 9 months from the receipt of such application, and notify the parties concerned in writing. An extension of 3 months may be allowed subject to the approval of State Administration for Industry and Commerce under the State Council. (3) If the party concerned is dissatisfied with the ruling of TRAB, a suit may be brought to the People’s Court within 30 days from receipt of the notification of such ruling. (4) The People’s Court shall notify the counterparty involved in the ruling to join the suit as a third party.</p> <p>Please see Paragraph 2 and Paragraph 3 of Article 44 of Trademark Law of P.R.China.</p> <p>ii) (1) TRAB shall, after receipt of the application to declare the invalidation of a registered trademark, notify the party concerned in writing and require him to respond within a specified time limit. (2) TRAB shall make a ruling to maintain registration or to declare the invalidation of the registered trademark within 12 months from the receipt of the application for the declaration of invalidation, and notify the parties concerned in writing. An extension of 6 months may be allowed subject to the approval of State Administration for Industry and Commerce under the State Council. (3) If the party concerned is dissatisfied with the ruling of TRAB, a suit may be brought to the People’s Court within 30 days from receipt of the notification of such ruling. (4) The People’s Court shall notify the counterparty involved in the ruling to join the suit as a third party.</p> <p>Please see Paragraph 2 of Article 45 of the Trademark Law of P.R.China..</p>
<b>4.2 Trial/Appeal for cancellation of registered trademark not in use</b>		
4.2.1	Time period for filing a non-use cancellation	<p>3 years after the date of expiration of the period of refusal of the application for international registration of the trademark. If the application for international registration of the trademark is under review against a refusal or under opposition at the expiration of the period of refusal, the application for a non-use cancellation shall be filed to CTMO 3 years after the date of the decision to approve the registration made by CTMO or TRAB entering into effect.</p> <p>Please see Paragraph 2 of Article 49 of the Trademark Law and Paragraph 1 of Article 49 of the Regulation for the Implementation of the Trademark Law of P.R.China.</p>
4.2.2	Person who can demand a trial/appeal for cancellation of registered trademark not in use	Any organization or individual.
4.2.3	What is the competent authority for such trial/appeal?	CTMO
4.2.4	Procedure relating to a trial/appeal for cancellation of registered trademark not in use (a link to a website)	<p>(1) If a registered trademark has not been in use for three consecutive years without just cause, any organization or individual may apply to CTMO for cancellation of such registered trademark. (2) CTMO shall notify the trademark registrant and ask him to furnish evidence materials proving the use of the trademark prior to the filing of the</p>

		<p>application for cancellation, or explain the just cause for non-use, within 2 months from the receipt of the notification.(3) CTMO shall make a decision within 9 months from receipt of the application for cancellation. If an extension is required due to special circumstances, an extension of 3 months may be allowed subject to the approval of State Administration for Industry and Commerce under the State Council. (4) If a party concerned is dissatisfied with the decision to cancel or not to cancel a registered trademark made by CTMO, an application for review may be filed to the TRAB within 15 days from the receipt of the notification of such decision. (5) TRAB shall make a decision within 9 months from the date of receipt of the application for review, and notify the parties concerned in writing. An extension of 3 months may be allowed due to special circumstances. (6) If the party concerned is dissatisfied with the decision of TRAB, a suit may be brought to the People's Court within 30 days from receipt of the notification of such decision.</p> <p>Please see Paragraph 2 of Article 49 and Article 54 of the Trademark Law of P.R.China and Article 66 and Article 67 of the Regulation for the Implementation of the Trademark Law of P.R.China.</p>
<b>4.3 Trial/Appeal for cancellation of trademark registration due to unfair use by owner of a trademark right or licensee</b>		
4.3.1	Time period for filing an unfair use cancellation	<p>If a trademark registrant, during the use of the trademark, changes his registered trademark, the name or address of himself or any other registration item of his registered trademark without approval, the local Administration for Industry and Commerce authority shall order him to make correction within a specified time limit. Where no correction is made at the expiration of the time limit, CTMO shall cancel his registered trademark.</p> <p>Such timing is not provided for in the domestic laws.</p> <p>Please see Article 49 of the Trademark Law of P.R.China.</p>
4.3.2	Person who can demand a trial/appeal for cancellation of trademark registration due to unfair use by owner of a trademark right or licensee	<p>i) the local Administration for Industry and Commerce authority; ii) CTMO</p> <p>Please see 4.3.1.</p>
4.3.3	What is the competent authority for such trial/appeal?	the local Administration for Industry and Commerce authority and CTMO.
4.3.4	Procedure relating to a trial/appeal for cancellation of trademark registration due to unfair use by owner of a trademark right or licensee	Please see 4.3.1
<b>4.4 Other information relating to a trial/appeal</b>		
4.4.1	Other information relating to a trial/appeal	
<b>4.5 Invalidation of the effects of an international registration in part or in whole</b>		

4.5.1	Where the effects of an international registration in a designated Contracting Party are cancelled in part or in whole because of a trial/appeal for invalidation etc, the timing when a notification of invalidation per Rule 19 of the Common Regulations will be sent to the International Bureau	Such timing is not provided for in the domestic law.
4.6 Transformation of an international registration into national or regional applications under Article 9quinquies of Madrid Protocol		
4.6.1	Points to be noted for transformation (If any) An amount of a fee if such a fee needs to be paid	i) Such application shall be filed within 3 months from the date on which the international registration was cancelled, ii) The goods and services listed in the application are in fact covered by the list of goods and services contained in the international registration in respect of the Contracting Party concerned. iii) The transformation may take place only where the international registration has been cancelled ,in respect of all or some of the goods and services, at the request of the Office of Origin. iv) The international registration should be granted protection in the designated country where the transformation is required. v) Such application shall be filed through the local trademark agency. No fee for transformation.
4.7 Additional features		
4.7.1	(If any [ex. Conversion])	
5. Madrid Protocol declarations		
5.1	Article 5(2)(b) of the Protocol (extension to 18 months of the refusal period) (Yes/No)	Yes
5.2	Article 5(2)(c) of the Protocol (possible notification of refusals based on an opposition after the 18-month time limit) (Yes/No)	Yes
5.3	Article 8(7)(a) of the Protocol (individual fees) (Yes/No)	Yes
5.4	Article 9 <sup>quater</sup> of the Agreement and that of the Protocol (Common Office of several Contracting States) (Yes/No)	
5.5	Article 14(2)(d) of the Agreement (in respect of international registrations)	

	effected under the Agreement prior to the date of accession of the Contracting Party concerned, no subsequent designation) (Yes/No)	
5.6	Article 14(5) of the Protocol (in respect of international registrations effected under the Protocol prior to the date of accession of the Contracting Party concerned, no subsequent designation) (Yes/No)	
5.7	Rule 7(2) of the Common Regulations (declaration of intention to use the mark)(Yes/No)	
5.8	Rule 17(5)(d) of the Common Regulations (notwithstanding the fact that all procedures before the Office may not have been completed, notification to the International Bureau by the Office of decisions concerning refusals) (Yes/No)	
5.9	Rule 17(5)(e) of the Common Regulations ( <i>ex officio</i> provisional refusals not open to review before the Office) (Yes/No)	Yes
5.10	Rule 20 <i>bis</i> (6)(a) of the Common Regulations (recording of licenses not provided for in the domestic law, so that the recording of licenses in the International Register has no effect) (Yes/No)	
5.11	Rule 20 <i>bis</i> (6)(b) of the Common Regulations (recording of licenses provided for in the domestic law, but the	Yes

	recording of licenses in the International Register has no effect) (Yes/No)	
5.12	Rule 34(2)(b) of the Common Regulations (the Office accepts to collect and forward fees to the International Bureau) (Yes/No)	Yes
5.13	Rule 34(3)(a) of the Common Regulations (individual fee payable in two parts) (Yes/No)	