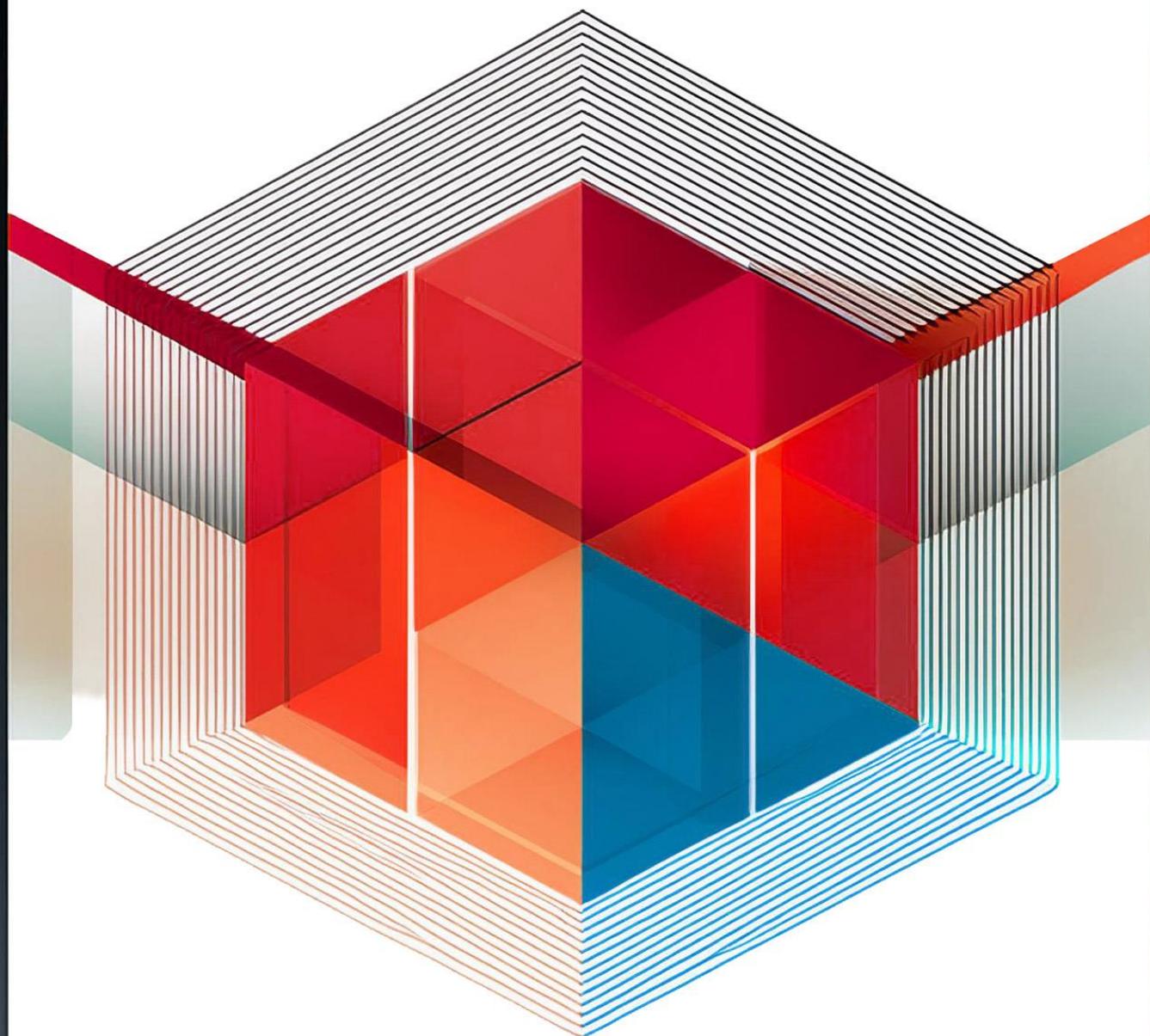


TM5

Trade Mark Protection in Opposition and Appeal

APPEAL: LEGAL SYSTEM INFORMATION



uspto

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Foreword

The TM5 “Trademark Protection in Opposition and Appeal (Review) Procedure” project was adopted in November 2021 with the aim to help Partner Offices and their users understand the different legal systems, legal application, examination and practices for trademark opposition and appeal (review), for the benefit of the users to protect their legitimate rights and interests more effectively in the trademark opposition and appeal (review) procedures before TM5 Partner Offices.

This study provides information about the legal systems in the Partner Offices regarding appeal (review) procedures (Phase 2).

Regarding “Phase1”, please refer to the link below.

<http://tmfive.org/wp-content/uploads/2023/09/OppositionLegalSystemInformation.pdf>

1 Procedural requirements

[CNIPA](#)

Trademark Law of the People's Republic of China (Adopted on 23 August 1982, revised on 22 February 1993, 27 October 2001, August 30, 2013, as amended up to Decision of April 23, 2019, of the Standing Committee of National People's Congress on Amendments to the Trademark Law of the People's Republic of China)

Regulations for the Implementation of the Trademark Law of the People's Republic of China (Promulgated by Decree No.651 of the State Council of the People's Republic of China on 29 April 2014, and effective as of 1 May 2014)

Trademark Review and Adjudication Rules (2014 Revision) (Decree of the State Administration for Industry and Commerce No. 65)

[EUIPO](#)

EUTMR - REGULATION (EU) 2017/1001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 on the European Union trade mark

EUTMDR - DELEGATED REGULATION (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation

Rules of Procedure - DECISION 2020-1 OF 27 FEBRUARY 2020 OF THE PRESIDIUM OF THE BOARDS OF APPEAL ON THE RULES OF PROCEDURE BEFORE THE BOARDS OF APPEAL

Amended on 6 November 2020 (Presidium Decision 2020-11), 19 February 2021 (Presidium Decision 2021-4), 6 July 2021 (Presidium Decision 2021-10), 12 December 2023 (Presidium Decision 2023-22)
<https://www.euipo.europa.eu/en/boards-of-appeal/rules-of-procedure>

[JPO](#)

[KIPO](#)

[USPTO](#)

1) Which decisions of your Office can be appealed?

CNIPA

Art. 34, 35,54,44 ,45 China Trademark Law

Final decisions of:

the Examiners: Absolute or Relative Grounds for refusal; formalities(designated goods)

the Opposition Divisions: only Decision Rejecting Registration;

the Cancellation Divisions: revoking or not revoking a registered trademark

Applications for revocation; applications for a declaration of invalidity by the Trademark Office ex officio;

Besides, invalidation: initiated on application by a third party

EUIPO

Final decisions of:

Examiners: Filing date (incl. priorities); formalities; Absolute Grounds for refusal;

Opposition Divisions: Admissibility and allowability of an opposition;

Cancellation Divisions: Applications for revocation; applications for a declaration of invalidity;

Department in charge of the Register: Records in the EU Trade Mark / Design Register and list of professional representatives.

A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows separate appeal.

(Article 66 EUTMR)

JPO

An appeal may be requested against the following decisions by an examiner.

In this questionnaire, answers are given to questions ① through ③. As to ④, please refer to the Phase 1 (Opposition) report.

●Examiner's Decision of Refusal (Article 15)

→ ① Appeals Against Decision of Refusal (Article 44)

●Examiner's Dismissal of Amendments (Article 16-2)

→ ② Appeals Against Dismissal of Amendments (Article 45)

●Examiner's Decisions on Trademark Registrations (Article 16)

→ ③ Trials on the Invalidation of Trademark Registration (Article 46)

④ Opposition to Registration (Article 43-2)

(Reference) Trademark Act https://www.japaneselawtranslation.go.jp/ja/laws/view/4032#je_ch3at2

KIPO

The following actions:

A decision to dismiss amendment [Article 115 of the Trademark Act (hereinafter referred to as the 'Act')]

A decision to reject trademark registration, a decision to reject registration of additional designated goods, or a decision to reject registration of the conversion of the classification of goods (Article 116 of the Act)

Trademark registration decision (Articles 117 and 119 of the Act)

Registration of license (Article 120 of the Act)

Registration of the conversion of the classification of goods (Article 214 of the Act)

Registration to Renew Duration of Trademark Rights (Article 118 of the Act)

Retrial concerning the final and conclusive trial decision (Article 157 of the Act)

USPTO

a. Final refusals from examination attorneys refusing to register a mark can be appealed to the USPTO Trademark Trial and Appeal Board (TTAB).

b. Final actions from examination attorneys cancelling a registration in an ex parte expungement or reexamination proceeding can be appealed to the TTAB.

c. Final decisions on petitions to the USPTO Director generally can be appealed to a U.S. district court. In certain circumstances, final decisions on petitions may be incorporated into a related appeal.

2) Please indicate the deadline by which an appeal notice must be filed. Please also indicate the point in time from which such deadline is calculated

CNIPA

From the moment the first administrative instance decision specified in question 1. is communicated to the parties

Within 15 days from the date the decisions communicated to the parties.

Besides, for invalidation on application by a third party, it shall be initiated within five years from the registration date of the trademark in question, the only exceptional case is where the registration is obtained mala fide, the owner of a well-known trademark is not bound by this five-year restriction.

EUIPO

Notice of appeal shall be filed within 2 months of the date of the notification of the decision.

From the moment the first administrative instance decision is communicated to the parties

JPO

other

① Appeals Against Decisions of Refusal (Article 44): within three months from the date the transcript of the examiner's decision has been served.

② Appeals Against Dismissal of Amendments (Article 45): within three months from the date the transcript of the ruling of dismissal of amendments has been served.

③ Trials on the Invalidation of Trademark Registration (Article 46): concerning some of the grounds for invalidation*, appeals may not be requested after a lapse of five years from the date of registration of the establishment of the trademark right.

*Where a trademark registration has been made in violation of paragraphs Article 3, Article 4(1)(viii), (xi) to (xiv), Article 8(1), (2) and (5), in violation of paragraphs of Article 4(1)(x) and (xvii) (excluding the case where a trademark has been registered for the purpose of unfair competition), in violation of paragraphs of Article 4(1)(xv) (excluding the case where a trademark has been registered for unfair purposes), and where a trademark registration falls under Article 46(1)(iv).

However, if the expiration date of the submission period falls on Saturday, Sunday, a national holiday, or other days when the JPO is closed, the expiration date shall become the next working day that the JPO is open (Article 3 of the Patent Act as applied mutatis mutandis pursuant to Article 77, paragraph (1) of the Trademark Act).

(Reference) Patent Act

<https://www.japaneselawtranslation.go.jp/ja/laws/view/4097>

KIPO

From the moment the first administrative instance decision specified in question 1. is communicated to the parties

USPTO

Other

See lettering above for decision type.

1.a. Must appeal to TTAB within 3-6 months (depends on application filing basis and potential extensions of time) from issuance of the final Administrative instance decision.

1.b. Must appeal to TTAB within 3 months from issuance of the final Administrative instance decision.

1.c. Must appeal to the U.S. district court within 6-year statute of limitations.

3) Does your office provide for extensions of time to file the appeal notice?

[CNIPA](#)

yes no

But according to Art. 59 Regulations for the Implementation of the China Trademark Law

The parties shall be permitted to submit supplementary evidential materials within three months from submission of the application if they state so in the application form.

[EUIPO](#)

yes no

Time limit and form of appeal (Article 68 EUTMR)

1. Notice of appeal shall be filed in writing at the Office within two months of the date of notification of the decision. The notice shall be deemed to have been filed only when the fee for appeal has been paid. It shall be filed in the language of the proceedings in which the decision subject to appeal was taken. Within four months of the date of notification of the decision, a written statement setting out the grounds of appeal shall be filed.

2. In *inter partes* proceedings, the defendant may, in his response, seek a decision annulling or altering the contested decision on a point not raised in the appeal. Such submissions shall cease to have effect should the appellant discontinue the proceedings.

The time limit for filing a notice of appeal cannot be extended and the continuation of proceedings is also not applicable (Article 105 EUTMR).

[JPO](#)

yes no

[KIPO](#)

yes no

The Commissioner of the Korean Intellectual Property Office may, at the request of a party or ex officio, extend the time only once, within 30 days. However, for those living in areas with inconvenient transportation, the time may be extended one additional time within 30 days (Article 17 of the Act, Article 7 of the Enforcement Rules of the same Act).

[USPTO](#)

yes no

For applications with the 3-month deadline (non-Madrid), a 3-month extension of time is available for a fee. For applications with the 6-month deadline (Madrid), no extension of time is available.

4) Please indicate whether there is an official form available to submit the appeal notice:

CNIPA

yes no

Firstly, the application form for every types of trademark review and adjudication proceedings can be downloaded from the Trademark Office website (https://sbj.cnipa.gov.cn/sbj/sbsq/sqss/201902/t20190227_576.html) .

Secondly, up to now, for review of refusal, the e-appeal form allows registered users to file a notice of appeal electronically.

EUIPO

yes no

The e-appeal form allows registered users to file a notice of appeal electronically, in all EU languages via the User Area.

JPO

yes no

(Reference) Form samples of appeal notice (only in Japanese)

https://www.jpo.go.jp/system/trial_appeal/general-sample_bill_sinpan.html

KIPO

yes no

In the case of a trial against a decision of rejection, Form No. 31 "Trial Request" (attached to the Enforcement Rules of the Patent Act pursuant to Article 60 of the Enforcement Rules of the Trademark Act (hereinafter referred to "Decree"))

USPTO

yes no

A form for the notice of appeal must be submitted through the TTAB electronic filing system.

5) Please indicate whether an appeal lodged in due time may carry suspensive effects on the challenged decision [Please interpret the suspensive effect of an appeal as the lack of legal effect of a contested decision until the appeal is resolved]:

CNIPA

Yes, according to Art. 34, 35,54,44 of the China Trademark Law, the filing of the appeal shall have suspensive effect.

EUIPO

Yes, according to Art. 66(1) EUTMR, the filing of the appeal shall have suspensive effect.

Article 66 EUTMR

Decisions subject to appeal

1. An appeal shall lie from decisions of any of the decision-making instances of the Office listed in points (a) to (d) of Article 159, and, where appropriate, point (f) of that Article. Those decisions shall take effect only as from the date of expiration of the appeal period referred to in Article 68. The filing of the appeal shall have suspensive effect.

JPO

There is no provision in the Act explicitly stipulates such an effect. However, practically, once an appeal against examiner's decision of refusal is requested, the effect of the examination decision becomes suspended since the examination decision (examiner's decision of refusal) does not become final until the appeal decision becomes final.

KIPO

Not applicable

USPTO

The final administrative instance (examiner) refusal does not have legal effect, and the application will not be placed in the "abandoned" status in the USPTO database until the appeal to the USPTO's TTAB is decided.

6) Please indicate whether the Statements of Grounds of the appeal may be filed separately from the appeal notice:

[CNIPA](#)

yes no

According to Art.13 of the Trademark Review and Adjudication Rules, there shall be specific adjudication request, facts, reason(s) and legal basis for an application for trademark review and adjudication; however, as presented in question 3, the parties can submit supplementary evidence materials within three months.

[EUIPO](#)

yes no

Yes, the Statements of Grounds of the appeal may be filed separately from the appeal notice within four months of the date of notification of the decision. (Art. 68 EUTMR)

Article 68

Time limit and form of appeal

1. Notice of appeal shall be filed in writing at the Office within two months of the date of notification of the decision. The notice shall be deemed to have been filed only when the fee for appeal has been paid. It shall be filed in the language of the proceedings in which the decision subject to appeal was taken. Within four months of the date of notification of the decision, a written statement setting out the grounds of appeal shall be filed.

[JPO](#)

yes no

The purport and grounds of the trial or appeal must be written in a trial or appeal notice (a demand/request for trial or appeal). (Article 131(1)(iii) of the Patent Act as applied mutatis mutandis pursuant to Article 56(1) of the Trademark Act). However, It is possible to amend the grounds for the demand/request. With regard to ③ trial on the invalidation of trademark registration, it is not allowed to change the gist of the demand/request when amending the grounds for the demand/request (Article 131-2(1) of the Patent Act as applied mutatis mutandis pursuant to Article 56(1) of the Trademark Act).

[KIPO](#)

yes no

In accordance with the amendment order in Article 127 of the Act, the appellant may submit the intention and reasons for the appeal after lodging an appeal.

[USPTO](#)

yes no

Yes. We interpret the "Statement of Grounds" to refer to the applicant's separate legal appeal brief, filed after the notice of appeal. The applicant appealing from an examiner's final refusal presents its arguments regarding the evidence of record and the application of existing law to that evidence in an appeal brief separate from the notice of appeal.

7) Please indicate the deadline for submitting the Statement of Grounds:

[CNIPA](#)

Please refer to question 6.

According to Art.13 of the Trademark Review and Adjudication Rules, there shall be specific adjudication request, facts, reason(s) and legal basis for an application for trademark review and adjudication; however, as presented in question 3, the parties can submit supplementary evidence materials within three months.

[EUIPO](#)

Four months from the date of notification of the contested decision (Art. 68 EUTMR)

[JPO](#)

The amendment must be submitted within the designated time limit (30 days).

[KIPO](#)

According to the amendment order, the claim shall be amended within one month (Article 32 of the Enforcement Rule)

[USPTO](#)

Sixty (60) days from date of appeal.

8) Does your office provide for extensions of time to file Statement of Grounds?

[CNIPA](#)

No

[EUIPO](#)

No. It is not possible to extend the time limit for filing statement of grounds and the continuation of proceedings is also not applicable (Art 105 EUTMR).

[JPO](#)

It is possible to extend the said designated time limit only in the case shown in the following question.

[KIPO](#)

Extension is possible in accordance with Article 17 of the Act and Article 22 of the Trial Affairs Handling Regulations.

[USPTO](#)

Yes

9) Please indicate the conditions and requirements under which an extension of the time limit may be requested and / or granted:

CNIPA

N/A

EUIPO

Extensions are not applicable for the time limits for a notice of appeal, payment of appeal fees and statement of grounds.

Article 3(2) of Rules of Procedure: The time limits for filing a notice of appeal and statement of grounds cannot be extended.

An extension of a time limit can be granted upon reasoned request submitted by the party concerned before the time limit in question expires. Where there are two or more parties, the Office may subject the extension of a time limit to the agreement of the other parties. (Art. 68 EUTMDR)

JPO

When it is recognized that the procedure cannot be completed within the designated time limit due to reasons not attributable to the person performing the procedure and his/her agent, a necessary extension of the period may be allowed.

KIPO

When applying for an extension, the inevitability of extension must be explained.

USPTO

The applicant may request reconsideration of the Administrative instance decision at time of appeal, which will cause the appeal to be suspended for consideration of the request by the examiner. The applicant may also request an extension of time to file its brief, which will be granted for good cause. The determination of good cause will be based upon all relevant circumstances, including the length of time of any previously granted extensions and the reason(s) for the requested extension(s). Thus, a reason such as the press of other business, which may be sufficient to show good cause for a first extension of thirty days, may not be sufficient for a second extension of time. Depending on the totality of the circumstances, good cause has been found when there has been an appointment of a new attorney, illness, the need to get instructions from a foreign applicant, and attempting to negotiate a consent agreement.

10) What other deadlines, if any, during the appeal proceedings can be extended:

CNIPA

There are no extension for the defendants to file a response to an inter partes proceedings, and there are no extension for filing a cross-examination opinion in an inter partes proceedings either; however, according to Art. 59 of the Regulations for the Implementation of the China Trademark Law, defendants in invalidation or review of cancellation shall be permitted to submit supplementary evidential materials within three months from submission of the statement of defence if they state so in the statement of defence.

EUIPO

Time limit for filing a response to an appeal or observations on a cross appeal

The time limit for filing a response to an appeal or observations on a cross appeal can be extended by a reasoned request which shall be submitted within the original time limit. Where sufficient evidence of the invoked exceptional circumstances referred to in Articles 24(1) and 25(5) EUTMDR is not submitted, the Boards of Appeal may request such evidence if deemed necessary.

Article 24(1) EUTMDR:

1. In *inter partes* proceedings, the defendant may file a response within two months of the date of notification of the appellant's statement of grounds. In exceptional circumstances, that time limit may be extended upon reasoned request by the defendant.

Article 25(5) EUTMDR

5. The appellant shall be invited to submit observations on the defendant's cross appeal within two months of the date of notification to the appellant. In exceptional circumstances, that time limit may be extended by the Board of Appeal upon the reasoned request of the appellant.

All time limits set by the Boards of Appeal

For all time limits set by the Boards of Appeal, an extension may be granted, in whole or in part, upon a reasoned request submitted within the original time limit.

Article 68 EUTMDR

Extension of time limits

Subject to specific or maximum time limits laid down in Regulation (EU) 2017/1001, Implementing Regulation (EU) 2018/626 or this Regulation, the Office may grant an extension of a time limit upon reasoned request. Such request shall be submitted by the party concerned before the time limit in question expires. Where there are two or more parties, the Office may subject the extension of a time limit to the agreement of the other parties.

JPO

The Commissioner of the JPO or a chief administrative judge may, upon request or ex officio, extend a legal period and a designated time limit.

A request for the extension of the time limit shall be made before the expiration of the original legal period or the designated time limit. Where the original expiration date falls on a Saturday, Sunday, or national holiday of Japan, the original expiration date shall become the next working day that the JPO is open and the request for the extension of the time limit may be made on that date.

(In Japanese) https://www.jpo.go.jp/system/trial_appeal/document/sinpan-binran/25-04.pdf

(In English) https://www.jpo.go.jp/e/system/trial_appeal/document/sinpan-binran/25-04_e.pdf

KIPO

All the deadlines may be extended in accordance with Article 17 of the Act.

(The President of the Intellectual Property Trial and Appeal Board or the presiding Judge may extend the deadlines for tasks such as amendment of procedures (Articles 39 and 127 of the Act), submission of opinions (Article 55), resumption of suspended procedures (Article 17(2) and Article 24).

[USPTO](#)

Extendable deadlines: Examiner brief, Applicant reply brief, and Applicant request for reconsideration of final board decision.

11) Means to file an extension request:

[CNIPA](#)

N/A

[EUIPO](#)

- electronically
- on paper

However, it should be stressed that e-filing remains the preferred means to file submissions.

[JPO](#)

- electronically
- on paper

It is possible to select to request electronically or on paper.

If electronically: compulsory optional

If optional same fee lower fee for electronic

With respect to ① appeals against decision of refusal and ② appeals against dismissal of amendments, if procedures that can be done online are done on paper, a digitization fee is required to convert the document to electronic form. The digitization fee is JPY 2,400 + JPY 800 per page.

[KIPO](#)

- electronically
- on paper

Fill out and submit Form No. 10 “Application for Extension of Period” of the Enforcement Rules of the Patent Act.

[USPTO](#)

- electronically
- on paper

The extension request must be submitted through the TTAB electronic filing system and provide an explanation of the circumstances that support good cause for granting the extension request.

12) In inter partes cases, is the extension request sent to the other party for confirmation

[CNIPA](#)

N/A

[EUIPO](#)

yes no

Article 68 EUTMDR

Extension of time limits

Subject to specific or maximum time limits laid down in Regulation (EU) 2017/1001, Implementing Regulation (EU) 2018/626 or this Regulation, the Office may grant an extension of a time limit upon reasoned request. Such request shall be submitted by the party concerned before the time limit in question expires. Where there are two or more parties, the Office may subject the extension of a time limit to the agreement of the other parties.

Article 3(6) of the Rules of Procedure

6. In inter partes proceedings, the Registrar shall grant extensions of time limits jointly requested by both parties within the original time limit for a maximum period of up to six months. In the event no time period is indicated in that request, the Registrar shall grant by default an extension for a period of two months.

[JPO](#)

yes no

[KIPO](#)

N/A

[USPTO](#)

yes no

If USPTO appeals to the TTAB from a final administrative instance (examiner) decision, only the applicant is a party. Extensions or suspensions of due dates for the applicant are an ex parte matter only, requested by the applicant, with notice to the examiner, and granted or denied by the TTAB. However, the examiner also may request suspension of the appeal, for good cause.

13) If the extension request is granted, how is the new deadline calculated?

[CNIPA](#)

[EUIPO](#)

The calculation of a time limit shall start on the day following the day on which the relevant event occurred, either a procedural step or the expiry of another time limit. Where that procedural step is a notification, the event shall be the receipt of the document notified, unless otherwise provided for.

Where a time limit is expressed as one year or a certain number of years, it shall expire on the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on

which the relevant event occurred. Where the relevant month has no day with the same number, the time limit shall expire on the last day of that month.

Where a time limit is expressed as one month or a certain number of months, it shall expire on the relevant subsequent month on the day which has the same number as the day on which the relevant event occurred. Where the relevant subsequent month has no day with the same number, the time limit shall expire on the last day of that month.

Where a time limit is expressed as one week or a certain number of weeks, it shall expire on the relevant subsequent week on the day having the same name as the day on which the said event occurred.

These rules are regulated in Article 101 EUTMR and Article 67 EUTMDR.

JPO

It is depending on cases.

Please refer to the following information for details.

(In Japanese) https://www.jpo.go.jp/system/trial_appeal/document/sinpan-binran/25-04.pdf

(In English) https://www.jpo.go.jp/e/system/trial_appeal/document/sinpan-binran/25-04_e.pdf

KIPO

When an extension is granted, the new deadline would be the last day of a period calculated from the original date, integrating both the original period and the extension period.

USPTO

In ex parte appeals, the party requests an extension of a certain amount of time, e.g., 30 days, and the Board grants or denies and typically calculates the new due date as an extension added to the previous deadline.

14) When can appeal proceedings be suspended?

CNIPA

First, the principle of suspension, that is, the principle of necessity, only the cases involving the determination of prior rights and other scenarios on the outcome of the trial have a substantive impact, could be suspended; for the cases that could be concluded with the other review grounds or confirmed status of prior trademarks, should not be suspended.

Secondly, the scenarios of suspension, there are seven clear scenarios that should be suspended and three scenarios that can be suspended depending on the specific conditions of the cases. Among the scenarios that should be suspended, there are five kinds of universal scenarios suitable for review of refusal, review of opposition and invalidation cases, namely:

- (1) the disputed trademark or the cited trademark is under the procedure of registrant name change or trademark transfer and no right conflict exist anymore after the transfer or change.
- (2) the cited trademark has expired and has been in the renewal procedure or renewal grace period.
- (3) the cited trademark is in the procedure of removal or withdrawal.

(4) the cited trademark has been revoked, declared invalid or not renewed less than one year when the review case is examined. It should be noted that if the reasons for refusal do not involve Article 50 of the Trademark Law, the review case is unnecessary to be suspended. According to the Trademark Examination and Trial Guide, if the cited trademark has been cancelled based on non-use for consecutive three years, the review case shall be decided in accordance with the Trademark Examination and Trial Guide.

(5) The case for the cited trademark has been concluded and the decision is pending for taking effect or pending for the execution of the effective judgment for re-determination.

There is one scenario specifically applicable to cases of review of opposition or invalidation, which is consistent with the provisions of Article 35(4) and Article 45(3) of the current Trademark Law, namely

(6) where the prior rights involved must be based on the outcome of another case being trialed by a people's court or being dealt with by an administrative agency.

There is one scenario exclusively applied to the review of refusal, namely

(7) When the applicant raises a clear request for suspension, the CNIPA should grant such a request if the status of the cited trademark(s) must be based on the result of another case that is being trialed by a court or being handled by administrative agency.

Here, in order to maximize the original intention of benefiting the legitimate rights holders, no further distinguish will be made between the time of filing and the plaintiff in cases related to cited marks, but the applicant of a review of refusal case shall clearly state the specific information such as the registration number of the cited mark involved in the suspension, the procedure under which it is being processed and its relationship with the case etc., and whether the suspension should be granted also must satisfy the aforementioned principle of necessity.

The scenarios under which suspension could be granted are three, namely

(8) Where the cited trademark involved in the review of refusal case has been subject to a request for invalidation and the registrant of the cited trademark has been found in other cases to constitute a bad faith regulated by Article 4, Article 19(4) and Article 44(1) etc. of the Trademark Law, it could be suspended; the difference between this scenario and the above scenarios (7) is that it does not require the applicant to file an application for suspension, and the examiner could decide on his own whether to suspend the procedure or not according to the specific scenarios of the case, and thus effectively reducing the burden caused to legitimate rights holders by repeated applications and exhaustion of legal proceedings caused by bad faith registration of trademarks.

(9) If it is necessary to wait for a conclusion in cases with the same or related facts, the examination could be suspended according to the needs of each case. This scenario does not necessarily involve cited trademark, and therefore does not require the applicant to file an application for suspension as an element, but in order to coordinate the various administrative procedures of trademark right granting or determining and the administrative and judicial procedures, unify the standards of examination and hearing, avoid contradictory conclusions resulting in procedures loop, and effectively alleviate the burden of the parties, the examiner could suspend the procedure based on his discretion.

(10) other scenarios that can be suspended, for failure to exhaust the scenarios, the principle of necessity and for the interests of the legitimate right holders, with reference to the above-mentioned scenarios, the examiner could decide whether to suspend according to the specific situation of the case.

[EUIPO](#)

As regards appeal proceedings, the Board of Appeal may suspend proceedings:

(a) of its own motion where a suspension is appropriate under the circumstances of the case;

(b) at the reasoned request of one of the parties in inter partes proceedings where a suspension is appropriate under the circumstances of the case, taking into account the interests of the parties and the stage of the proceedings.

At the request of both parties in *inter partes* proceedings, the Board of Appeal shall suspend the proceedings for a period which shall not exceed six months. That suspension may be extended upon a request of both parties up to a total maximum of two years.

Any time limits related to the proceedings in question, other than the time limits for the payment of the applicable fee, shall be interrupted as from the date of suspension. The time limits shall be recalculated to begin in full as from the day on which the proceedings are resumed.

Where appropriate under the circumstances of the case, the parties may be invited to submit their observations as regards the suspension or resumption of the proceedings.

These requirements are regulated in Article 71 EUTMDR and they are further elaborated in Article 44 of the Rules of Procedure as follows:

Article 44

Suspension

1. In *ex parte* proceedings, upon a reasoned request by a party, the Registrar shall grant a suspension that shall not exceed six months. The suspension may also be granted by the Board of Appeal of its own motion.
2. In *inter partes* proceedings, the Registrar shall grant suspensions requested by both parties. The initial suspension shall not exceed six months and shall be extended, upon a request by both parties, up to a total maximum of two years.
3. Appeal proceedings may be suspended *ex officio*:
 - (a) by the Chairperson, before the Final Procedural Check pursuant to Article 24(3) of these Rules, where this is appropriate under the circumstances of the case, taking into account the interests of the parties, and the stage of the proceedings;
 - (b) by the Rapporteur, under the direction of the Chairperson, after the performance of the Final Procedural Check, taking into account the factors mentioned above (in Article 44(3)(a) of these Rules).
4. In *inter partes* proceedings, the proceedings may be suspended at the reasoned request of one of the parties. Any request for suspension that does not contain reasons shall be rejected by the Registrar.
5. A request for suspension shall indicate the period for which suspension is requested. In the event no period is indicated, suspension shall be granted by default for two months.
6. Suspension may not be granted prior to the due filing of a statement of grounds of appeal, unless the parties have submitted a joint request for mediation pursuant to Article 170(4) EUTMR, in which case paragraph 8 below shall apply.
7. The Registrar shall invite the other party to file its observations on a unilateral request for suspension within one month. Where the other party opposes the suspension, the Chairperson or the Rapporteur under the direction of the Chairperson, shall decide on the matter, taking into account the factors mentioned in Article 44(3)(a) of these Rules.
8. Where a joint request for mediation has been submitted by the parties in accordance with Article 170(2) to (4) EUTMR, whether on the parties' own initiative or following a proposal from the Rapporteur, appeal proceedings shall be automatically suspended in accordance with Article 170(5) EUTMR and the Registrar shall inform the parties accordingly. Following the conclusion of the mediation proceedings in accordance with Article 170(8) and (9) EUTMR, the Registrar shall inform the parties of the resumption of the appeal proceedings.

[JPO](#)

There are "suspension" and "termination" in the stay of procedures.

Suspension is a system to stay the progress of procedures until a new party concerned can be involved into the procedures when an event occurs that requires the replacement of a party, such as the decease of a party, merger of corporations, or bankruptcy of a party.

Termination is a system to stay the progress of procedures when it becomes impossible or inappropriate for the JPO or a party to continue the procedures. The procedures are stayed when the JPO becomes impossible to execute its duties due to a natural disaster or any reason, when a problem affects the party concerned, and when

it is found necessary to stay the procedures until a determination on an opposition or a decision of another trial becomes final or court proceedings are completed. Please refer to the followings:

(In Japanese) https://www.jpo.go.jp/system/trial_appeal/document/sinpan-binran/26-01.pdf

(In English) https://www.jpo.go.jp/e/system/trial_appeal/document/sinpan-binran/26-01_e.pdf

KIPO

Suspension (Article 22 of the Act): Suspension that occurs in the event of the death or disappearance of one of the parties or the need to replace the person involved in procedures.

Suspension (Article 25 of the Act):

- When the judge is unable to perform his/her duties due to natural disaster or other unavoidable reasons.
- When the party cannot continue the procedure due to a certain problem
- When the proceedings cannot be continued due to other related trial or lawsuit (Article 151 of the Act)
- When the case is pending at the Industrial Property Dispute Mediation Committee
- When an appeal against a decision to dismiss amendment is requested
- When there is a request for exclusion or avoidance

USPTO

Prior to the issuance of the TTAB's decision in an ex parte appeal, proceedings with respect to the appeal may be suspended by the TTAB upon written request by the applicant showing good cause for the requested suspension. For example:

- The applicant is involved in a civil action in court or a TTAB inter partes proceeding, that may be dispositive of the issue(s) involved in the appeal;
- Another application that involves the same issue is also on appeal to the TTAB;
- A registration cited as a bar for confusing similarity is the subject of a cancellation proceeding.

15) Means to file a suspension request:

CNIPA

electronically

on paper

The above-mentioned scenario (7) requiring the applicant of the review of refusal case to make a clear request for suspension, which may be made together with the review grounds, and the request for suspension shall state the specific information such as the registration number of the cited trademark involved, the procedure under which it is involved, and the relationship with the case etc.

[EUIPO](#)

electronically

on paper

However, it should be stressed that e-filing remains the preferred means to file submissions.

[JPO](#)

Effect of “suspension” naturally occurs by legal reasons for suspension.

Effect of “termination” occurs naturally by the law itself or by decision of the Commissioner of the JPO or a panel.

Therefore, in both cases, a request from a party is not a requirement.

[KIPO](#)

electronically

on paper

In accordance with Article 151 (1) of the Act and Article 72 of the Decree, an application must be submitted in Form No. 33 of the Decree.

(can be submitted online)

[USPTO](#)

electronically

on paper

Must file a motion for suspension through the TTAB electronic filing system and provide an explanation of the circumstances that support good cause for granting the suspension request.

16) In inter partes cases, is the suspension request sent to the other party for confirmation?

[CNIPA](#)

yes

no

it depends on when it was received

[EUIPO](#)

yes

no

it depends on when it was received

The Registrar shall invite the other party to file its observations on a unilateral request for suspension within one month. Where the other party opposes the suspension, the Chairperson or the Rapporteur under the direction of the Chairperson, shall decide on the matter, taking into account the factors such as interests of the parties, and the stage of the proceedings (Article 44(7) of the Rules of Procedure)

JPO

- yes
- no
- it depends on when it was received

KIPO

- yes
- no
- it depends on when it was received

If it is intended to suspend the trial proceedings pursuant to Article 33 of the Trial Affairs Handling Regulations, the presiding judge shall notify the applicant and respondent of the reasons for suspension, etc.

USPTO

- yes
- no
- it depends on when it was received

In USPTO appeals to the TTAB from a final administrative instance (examiner) decision, only the applicant is a party. Extensions or suspensions of due dates for the applicant are an ex parte matter only, requested by the applicant, with notice to the examiner, and granted or denied by the TTAB. However, the examiner also may request suspension of the appeal, for good cause.

17) If the suspension request is granted, how is the deadline calculated?

CNIPA

As for the above-mentioned scenario (7), in principle, whoever applies for the suspension of the trial, whoever applies for the lifting of the suspension. After the status of the cited trademark is determined, the applicant shall submit the corresponding evidential materials, the examiner shall resume the examination after receiving the supplementary evidence from the applicant and confirming that the suspension scenario has been removed.

After the removal of all of above suspension scenarios, the examiner shall resume the examination of the cases in accordance with the factual status at that time and shall conclude the case in accordance with the stipulated time limit.

EUIPO

Any time limits related to the appeal proceedings in question, other than the time limits for the payment of the applicable fee, shall be interrupted as from the date of suspension. The time limits shall be recalculated to begin in full as from the day on which the proceedings are resumed.

JPO

When procedures are suspended or terminated, progress of a time limit shall be stayed. When procedures progress again by resumption or cancellation of termination, the whole time progresses again from the time of the continuation (Article 132(2) of the Code of Civil Procedure as applied mutatis mutandis pursuant to Article 24 of the Patent Act as applied mutatis mutandis pursuant to Article 77(2) of the Trademark Act).

(Reference) Code of Civil Procedure

https://www.japaneselawtranslation.go.jp/ja/laws/view/4421#je_pt1ch5sc6at9

KIPO

Where trademark-related procedures are interrupted or suspended, the deadline that was halted will begin anew once notification of resumption is given or the suspended procedures are resumed (Article 26 of the Act).

USPTO

The calculation of the new deadline depends on the circumstances and reason for the suspension. For example, the appeal may be suspended for 90 days from the issuance of the suspension order, and will automatically resume after that time, or the appeal may be suspended for an indefinite period of time, waiting until another matter concludes.

18) Is it possible to opt out of (unilaterally terminate) the suspension?

CNIPA

- yes
 no

For the above-mentioned scenario (7), the applicant can apply for the lifting of the suspension even if the status of the cited trademark is uncertain.

EUIPO

- yes
 no

JPO

- yes
 no

[KIPO](#)

- yes
 no

Suspension is due to legal reasons or by the decision of the judge, and cannot be cancelled due to the parties' refusal. It can be cancelled by the judge's order or decision to resume the proceedings (Articles 24 and 25 of the Act).

[USPTO](#)

An applicant may request to resume the appeal, but cannot opt out unilaterally, i.e., without grant by the Board.

19) Can the decision appealed be re-considered by the examiner after the Appeal has been filed? - If so, can the decision-making instance reach a different outcome during this re-consideration?

[CNIPA](#)

No.

[EUIPO](#)

Yes, according to Article 69(1) EUTMR and 34 EUTMDR

If the party which has lodged the appeal is the sole party to the procedure, and if the department whose decision is contested considers the appeal to be admissible and well founded, the department shall rectify its decision.

In ex parte proceedings the Board of Appeal shall submit the notice of appeal and the statement of grounds of appeal to the instance of the Office which adopted the contested decision for the purposes of Article 69 of Regulation (EU) 2017/1001.

Where the instance of the Office which adopted the decision subject to appeal decides to grant revision it shall inform the Board of Appeal thereof without delay.

Where the instance of the Office which adopted the decision subject to appeal has initiated the procedure for revoking the decision subject to appeal pursuant to Article 103(2) of Regulation (EU) 2017/1001, it shall inform the Board of Appeal thereof without delay for the purposes of Article 71 of this Regulation. It shall also inform the Board of Appeal without delay about the final outcome of that procedure.

If the decision is not rectified within one month of receipt of the statement of grounds, the appeal shall be remitted to the Board of Appeal without delay, and without comment as to its merit.

[JPO](#)

No.

[KIPO](#)

In accordance with the provision to Article 55-2, Paragraph 1 of the Act, if there is a request for a trial against the decision of rejection, a reexamination cannot be requested (in the case of trademarks, there is no administrative adjudication system).

USPTO

Yes, an examiner may request a remand from the TTAB for a variety of reasons including to withdraw the refusal, to introduce new evidence or to change the grounds for refusal. Similarly, an applicant may request a remand from the TTAB back to the examiner to introduce new evidence or to amend the application. On remand, the examiner can reach a different outcome.

After the TTAB's decision on the appeal, the applicant or the examiner may request rehearing, reconsideration, or modification of the decision by the TTAB within one month. Applicants frequently request reconsideration of TTAB decisions, but examiners rarely do so.

20) Who can file an appeal? It is possible to indicate multiple options.

CNIPA

- the applicant
 licensee other

According to Art. 34, 35,44,54 of the China Trademark Law,

For review of refusal or review of opposition decision rejecting registration, the appealing applicant shall be the trademark registration applicant.

For review of invalidation, the appealing applicant shall be the trademark registrant.

For review of cancellation, any party involved can file an appeal.

According to Art. 44,45 of the China Trademark Law,

For invalidation based on absolute grounds, there is no limit on the plaintiff's qualification; for invalidation based on relative grounds, the plaintiff shall be limited in prior right holder or any interested party

If the trademark registration or trademark registration application has been transferred, the transferee can file an appeal.

If the name of the trademark registrant or trademark registration applicant has been changed, it can file an appeal under the new name.

EUIPO

- the applicant licensee other

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right. (Article 67 EUTMR)

JPO

- the applicant licensee other

① Appeals against examiner's decision of refusal: A person who has received an examiner's decision to the effect that an application is refused (including a successor of the right) (Article 44(1) of the Trademark Act)

② Appeals against examiner's dismissal of amendments: A person who has received a ruling of examiner's dismissal of amendments (including a successor of the right) (Article 45(1) of the Trademark Act)

③ Trial for invalidation of trademark registration: interested person (Article 46(2) of the Trademark Act)

[KIPO](#)

the applicant licensee other

Trial to appeal decision of dismissal and decision of rejection: Applicants who have received a decision to dismiss amendment, decision to reject trademark registration, decision to reject registration of additional goods, or decision to reject registration of the conversion of the classification of goods

Invalidation trial: interested party or examiner (Articles 117 and 118 of the Act)

Cancellation trial: Anyone can file an appeal, but if the restrictions on transfer of trademark rights are violated, only interested parties can file an appeal. If the use of a registered trademark constitutes an act of unfair competition, only the person with the rights to the trademark can file an appeal. (Article 119 of the Act)

Trial to confirm scope of rights: Trademark holder, exclusive licensee (excluding non-exclusive licensee), or interested party (Article 121 of the Act, Section 1, Chapter 3 of Part 14-2 of the Trial Handbook)

[USPTO](#)

The applicant may file an appeal of a refusal of registration.

21) Are there any requirements relating to legal standing to file an appeal?

[CNIPA](#)

The same as above.

[EUIPO](#)

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right. (Article 67 EUTMR)

[JPO](#)

Please refer to Q20 above.

[KIPO](#)

The parties may file an appeal against rejection decisions, etc.; interested parties or examiners for invalidation trials, etc.; and anyone for applicable cancellation trials.

[USPTO](#)

No, other than only the applicant may file the ex parte appeal.

22) Does your Office require professional representation to file an appeal?

[CNIPA](#)

- yes
 no
 it depends

According to Art. 18 of the China Trademark Law,

A foreigner or foreign enterprise shall entrust a trademark agency for applying for trademark registration and handling other trademark-related matters in China.

According to Art. 5 of Regulations for the Implementation of the China Trademark Law,

A foreigner or a foreign enterprise referred to in Article 18 of the Trademark Law shall mean a foreigner or a foreign enterprise without a usual domicile or business premise in China.

EUIPO

yes

no

it depends

In general, no person shall be compelled to be represented before the Office/Boards of Appeal. However, natural or legal persons having neither their domicile nor their principal place of business or a real and effective industrial or commercial establishment in the European Economic Area shall be represented before the Office/Boards of Appeal by professional representative in all proceedings, other than the filing of an application for an EU trade mark. (Article 119(1) and (2) EUTMR)

Natural or legal persons having their domicile or principal place of business or a real and effective industrial or commercial establishment in the European Economic Area may be represented before the Office by an employee. An employee of a legal person to which this paragraph applies may also represent other legal persons which have economic connections with the first legal person, even if those other legal persons have neither their domicile nor their principal place of business nor a real and effective industrial or commercial establishment within the European Economic Area. Employees who represent persons, within the meaning of this paragraph, shall, at the request of the Office or, where appropriate, of the party to the proceedings, file with it a signed authorisation for insertion in the files. (Article 119(3) EUTMR)

Article 5 of the Rules of Procedure

Mandatory representation of parties outside of the EEA

A party having no establishment or domicile within the EEA, must be represented before the Board of Appeal in accordance with Article 119(2) EUTMR or Article 78(1) CDR.

2. Where, during appeal proceedings, the Boards of Appeal are informed that the representative of such a party:

(a) does not fulfil the requirements laid down in Article 120(1) EUTMR, or Article 78(1) CDR;

or

(b) has relinquished the representation of that party;

and no new representative has been appointed, the Registry shall invite that party to remedy the deficiency within two months. Moreover, that party will be informed that, if no new representative has been appointed within the set time limit, any submission, document or item filed on behalf of, or by that party, shall be deemed not to have been filed.

3. The foregoing provisions are without prejudice to any on-going procedural time limits.

JPO

yes

no

it depends

It is necessary for a person not domiciled or resident in Japan (or, without a business office in Japan, if it is a corporation) to appoint his/her patent administrator domiciled or resident in Japan when filing an appeal to the JPO. (Article 8 of the Patent Act as applied mutatis mutandis pursuant to Article 77(2) of the Trademark Act)

The patent administrator does not necessarily have to be an professional representative.

[KIPO](#)

- yes
- no
- it depends

Pursuant to Article 6 of the Act, a person who does not have an address or place of business in Korea may request trial only by a person who has an address or place of business in Korea as a representative for trademark-related affairs. In accordance with Articles 2 and 21 of the Patent Attorney Act, a patent attorney can perform as a representative.

[USPTO](#)

- yes
- no
- it depends

Applicants generally may file pro se or be represented by a licensed U.S. lawyer, but foreign-domiciled applicants must be represented by a licensed U.S. lawyer.

23) Means to file an appeal:

[CNIPA](#)

- electronically on paper

For review of refusal, electronically is the preferred option, and actually, up to now, 97% of review of refusal has been filed electronically.

But for review of opposition decision rejecting registration, review of invalidation and review of cancellation, the appeal has to be filed on paper.

For invalidation, electronically is the preferred option.

- a. If electronically: compulsory optional

- i.If optional same fee lower fee for electronical

[EUIPO](#)

- electronically on paper :

Electronically is the preferred option.

- a. If electronically: compulsory optional

- ii.If optional same fee lower fee for electronical

[JPO](#)

- electronically on paper :

- a. If electronically: compulsory optional

- iii.If optional same fee lower fee for electronical

With respect to ① appeals against decision of refusal and ② appeals against dismissal of amendments, if procedures that can be done online are done on paper, a digitization fee is required to convert the document to electronic form. The digitization fee is JPY 2,400 + JPY 800 per page.

KIPO

electronically on paper :

Fill out Form No. 31 (Trial Request) of the Enforcement Rules of the Patent Act and submit it to the Intellectual Property Trial and Appeal Board along with the required documents.

a. If electronically: compulsory optional

iv. If optional same fee lower fee for electronic

USPTO

electronically on paper :

a. If electronically: compulsory optional

v. If optional same fee lower fee for electronic

24) Deadline to submit evidence

CNIPA

compulsory together with the Appeal (but only if the evidence accompanies a request for reconsideration filed concurrently with the notice of appeal)

possible at a later stage

According to Art. 59 Regulations for the Implementation of the China Trademark Law

The parties shall be permitted to submit supplementary evidential materials within three months from submission of the application if they state so in the application form.

EUIPO

compulsory together with the Appeal (but only if the evidence accompanies a request for reconsideration filed concurrently with the notice of appeal)

possible at a later stage

The Board of Appeal may accept facts or evidence submitted for the first time before it only where those facts or evidence meet the following requirements:

(a) they are, on the face of it, likely to be relevant for the outcome of the case; and

(b) they have not been produced in due time for valid reasons, in particular where they are merely supplementing relevant facts and evidence which had already been submitted in due time, or are filed to contest findings made or examined by the first instance of its own motion in the decision subject to appeal.

Article 27(4) EUTMDR and Article 54 of the Rules of Procedure

JPO

compulsory together with the Appeal (but only if the evidence accompanies a request for reconsideration filed concurrently with the notice of appeal)

possible at a later stage

Evidence may be submitted by the conclusion of the proceedings.

KIPO

compulsory together with the Appeal (but only if the evidence accompanies a request for reconsideration filed concurrently with the notice of appeal)

possible at a later stage

Submission and withdrawal of evidence can be made until the end of the hearing (Section1, Chapter 2, Part 9, Trial Handbook).

However, the principle of timely submission according to the Civil Procedure Act applies.

USPTO

The deadline for filing evidence occurs prior to the appeal. Evidence is submitted during prosecution of the application by both the applicant and the examiner. If an applicant files a request for reconsideration of the refusal concurrently with the notice of appeal, evidence may be submitted with the request for reconsideration. During the appeal, evidence may be supplemented only upon the TTAB's grant of a request for remand either from the applicant or the examiner.

25) Means to file evidence:

CNIPA

electronically

on paper

The means to file evidence shall be the same as the means to file the appeal.

If electronically:

compulsory optional

If optional

same fee lower fee for electronic

EUIPO

electronically

on paper

Article 49 of the Rules of Procedure

Article 49

Means of providing written evidence

1. Evidence shall, in accordance with Decision No EX-23-13 of the Executive Director of the Office, be submitted using the electronic communications platform maintained by the Office.

2. Evidence may be given on data carriers in accordance with the technical specifications laid down in Decision No EX-22-7 of the Executive Director of the Office. Where evidence submitted by means of a data carrier that complies with those technical specifications is illegible, in the sense that it cannot be

opened, the Registry shall invite the party to remedy the deficiency within one month. Where the deficiency is not remedied within the prescribed time limit, the evidence shall be deemed not to have been filed pursuant to Article 4 of said decision of the Executive Director.

3. Alternatively, evidence can be submitted by post or courier. Where post or courier is used, evidence shall be submitted in as many copies as there are parties to the proceedings. The copies must be clearly identified.

4. Where a party provides evidence pursuant to Article 7(3), Article 16(1)(c) and Article 16(2) EUTMDR, by making reference to a freely accessible online source recognised by the Office, the party shall expressly indicate the specific information it puts forward as evidence from that source.

5. Where evidence does not comply with paragraphs 3 to 4, the Registrar shall invite the submitting party to remedy the deficiency within one month indicating that where the request is not remedied within the prescribed time limit, the Board of Appeal shall not take the evidence in question into account.

If electronically: compulsory optional

If optional same fee lower fee for electronic

[JPO](#)

electronically

on paper

When submitting evidence, the evidence must be specifically identified in writing and the facts to be proved and the relationship between the evidence and the facts to be proved must be clearly indicated (Article 57-3 of the Ordinance for Enforcement of the Patent Act as applied mutatis mutandis pursuant Article 22(6) of the Ordinance for Enforcement of the Trademark Act).

If the evidence is a document, the original and its copies (in the number of copies corresponding to the JPO and counterparties) shall be submitted on paper. However, the copies can be submitted on DVD-R.

Please refer to the following webpage for details.

https://www.jpo.go.jp/e/system/trial_appeal/document/sinpan-binran/34-01_e.pdf

If electronically: compulsory optional

If optional same fee lower fee for electronic

[KIPO](#)

electronically

on paper

Please provide details on the requirements:

Documental evidence can be submitted electronically.

[USPTO](#)

electronically

on paper

If electronically: compulsory optional

If optional same fee lower fee for electronic

No new evidence may be submitted during the appeal, unless the application is remanded to the examiner. On remand, the applicant would use the electronic filing system to submit evidence directly to the examiner. The examiner would communicate electronically with the applicant when introducing new evidence to support the refusal.

26) Are there any language requirements in your Office when filing an appeal?

[CNIPA](#)

Chinese only. Where the various certificates, certifying documents and proofs submitted under the trademark law and the regulation are in a foreign language, the Chinese translation thereof shall be attached. Where the Chinese translation is not attached, the certificates, certifying documents and proofs shall be deemed not to have been submitted.

[EUIPO](#)

Notice of appeal shall be filed in the language of the proceedings in which the decision subject to appeal was taken. (Article 68 EUTMR)

Where the notice of appeal is filed in another official language of the Union than the language of proceedings, the appellant shall provide a translation thereof within four months of the date of notification of the decision subject to appeal. (Article 21(2) EUTMDR)

Where in ex parte proceedings the decision subject to appeal has been taken in an official language other than the language of proceedings, the appellant may file the notice of appeal either in the language of the proceedings or in the language in which the decision subject to appeal was taken; in either case, the language used for the notice of appeal shall become the language of the appeal proceedings and paragraph 2 shall not apply (Article 21(3) EUTMDR)

[JPO](#)

In principle, documents pertaining to trial or appeal must be written in Japanese (Article 2(1) of the Ordinance for Enforcement of the Patent Act as applied mutatis mutandis pursuant to Article 22(1) of the Ordinance for Enforcement of the Trademark Act).

A power of attorney, a certificate of nationality, and other documents written in a foreign language must include an attached translation (Article 2(2) of the Ordinance for Enforcement of the Patent Act as applied mutatis mutandis pursuant to Article 22(1) of the Ordinance for Enforcement of the Trademark Act).

[KIPO](#)

Documents submitted to the Intellectual Property Trial and Appeal Board must be written in Korean. If it is inevitable to submit documents in a foreign language for proof of facts, etc., Korean translation must be attached (Article 15 of the Decree). If a Korean translation is not attached in violation of this, it is subject to rejection (Article 25 of the Enforcement Decree).

[USPTO](#)

All submissions must be in English. Any foreign-language evidence must be translated into English.

27) What are the fees payable to your Office to file an appeal?

[CNIPA](#)

The fee for filing on paper is RMB 750, the fee for filing electronically is RMB 675.

[EUIPO](#)

Appeal fee: 720 € for EUTM cases, 800 € for RCD cases

[JPO](#)

JPY 15,000 + JPY 40,000 per classification

[KIPO](#)

Specific fees for each trial can be found on the website of the Intellectual Property Trial and Appeal Board.

[USPTO](#)

\$225 per International Class of goods/services in the appeal. For applicants that request a second or subsequent extension of time to file an appeal brief, there is a \$100 fee per extension without regard to the number of classes. There is a per class fee for filing the appeal brief, which is \$200 per class. If the applicant also requests an oral hearing to present arguments to the Trial and Appeal Board, there is a \$500 fee, without regard to the number of classes.

28) Are fees related to filing an appeal payable to the Office (excluding appeal fees to further instances)? Please provide details

[CNIPA](#)

Only appeal fees are paid to the Office.

[EUIPO](#)

Only appeal fees are paid to the Office. The following rules apply to costs of the parties.

Article 109 EUTMR - Costs

1. The losing party in opposition proceedings, proceedings for revocation, proceedings for a declaration of invalidity or appeal proceedings shall bear the fees paid by the other party. Without prejudice to Article 146(7), the losing party shall also bear all costs incurred by the other party that are essential to the proceedings, including travel and subsistence and the remuneration of a representative within the meaning of Article 120(1), within the limits of the scales set for each category of costs in the implementing act to be adopted in accordance with paragraph 2 of this Article. The fees to be borne by the losing party shall be limited to the fees paid by the other party for opposition, for an application for revocation or for a declaration of invalidity of the EU trade mark and for appeal.

3. However, where each party succeeds on some and fails on other heads, or if reasons of equity so dictate, the Opposition Division, Cancellation Division or Board of Appeal shall decide a different apportionment of costs.

4. The party who terminates the proceedings by withdrawing the EU trade mark application, the opposition, the application for revocation of rights, the application for a declaration of invalidity or the appeal, or by not renewing registration of the EU trade mark or by surrendering the EU trade mark, shall bear the fees and the costs incurred by the other party as stipulated in paragraphs 1 and 3.

5. Where a case does not proceed to judgment the costs shall be at the discretion of the Opposition Division, Cancellation Division or Board of Appeal.

6. Where the parties conclude before the Opposition Division, Cancellation Division or Board of Appeal a settlement of costs differing from that provided for in paragraphs 1 to 5, the department concerned shall take note of that agreement.

JPO

As per Q23, with respect to ① appeals against decision of refusal and ② appeals against dismissal of amendments, if the procedure is done on paper, the applicant must pay the cost of digitizing the paper (JPY 2,400 + JPY 800 per page) in addition to the fee described in Q27.

<https://www.jpo.go.jp/e/system/process/tesuryo/hyou.html>

KIPO

There is a correction fee, participation application fee, etc., and the specific name and amount can be found on the website of the Intellectual Property Trial and Appeal Board.

USPTO

No, just fees.

29) When is the payment due, what are the effects of late payment and how can they be remedied?

CNIPA

The appeal fees need to be paid within the time limit 7 days from receipt of the notification of payment. According to Art. 10 of the Regulations for the Implementation of the China Trademark Law, the documents shall be deemed served on the party concerned after 15 days from dispatch of the documents, except where the party concerned is able to prove the actual date of receipt or the date of entry of the documents into its electronic system.

This time limit cannot be extended. According to Art. 16 Trademark Review and Adjudication Rules, non-payment would lead to dismissal, the Office shall notify the applicant in writing and state the reason(s). This dismissal notification can be remedied by filing administrative reconsideration to CNIPA or filing administrative lawsuit to Beijing IP Court.

EUIPO

The appeal fees need to be paid within the time limit 2 months from notification of the contested decision. This time limit cannot be extended as fixed by Article 68 EUTMR but can be remedied by filing proof that the banking order was given within the appeal period and a 10 % surcharge has been paid within the date set by the Boards of Appeal Registry. (Article 180(3) EUTMR)

Article 11 of the Rules of Procedure

Appeal fee

1. In the event of insufficient payment of the appeal fee, pursuant to Article 68(1) EUTMR or Article 57 CDR respectively, or lack of payment within the prescribed time limit, the Registrar shall invite the appellant to file its observations on admissibility of the appeal within one month.
2. If no observations are filed, or the appellant is unable to prove due payment was made within the prescribed time limit, the Registrar shall remit the case to the competent Board for decision without delay.
3. In the event the observations submitted within the prescribed time limit prove the due payment of the appeal fee, or that payment has been made in accordance with the requirements laid down in Article 180(3) EUTMR or Article 7(3)(a)(ii) and Article 7(b) CDFR respectively, the Registrar shall deem the appeal as having been filed and continue written proceedings.

[JPO](#)

The payment due is the same as the deadline for filing the trial or appeal. If the payment is not made, the applicant will be ordered to make payment within the following time limits. If it is not paid, the trial or appeal shall be dismissed (Article 133(2)(iii) and (3) of the Patent Act as applied mutatis mutandis pursuant to Article 56(1) of the Trademark Act).

https://www.japaneselawtranslation.go.jp/ja/laws/view/4097#je_ch7at15

- ① For appeals against decision of refusal: 30 days
- ② For appeals against dismissal of amendments: 30 days
- ③ For trials for invalidation of trademark registration: 10 days (25 days for those who reside in a remote area or an area with transportation difficulty in Japan)

[KIPO](#)

A trial number is assigned on the date the trial request is accepted, and the fee must be paid by the day following the date the trial number is assigned (Article 8(1) of the Collection Rules for Patent Fees, etc.).

Non-payment or overpayment of fees is subject to a correction order, and the correction period according to the correction order is within one month. If amendment is not made within this period, the claim may be invalidated or dismissed. However, even if the amendment period has passed, if amendment is made before the claim is dismissed, it is considered a legitimate amendment.

A person who wishes to object to the decision of dismissal may file a lawsuit with the Patent Court within 30 days from the date of receiving a certified copy of the decision (Section 2, Chapter 3, Part 3 of Trial Handbook).

[USPTO](#)

The fee must be submitted electronically with the notice of appeal. If an appeal is filed without the fee, the appeal is considered untimely and the application will be deemed to be abandoned. The applicant may petition the USPTO Director to revive the abandoned application.

30) Please indicate whether the appeal body can review a decision made by IP offices' examiners

[CNIPA](#)

- In its entirety, and the appeal body is not bound by the grounds submitted by an appellant

- Partially, with the appeal body considering only the grounds and pleas submitted by the appellant
- Partially, with the appeal body considering all grounds and pleas submitted by the parties (the appellant and the opposing party)

According to Art. 52,53,55,56 of the Regulations for the Implementation of the China Trademark Law,

For review of refusal, the appeal body shall examine the case based on the refusal decision, the facts, reasons and requests alleged by the applicant, and the factual status at the time of the review. Where the appeal body discovers that the trademark violates the provisions of Article 10, Article 11, Article 12 or the first paragraph of Article 16 of the Trademark Law but the Trademark Office does not make the refusal decision pursuant to the provisions of the aforesaid clauses, the appeal body may make a review decision to reject the application pursuant to the provisions of the aforesaid clauses. The appeal body shall solicit the opinion of the applicant before making the review decision.

For review of opposition decision rejecting registration, the appeal body shall examine the case based on the opposition decision on non-registration, the facts and reasons alleged by the applicant and requests thereof, and the opinion of the original opponent.

For review of invalidation, the appeal body shall examine the case based on the invalidation decision, the facts and reasons of the applicant, and the requests thereof.

For review of cancellation, the appeal body shall examine the case based on the Office's decision on revocation or upholding of the registered trademark, the facts and reasons alleged by the parties concerned, and the requests thereof.

EUIPO

- In its entirety, and the appeal body is not bound by the grounds submitted by an appellant
- Partially, with the appeal body considering only the grounds and pleas submitted by the appellant
- Partially, with the appeal body considering all grounds and pleas submitted by the parties (the appellant and the opposing party)

JPO

- In its entirety, and the appeal body is not bound by the grounds submitted by an appellant
- Partially, with the appeal body considering only the grounds and pleas submitted by the appellant
- Partially, with the appeal body considering all grounds and pleas submitted by the parties (the appellant and the opposing party)

Grounds not pleaded by a party or intervenor may also be examined in a trial or appeal. In that case, the result thereof must be notified to the parties and the intervenors and an opportunity to present opinions within a reasonable period of time specified must be given to them (Article 153(1) and (2) of the Patent Act as applied mutatis mutandis pursuant to Article 56(1) of the Trademark Act).

However, because the purport of the request that is not claimed by the demandant cannot be examined (Article 153(3) of the Patent Act as applied mutatis mutandis pursuant to Article 56(1) of the Trademark Act), as for designated goods and services for which no trial for invalidation has been requested, grounds for the invalidation cannot be conducted ex-officio detection in relation to ③ trials for invalidation of trademark registration.

KIPO

- In its entirety, and the appeal body is not bound by the grounds submitted by an appellant
- Partially, with the appeal body considering only the grounds and pleas submitted by the appellant

- Partially, with the appeal body considering all grounds and pleas submitted by the parties (the appellant and the opposing party)

In the case of a trial against the decision of rejection, the decision can be made regardless of examination results.

Meanwhile, in an inter-party trial, the grounds and pleas presented by the appellant will be the subject of a trial.

USPTO

- In its entirety, and the appeal body is not bound by the grounds submitted by an appellant
- Partially, with the appeal body considering only the grounds and pleas submitted by the appellant
- Partially, with the appeal body considering all grounds and pleas submitted by the parties (the appellant and the opposing party)

Generally, the TTAB reviews the issues raised by the applicant on appeal, that were the subject of a final administrative instance (examiner) decision refusing registration. However, the TTAB has the discretion to identify additional grounds and remand the application to the examiner for further consideration. Also, in reviewing the grounds for refusal presented by the examiner, the TTAB may rely on its own rationale or reasoning to affirm the ground, and is not bound by the arguments of the examiner.

31) Please indicate the grounds on which the decision may be appealed

CNIPA

- Facts
- Points of Law
- Procedural irregularities
- Other

EUIPO

- Facts
- Points of Law
- Procedural irregularities
- Other

JPO

- Facts
- Points of Law
- Procedural irregularities
- Other

KIPO

- Facts
- Points of Law
- Procedural irregularities
- Other

However, if there are irregularities related to general administrative procedures, a general administrative trial must be requested, not a trademark trial.

[USPTO](#)

The applicant may make factual, legal, or procedural arguments that support registration of its proposed mark or reversal of the refusal.

32) Can new arguments not raised before the decision made by IP offices' examiners, such as claim of distinctiveness acquired through use, be claimed in appeal procedures?

[CNIPA](#)

Yes.

Firstly, from the respect of the appeal body, please refer to question 30, for review of refusal, if the appeal body discovers that the trademark violates the provisions of Article 10, Article 11, Article 12 or the first paragraph of Article 16 of the Trademark Law but the Trademark Office does not make the refusal decision pursuant to the provisions of the aforesaid clauses, the appeal body may add new reason for refusal, and notify the applicant for soliciting its opinion. Secondly, from the respect of the applicant, in appeal procedures, it has opportunity to present evidences to argue on the claim of distinctiveness acquired through use.

[EUIPO](#)

Article 27 EUTMDR

In *ex parte* proceedings, and with respect to those goods or services which form part of the subject matter of the appeal, the Board of Appeal, in compliance with Article 45(3) EUTMR (the Office to re-open the examination of absolute grounds on its own initiative at any time before registration, where appropriate) shall proceed in accordance with Article 42 EUTMR* where it raises a ground for refusal of the trade mark application which had not already been invoked in the decision subject to appeal in application of that provision.

In *inter partes* proceedings, the examination of the appeal and, as the case may be, the cross appeal, shall be restricted to the grounds invoked in the statement of grounds and, as the case may be, in the cross appeal. Matters of law not raised by the parties shall be examined by the Board of Appeal only where they concern essential procedural requirements or where it is necessary to resolve them in order to ensure a correct application of EUTMR having regard to the facts, evidence and arguments presented by the parties.

The examination of the appeal shall include the following claims or requests provided that they have been raised in the statement of grounds of the appeal or, as the case may be, in the cross appeal and provided that they were raised in due time in the proceedings before the instance of the Office which adopted the decision subject to appeal:

- (a) distinctiveness acquired through use;
- (b) recognition of the earlier trade mark on the market acquired through use;
- (c) proof of use.

*42 EUTMR

Examination as to absolute grounds for refusal

1. Where, under Article 7, a trade mark is ineligible for registration in respect of some or all of the goods or services covered by the EU trade mark application, the application shall be refused as regards those goods or services.

2. The application shall not be refused before the applicant has been allowed the opportunity to withdraw or amend the application or to submit his observations. To this effect, the Office shall notify the applicant of the grounds for refusing registration and shall specify a period within which he may withdraw or amend the application or submit his observations. Where the applicant fails to overcome the grounds for refusing registration, the Office shall refuse registration in whole or in part.

[JPO](#)

They can be raised. For example, even if the examination raised solely the issue of whether or not the trademark itself is distinctive and there was no opinion on the distinctiveness acquired through use, it is possible to add a claim for the acquisition of distinctiveness through use in ① appeals against decision of refusal.

[KIPO](#)

Yes

[USPTO](#)

The Board must distinguish between new grounds and new arguments on existing grounds. No new grounds for refusal or for registration may be raised in the first instance at the Board. A new claim of acquired distinctiveness would be considered a new ground, and would require the applicant to seek a remand to the examiner to consider such claim. Similarly, even if such a claim had already been made, but the applicant seeks to introduce more evidence in support of the claim, a remand to the examiner would be required. If the applicant or examiner makes a new argument based on existing grounds and evidence, the Board has the discretion to consider the arguments and decide the case, but may remand if it is considered necessary to obtain any additional briefing from the applicant and/or examiner

33) Please indicate whether new evidence may be accepted within the appeal proceeding:

[CNIPA](#)

- yes
 no

According to Art. 59 of the Regulations for the Implementation of the China Trademark Law,

If the evidence is generated after the stipulated period or submission of evidence after the stipulated period when the party concerned has evidence to prove any justification for late submission, the appeal body shall forward the evidence to the counterparty and may adopt the evidence after cross-examination.

[EUIPO](#)

- yes
 no

The Board of Appeal may accept facts or evidence submitted for the first time before it only where those facts or evidence meet the following requirements:

(a) they are, on the face of it, likely to be relevant for the outcome of the case; and

(b) they have not been produced in due time for valid reasons, in particular where they are merely supplementing relevant facts and evidence which had already been submitted in due time, or are filed to contest findings made or examined by the first instance of its own motion in the decision subject to appeal.

Article 27(4) EUTMDR

JPO

- yes
 no

It is possible to submit evidence until the conclusion of the proceedings.

KIPO

- yes
 no

Must not violate the principle of timely submission.

The evidence that is admitted for examination may also be admitted for trial.

USPTO

- yes
 no

No, generally all evidence must be submitted to the examiner before the appeal. However, occasionally some new evidence is submitted in the appeal, and may be considered if the other party (the examiner or the applicant) does not object and also addresses the evidence; or if the other party is making complete an incomplete submission, for example, the applicant puts in part of an article, the examiner on appeal puts in the full article.

34) Is it possible to request confidentiality of submissions/evidence?

CNIPA

- yes
 no

In case of confidentiality of submissions/evidence, the appeal body shall NOT forward the evidence to the counterparty, but because the evidence without cross-examination, the appeal body shall NOT adopt the evidence to establish the conclusion of the case.

EUIPO

- yes
 no

Article 6 of the Rules of Procedure

Confidential information

1. A party may request that specific information in a submitted document or item is kept confidential. A request for confidentiality shall be explicit, defined as to its scope, and it shall include a justification of the party's special interest in keeping the document or item confidential.
2. Where confidentiality is requested, two versions of the document containing the information subject to the request pursuant to paragraph 1 shall concurrently be submitted: The unaltered version and a public version in which only the information subject to the request pursuant to paragraph 1 has been removed, unless demonstrated that total confidentiality is justified.
3. Where a request fulfils said requirements the Registrar shall mark as confidential the document or item containing information for which confidentiality is requested by the party.
4. Where a request does not contain reasons, the Registrar shall reject it.

5. Where a request does not comply with the other formal requirements laid down in paragraphs 1 and 2, the Registrar shall invite the party to remedy the deficiency within a specified time limit. Where a request is not remedied within the prescribed time limit, the Registrar may reject the request or remit it to a Chairperson or the Board.
6. Where a request for confidentiality has been rejected by the Registrar, the party concerned may demand that the Board shall decide on the request, in which case the Registrar shall mark the document as confidential until the Board has taken its decision.
7. Where confidentiality is requested towards the other party, the Registrar shall invite the requesting party to withdraw either the request, or the document for which confidentiality is requested.
8. Where confidential information is communicated to the other party, such party shall keep that information confidential.

JPO

- yes
 no

If the Commissioner of the JPO finds necessary to keep them confidential as to documents which are likely to negatively affect an individual's reputation or disturb its peaceful existence of an individual, it is possible to restrict inspection or issuance of documents submitted (Article 72(1)(iii) of the Trademark Act).

In addition, with respect to ③ trials for invalidation of trademark registration, if the documents contain trade secrets owned by a party or an intervenor, the said party or intervenor may request a restriction on inspection, etc. of the said documents (Article 72(1)(i) of the Trademark Act).

Please refer to the following webpage for details (Manual for Trial and Appeal Proceedings 01-01).

https://www.jpo.go.jp/e/system/trial_appeal/document/sinpan-binran/01-01_e.pdf

KIPO

- yes
 no

If a party wishes to restrict the viewing or copying of trial documents containing personal information or trade secrets, he or she may request to limit the access to the confidential information to only the parties.

USPTO

- yes
 no

35) Deadline to file a confidentiality request for submissions/evidence:

CNIPA

- compulsory to be filed together with the submissions/evidence
 possible to be requested at a later stage

EUIPO

compulsory to be filed together with the submissions/evidence

possible to be requested at a later stage

It must be mentioned that it is not specifically mentioned in the EUTMR, EUTMDR, CDR Regulations or Boards of Appeal Rules of Procedure. However, to effectively proceed with a confidentiality request it is essential that a request for confidentiality is submitted together with the submissions/evidence.

[JPO](#)

compulsory to be filed together with the submissions/evidence

possible to be requested at a later stage

In order to prevent inspection, it is advisable, although not obligatory, to do so at the same time as the submission of the said documents or as soon as possible after the submission of the said documents.

[KIPO](#)

compulsory to be filed together with the submissions/evidence

possible to be requested at a later stage

(Need to file a confidentiality request to restrict viewing and copying of trial documents, explaining that they contain critical secrets regarding the private life, which may cause significant disruption to the social life of the parties if accessed by the third party, and that they contain trade secrets held by the parties.

[USPTO](#)

Inapplicable

36) Means to file the confidentiality request:

[CNIPA](#)

electronically

on paper

It depends on which means to file the appeal, the means to file confidentiality request shall be the same as the means to file the appeal.

[EUIPO](#)

electronically

on paper

[JPO](#)

electronically

on paper

A request for restriction of inspection, etc. with regard to ③ trials for invalidation of trademark registration shall be submitted in the Form 65-8 stipulated by Article 50-14 of the Ordinance for Enforcement of the Patent Act as applied mutatis mutandis pursuant to Article 22(6) of the Ordinance for Enforcement of the Trademark Act.

[KIPO](#)

electronically

on paper

File a request to restrict viewing and copying of trial documents pursuant to Article 85 of the Order.

[USPTO](#)

Inapplicable

37) Please briefly explain the decision-making process. For example, how many rounds of written observations are possible?

[CNIPA](#)

Collegiate system

an odd number of three or more trademark review and adjudication officers shall form a collegial group to try a case. And during hearing, the collegial group shall adhere to the principle of majority rule. Procedure rules—Petition, defense and cross-examination

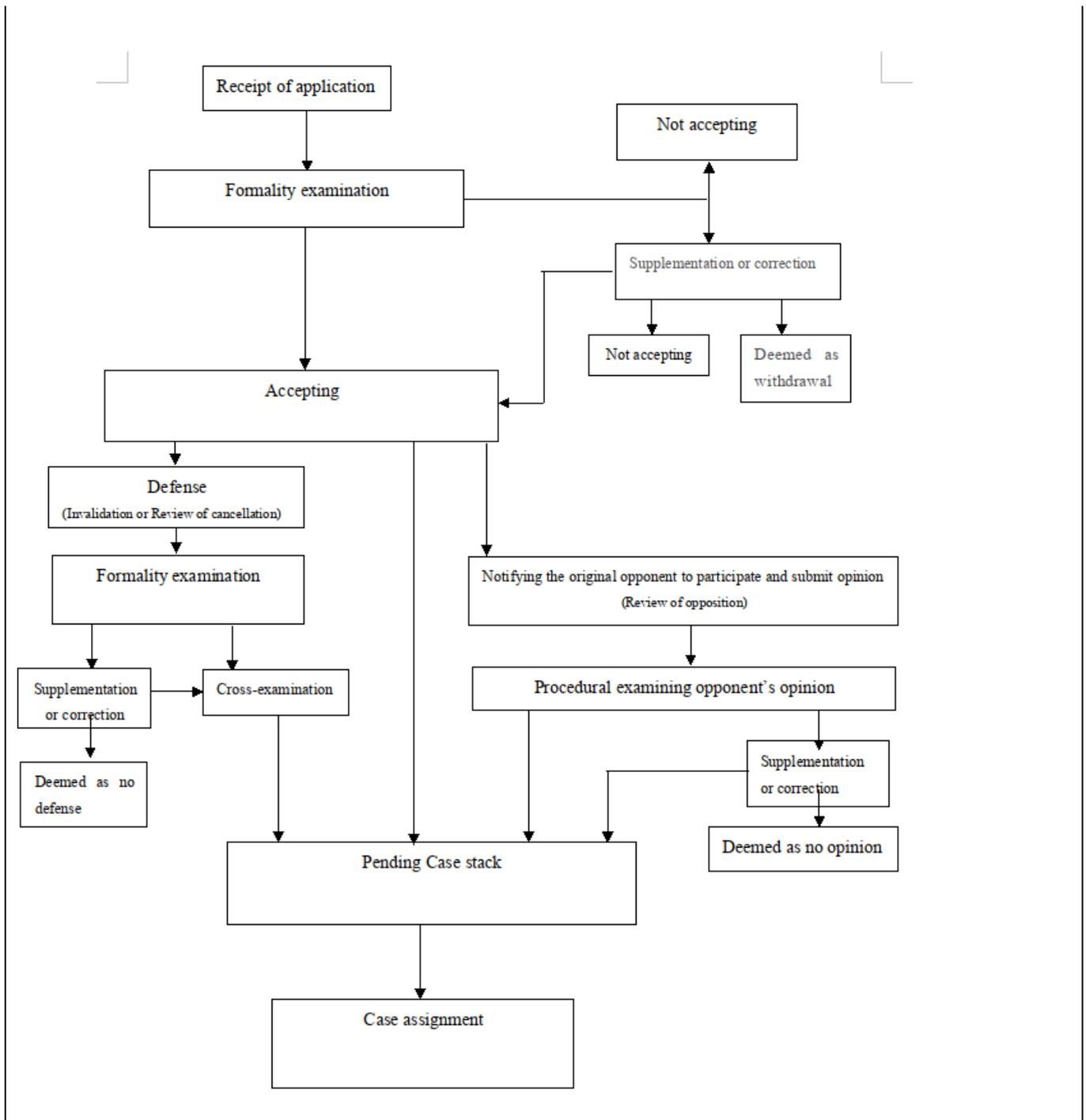
There are complete petition, defense and cross-examination procedures to guarantee the parties' right of being notified, participating and arguing.

Evidence rules—Cross-examined by both parties

The main evidence on which the decision is based must be cross-examined by both parties.

Decisions shall be issued upon approval by administrative supervisor.

Complicated and difficult cases shall be submitted to the committee meeting of the appeal body for hearing.

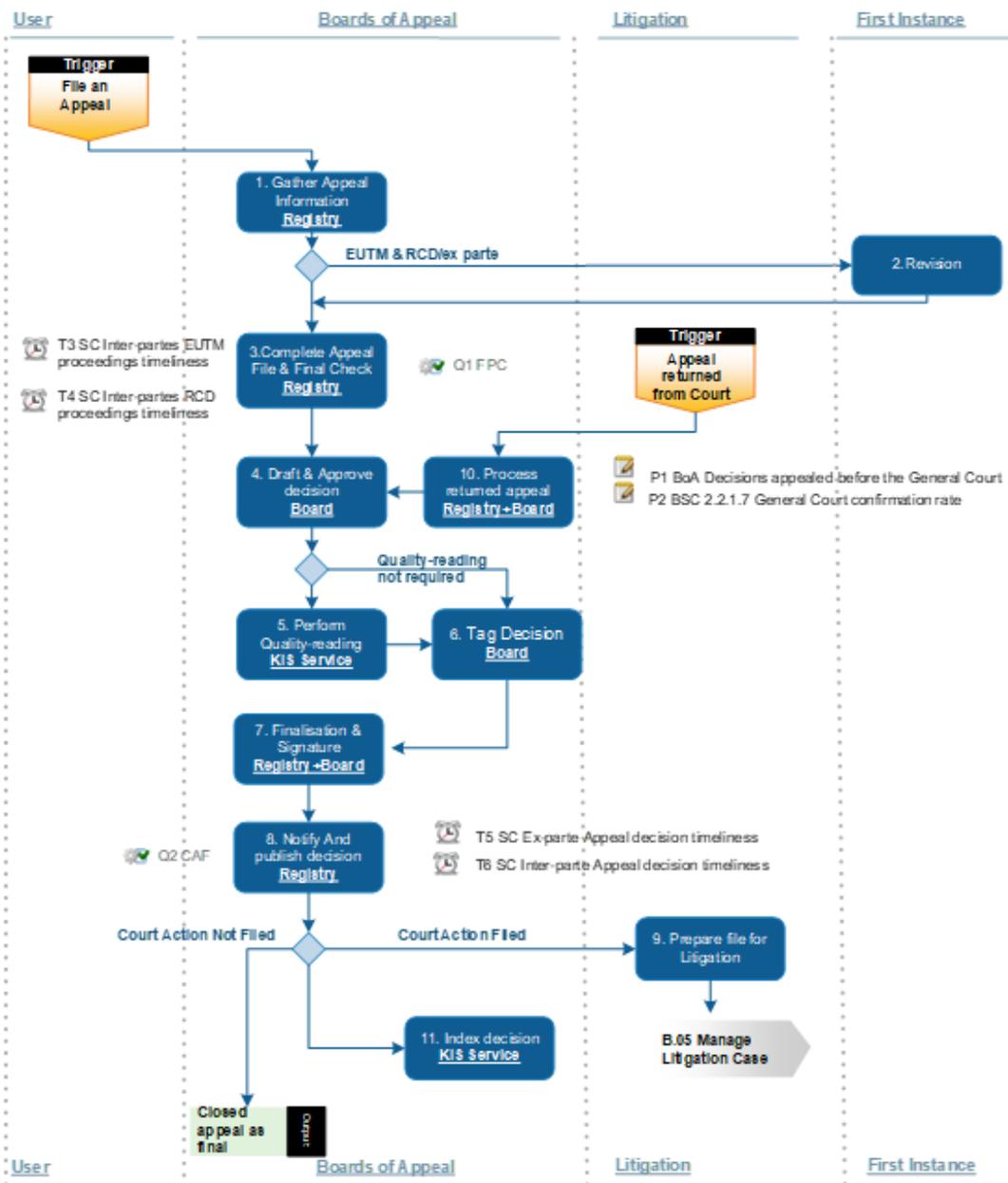


[EUIPO](#)

Once a notice of appeal is submitted, formality examination follows. Formalities are mainly dealt with by the Registrar. If deficiencies are noted, they are communicated to the parties and a request to remedy is addressed to them. If the deficiency is remedied, the appeal is further processed. In absolute ground cases, the appeal file is sent back to the first instance for interlocutory revision; that is, the first instance is given a second opportunity to consider its contested decision. If the contested decision is withdrawn or revoked, the appeal proceedings are closed. If the first instance refuses to grant revision, the appeal proceedings continue.

Please see the diagram of appeal processes below which describes the process followed within the Boards of Appeal in order to issue and adopt a decision on an appeal in accordance with the EUTM/RCD Regulation.

The diagram below explains the workflow for the EUIPO Boards of Appeal proceeding:



A Board of Appeal deciding on a case consists of three members, including the Chairperson of the respective Board. Two of the members must be legally qualified. However, specific cases may be decided by the Grand Board or by a Single Member Board.

In accordance with the EUTMDR, a Board may refer a case allocated to it to the Grand Board if it believes that this is justified by the legal difficulty, the importance of the case or by special circumstances. A Board shall refer a case allocated to it to the Grand Board if it considers that it must deviate from an interpretation of the relevant legislation given in an earlier decision of the Grand Board, or if it observes that the Boards of Appeal have issued diverging decisions on a point of law which is liable to affect the outcome of the case. The Executive Director of the EUIPO may request a reasoned opinion to the Grand Board on questions on a point of law, in particular in case of diverging decisions.

A decision may be taken by a Single Member. To determine which specific cases fall under the authority of a Single Member, account should be taken of the lack of difficulty of the legal or factual matters raised, the limited importance of the individual case or the absence of other specific circumstances. The decision to confer a case on one member in the cases referred to shall be adopted by the Board handling the case. These are specifically

the cases where the decision closes the proceedings following an agreement between the parties, fixes the amount of costs, reviews the amount of costs determined by the Registry or only concerns the admissibility of the appeal as well as restitutio in integrum cases.

The Board decides if oral proceedings are expedient, either of its own motion or at the request of any party to the proceedings. Oral proceedings, including delivery of the decision, shall be public before the Boards of Appeal, in so far as the Board does not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

The parties can request an examination of an appeal as a matter of priority (Expedited Appeal Proceedings). Upon reasoned request of the appellant or of the defendant and after hearing the other party, the Board of Appeal may decide, having regard to the particular urgency and the circumstances of the case, to examine the appeal as a matter of priority.

The Board may, through the Rapporteur of the file and at all stages of an inter partes procedure, encourage the parties to put an end to the dispute and, if appropriate, submit proposals for a friendly settlement. The Rapporteur may, amongst other things, call the parties individually or in a conference call or write to the parties to explore the possibilities of friendly settlement and to ask them to supply information or particulars which may help to come to a friendly settlement. By doing so, the Rapporteur remains bound by the principle of impartiality and must guarantee the principle of adversarial proceedings. It must not imply that the Board is bound in any way by such communication or of any personal opinion expressed and must keep the content of deliberations of the Board secret. When the Rapporteur believes that there is a possibility of a friendly settlement which may better serve the interests of the parties than a decision, it may propose to the parties to request a suspension of the proceedings in order to negotiate, with or without the assistance of the Board, a settlement agreement. In case the conciliation fails, the appeal proceedings shall be resumed.

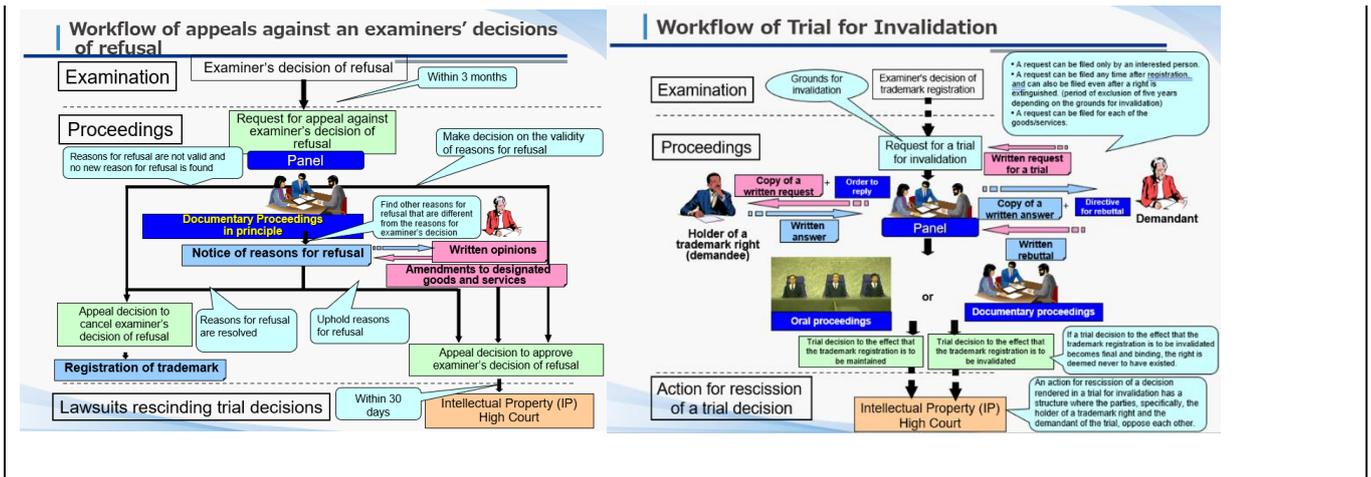
Moreover, during the appeal proceedings, it is offered a mediation service for inter partes proceedings allowing the parties to reach an amicable settlement. The appeal before the Boards and mediation are separate proceedings. When the parties have requested mediation proceedings and the statement of grounds has been filed and, where applicable, the administration charges have been paid to the Office, the Board shall suspend the appeal proceedings pending the outcome of the amicable settlement. In case mediation fails, the appeal proceedings shall be resumed.

The Boards of Appeal prepare for each year an overview of important decisions. These decisions are identified as important by the Board having rendered them. The overview comprises summaries of the decision provided by the Board in question. Detailed information about the decision selected as important can also be found in eSearch Case Law Tool. The criteria applied for selection important decisions are for instance; Grand Board cases, Second decisions rendered after annulment by General Court or Court of Justice on a point of law, other decisions containing clarification on a point of law, different approaches among Boards, decisions related to signs which consist exclusively of shape Decisions related to public policy or morality etc.

[JPO](#)

Please refer to the following workflow.

There is no limit to the number of times for expressing opinions until the conclusion of the proceedings.



KIPO

Usually, 3 rounds or fewer for summarizing contentious points, but more times are possible if needed. There is no limit to the number of the rounds of written observations.

USPTO

The applicant submits an opening brief with the required brief fee, then the examiner submits a brief, and the applicant may (but is not required to) submit a reply brief. The applicant may request an oral hearing before a three-judge panel. When the briefing and/or oral hearing are complete, the appeal is decided by a panel of three judges of the TTAB, who issue a written decision on the appeal.

38) Does your Office provide for the opportunity of an oral hearing in appeal procedures? Please provide details.

CNIPA

Most of appeal cases are tried through written hearing. In May 2017, Regulation of Oral Hearing of Trademark Review and Adjudication Cases are published, the appeal body can conduct Oral hearing at the request of a party or on the basis of practical needs.

EUIPO

If the Office considers that oral proceedings would be expedient they shall be held either at the instance of the Office or at the request of any party to the proceedings.

Article 96 EUTMR / 64 CDR

Article 27 of the Rules of Procedure Ordering an oral hearing

1. At the request of a party or of its own motion, the Board of Appeal may decide to hold oral proceedings where it considers it to be expedient in accordance with Article 96 EUTMR or Article 64 CDR respectively.
2. Any request for an oral hearing made by a party must state the reasons why that party wishes to be heard,

or, as the case may be, why it considers it necessary to hear witnesses or experts.

3. Where the Board of Appeal has decided to hold an oral hearing, the Registrar shall communicate this to the parties and issue the necessary summons accordingly.

JPO

The JPO provides opportunities for oral hearings in trial or appeal proceedings. In trademark cases, oral proceedings may held if necessary since there are cases where proceedings can be conducted without oral proceedings.

① Appeals against decision of refusal and ② Appeals against dismissal of amendments: in principle, the proceedings are conducted through written proceedings, however, a chief administrative judge may conduct such appeals through oral proceedings at the motion of a party or by the judge's own authority (Article 145(2) of the Patent Act as applied mutatis mutandis pursuant to Article 56(1) of the Trademark Act).

③ Trials for invalidation of trademark registration: the proceeding is conducted through oral proceedings, however, a chief administrative judge may decide to conduct the trial through written proceedings, at the motion of a party or intervenor or by the judge's ex officio (Article 145(1) of the Patent Act as applied mutatis mutandis pursuant to Article 56(1) of the Trademark Act).

KIPO

Trial is conducted through oral or written hearings (Article 141 of the Act)

In inter-party cases, trial should be conducted through oral hearings pursuant to Article 39-2 of the Trial Affairs Handling Regulations.

USPTO

An oral hearing is not mandatory in an ex parte appeal to the Board, but will be scheduled if a timely request therefor is filed by the applicant, with the requisite fee.

39) Could you please indicate how many oral hearings your appeal body provided in 2021 and 2022?

CNIPA

Up to now, the number of cases tried verbally is few, there was 26 oral hearings in 2021 and 12 oral hearings in 2022.

EUIPO

In 2021, there was no oral hearings.

In 2022, there was one oral hearing.

JPO

In 2021... 0 times (for appeals/trials of ① through ③)

In 2022... 0 times (for appeals/trials of ① through ③)

In 2023... 2 times (for trials of ③)

[KIPO](#)

205 hearings in 2021, 167 hearings in 2022 (if including all rights, 526 hearings in 2021 and 681 hearing in 2022)

[USPTO](#)

Trade mark appeal proceedings... 2021.....46 applications involved oral hearings
2022.....45 applications involved oral hearings

40) Who can participate in oral hearings:

[CNIPA](#)

Please choose **all** that apply:

- Parties to the case / in the proceeding, directly and without representation
- Representatives of the parties
- External experts
- Witnesses
- Other: Examiner

The main grounds are Article 13 paragraphs 2 and 3, Article 15, Article 16 paragraph 1, Article 30, Article 31, Article 32; Article 4, Article 10, Article 11, Article 12, Article 19 paragraph 4 of the Trademark Law.

[EUIPO](#)

Please choose **all** that apply:

- Parties to the case / in the proceeding, directly and without representation
- Representatives of the parties
- External experts
- Witnesses
- Other: Examiner

Oral proceedings, including delivery of the decision, shall be public before the Boards of Appeal, in so far the Boards do not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

Art 96(3) EUTMR / 64(2) CDR/ Article 30(2) of the Rules of Procedure

[JPO](#)

Please choose **all** that apply:

- Parties to the case / in the proceeding, directly and without representation
- Representatives of the parties
- External experts
- Witnesses
- Other:

Those who may appear in oral proceedings are a party concerned (a representative for corporation), an agent, an intervenor (a person who has an interest in the outcome of the appeal) and an interpreter.

Please refer to the following webpage for detail (Manual for Trial and Appeal Proceedings 33-03).

https://www.jpo.go.jp/e/system/trial_appeal/document/sinpan-binran/33-03_e.pdf

[KIPO](#)

Parties to the case / in the proceeding, directly and without representation

Representatives of the parties

External experts

Witnesses

Other: Examiner

Please comment on your choice here:

External experts (professional judges) may advise on the judgement at the request of the judge.

[USPTO](#)

Parties to the case / in the proceeding, directly and without representation

Representatives of the parties

External experts

Witnesses

Other: Examiner

41) Please indicate whether video or audio recordings are allowed during the oral hearings:

[CNIPA](#)

yes

no

The collegiate panel may use video or audio recording to take notes, while other oral trial participants shall not make audio or video recordings without permission.

[EUIPO](#)

yes

no

Where oral proceedings or the taking of evidence before the Office are recorded, the recording shall replace the minutes.

Article 53(3) EUTMDR / Article 31(4) of the Rules of Procedure

[JPO](#)

yes

no

[KIPO](#)

yes

no

USPTO

- yes
- no

42) Please indicate formats of oral hearings:

CNIPA

- In person
- Online
- Hybrid (in person + online)

EUIPO

- In person
- Online
- Hybrid (in person + online)

JPO

- In person
- Online
- Hybrid (in person + online)

KIPO

- In person
- Online
- Hybrid (in person + online)

USPTO

- In person
- Online
- Hybrid (in person + online)

43) Please indicate which IT tool is used for conducting of oral hearings:

CNIPA

In the past few years, VooV Meeting (Tencent) was mainly used; while the online oral hearing system specially developed by Trademark Office will be mainly used from now.

EUIPO

Zoom platform

JPO

A web conference system (e.g., Microsoft Teams, Cisco Webex Meetings, etc.) is used.

KIPO

Equipment to transmit and receive video and audio as well as a display

Equipment for recording and stenography is used according to Article 44 and 45 of the Trial Affairs Handling Regulations.

USPTO

Virtual/hybrid hearings are conducted on WebEx.

44) Please indicate whether there are any relevant time limits for your appeal body to render a decision and deliver it to the parties to a case, e.g. between the notice of conclusion of the appeal trial and the decision:

CNIPA

According to Art.34,35, 44,45, 54 of the China Trademark Law,

For review of refusal, review of cancellation and review of invalidation, the appeal body shall render a decision and deliver it to the parties within 9 months from the date when the application is received.

For invalidation and review of opposition decision rejecting registration, the time limit is 12 months.

Where the basic pendency period is 9 months, if it is necessary under special circumstance, this period may be extended 3 months; and when the basic pendency period is 12 months, the extension may be 6 months.

EUIPO

There are no time limits set in the EU trade mark regulations for the Boards of Appeal to render a decision. However, we have internal Key Performance Indicators (KPIs) for timeliness:

KPIs for the Registry of the Boards of Appeal (in natural days)	% of cases	Excellence	Compliance	Action Needed
From deadline for filing observation to remittal to the Boards - inter partes EUTM (max time). Details	98%	<35	35-70	>70
From deadline for filing rejoinder to remittal to the Boards - inter partes RCD. Details	98%	<35	35-70	>70
KPIs for decision taking units of the Boards of Appeal (in months)	% of cases	Excellence	Compliance	Action Needed
From remittal to the Boards to decision notification - ex parte. Details	85%	<6	6-12	>12
From remittal to the Boards to decision notification - inter partes. Details	85%	<6	6-12	>12

JPO

The period from a notice of conclusion of the proceedings to the trial/appeal decision is 20 days (Article 156 of the Patent Act as applied mutatis mutandis pursuant to the Trademark Act Article 56).

KIPO

Pursuant to Article 149(5) of the Act, the decision should be made with 20 days from the date of notification of the conclusion of the trial, which is served when the case has reached a point where a decision in the trial can be made.

USPTO

No

45) Please indicate whether your appeal body's decisions are published:

ALL 5 OFFICES

- Yes, the complete decision is published
- Yes, an extract of the decision is published
- No
- Other

46) Please indicate whether there is any database comprising your appeal body's decisions:

EUIPO

eSearch Case Law database

<https://euipo.europa.eu/eSearchCLW/>

CNIPA

<https://wsgs.sbj.cnipa.gov.cn:9443/tmpu/pingshen/getMain.html>

Chinese version only. New user needs to register.

JPO

They are published at the website shown below.

<https://www.j-platpat.inpit.go.jp/a0100>

[KIPO](#)

Depending on users, it will be classified as follows

- Inner users including judges: KIPOnet
- Parties and representatives: Patent-ro (www.patent.go.kr)
- General users: KIPRIS

[USPTO](#)

Yes, the USPTO publishes decisions online in TTABVUE and the FOIA reading room, available at USPTO.gov. Commercial databases also publish the decisions, such as Westlaw, Lexis, and Bloomberg BNA.

Decisions may be found on various legal databases, and in the TTAB's online file of the proceeding, but to be published with a precedential designation, it must go through a review process at the TTAB and various other USPTO departments.

47) If yes to Question 46, please indicate who can access the content of the decisions:

[ALL 5 OFFICES](#)

Open source

48) Does your Office encourage or provide mediation services or other means of amicable settlement? At which stage of the proceedings? Please provide details.

[CNIPA](#)

yes
 no

According to Art.8 of the Trademark Review and Adjudication Rules,

During the trademark review and adjudication period, a party concerned shall have the right to dispose of its trademark rights and rights in relation to trademark review and adjudication pursuant to the law. Under the prerequisite that the public interest or third party's rights are not compromised, the parties concerned may reach a settlement in writing on their own or via mediation.

Where the parties concerned have reached a settlement, the appeal body may close the case or make a decision or ruling.

[EUIPO](#)

yes
 no

EUIPO MEDIATION CENTRE

The EUIPO Mediation Centre offers a wide range of alternative dispute resolution (ADR) services through a qualified team of experienced [mediators](#) and case managers who assist parties to reach **effective and amicable solutions** tailored to their business interests. ADR services are available to all parties involved in inter partes proceedings before the Office at second instance (appeals) and first-instance for cancellation proceedings. In addition, SMEs can request ADR for oppositions, and invalidities, a service which will be gradually extended to all users in 2024 and 2025.

The objective of the Mediation Centre is to provide complementary, voluntary, confidential and accessible dispute resolution options to users so that they can choose the most appropriate path in the event of an IP dispute.

The Mediation Centre's services are designed to meet the different needs of parties in a wide range of IP disputes.

ADR services are free of charge to the parties and are available entirely online. Mediations can be conducted in the five languages of the Office and an increasing number of other EU languages as the list of multilingual mediators grows.

All the services offered by the Mediation Centre are governed by the same basic principles: the neutrality and impartiality of the mediators, conciliators, experts and case managers, the confidentiality of the process, and the voluntary participation of the parties.

MEDIATION

Mediation enables the parties to reach an amicable settlement of their dispute before the EUIPO with the assistance of a mediator.

The role of the mediator is to conduct the process and assist the parties in reaching a voluntary and mutually satisfactory settlement. The mediator is neutral and impartial and has no authority to settle the case. It is not the role of the mediator to provide legal advice, to propose solutions, represent any party or adjudicate on the merits of the case. Settlement is consensual and the terms must be agreed by the parties.

While the mediation service applies to disputes before the EUIPO (i.e. related to EU trade marks, registered Community designs, and geographical indications for craft and industrial products), the full scope of the mediation is voluntarily determined by the parties and therefore it may include other IP rights (such as copyright, domain names, patents) or any other dispute pending between the parties.

CONCILIATION

Conciliation is an ADR process in which a conciliator assists the parties in reaching a settlement by suggesting possible solutions on the substance of the dispute pending before the EUIPO.

If the parties agree to solving the dispute through conciliation, the conciliator will be responsible for guiding the process and will make a proposal for the settlement of the dispute. Such proposal will be discussed, negotiated and fine-tuned with the parties, who remain at all times free to accept or decline the proposed solution.

As in mediation, the conciliator is neutral and impartial and has no authority to settle the case: the settlement is consensual and must be agreed by the parties.

The conciliator is always the rapporteur or examiner in the case pending before the EUIPO, and they will continue to act in that role even where the conciliation does not lead to a settlement between the parties. By choosing to proceed with a conciliation the parties also agree not to contest the involvement of the conciliator in any pending or future decision-taking activity on that dispute.

Article 170 EUTMR / Articles 32 to 34 of the Rules of Procedure

[JPO](#)

yes

no

[KIPO](#)

yes

no

If it is deemed to be necessary to reach an agreement through dispute mediation process among cases related to infringement, the presiding judge can refer the Industrial Property Rights Dispute Mediation Committee with the consent of both parties (Article 151-2 of the Act).

[USPTO](#)

yes

no

We do not provide it, but we sometimes encourage it. For an ex parte appeal from an examiner's refusal, the applicant may want to seek mediation with the owner of a registration cited against the application.

49) Does your Office indirectly encourage amicable resolution of appeal proceedings?

[CNIPA](#)

- yes
 no

[EUIPO](#)

- yes
 no

ADR processes carried out within the EUIPO incur no additional fee for the parties, can be run fully remotely and can be offered in 12 languages of the European Union.

[JPO](#)

- yes
 no

[KIPO](#)

- yes
 no

Refer to the above answer (Article 151-2 of the Act)

[USPTO](#)

- yes
 no

We do not provide it, but we sometimes encourage it. For an ex parte appeal from an examiner's refusal, the applicant may want to seek mediation with the owner of a registration cited against the application.

50) Is there a specific period to allow for amicable settlements?

[CNIPA](#)

- Yes
 No

According to Art.34,35, 44,45. 54 of the China Trademark Law, Art.8 of the Trademark Review and Adjudication Rules,

Amicable settlements shall be reached before the time limit prescribed by Trademark Law; and where the basic pendency period is 9 months, this period may be extended 3 months, when the basic pendency period is 12 months, the extension may be 6 months.

[EUIPO](#)

Yes

No

In the case of disputes subject to the proceedings pending before the Opposition Divisions, Cancellation Divisions or before the Boards of Appeal of the Office a joint request for mediation may be presented at any time after the lodging of a notice of appeal against decisions of the Opposition or Cancellation Divisions. (Article 170(4) EUTMR)

[JPO](#)

Yes

No

[KIPO](#)

Yes

No

The Industrial Property Rights Dispute Mediation Committee can be used at any stage regardless of trial, there are no specific time limits or restrictions regarding a trial.

[USPTO](#)

No, but the Board can suspend if requested for good cause. For example, an applicant may enter into settlement negotiations with the owner of a registration cited by an examiner as a bar to the application.

51) Do your appeal bodies offer the possibility of alternative dispute resolution?

[CNIPA](#)

yes

no

Please refer to responses to questions No. 48-50.

No matter the appeal body closes the case or makes a decision or ruling, the decision issued by the appeal body shall be fallen into the jurisdiction of Beijing IP Court for judicial review.

Our appeal body may offer ADR service in our office or also online.

[EUIPO](#)

yes

no

Please see responses to questions No. 48-50.

[JPO](#)

yes

no

[KIPO](#)

- yes
 no

The IPTAB does not involve in the dispute resolution process and if mediation is deemed to be necessary, they refer the case to the Industrial Property Rights Dispute Mediation Committee. (See answers to Q 48 ~50)

[USPTO](#)

- yes
 no

Inapplicable

52) Are you contemplating any changes to the laws covering the procedural requirements? Is so, what are they?

[CNIPA](#)

Not yet.

[EUIPO](#)

The Office has established a Mediation Centre in November 2023 and will offer mediation also at the level of 1st instance proceedings. There is no need to change the regulations as it is already regulated in Article 170 EUTMR.

On 10 October 2024, the EU Council adopted the EU Design Legislative Reform Package. The legislation includes two texts: the Recast Directive on the legal protection of designs and the Amending Regulation on community designs. In addition, there are ongoing European Union legal reforms for GIs and the “patent package” which includes a set of new regulations on Supplementary Patent Certificates, Standard Essential Patents and Compulsory Licenses.

All these reforms could bring changes in procedural requirements.

[JPO](#)

At present, we are not contemplating such changes to the laws.

[KIPO](#)

Not applicable

[USPTO](#)

Not currently

2 Institutional Structure

1) Please provide details regarding the institutional framework of the appeal body in your office

CNIPA

Our appeal body is under Trademark Office under CNIPA, and consists of 11 adjudication divisions, 1 formality examination division .

According to Art.2 of the China Trademark Law, our appeal body is responsible for trialing trademark review and adjudication cases.

After the institutional restructuring of Chinese central government agencies, both TRAB and the Trademark Office transferred from prior SAIC (State Administration for Industry and Commerce) to prior SIPO (State Intellectual Property Office), and SIPO was re-instituted as China National Intellectual Property Administration (CNIPA) to strengthen the IPR protection. While prior TRAB and CTMO were integrated into new Trademark Office, the function of Trademark Review and Adjudication proceedings remains unchanged.

EUIPO

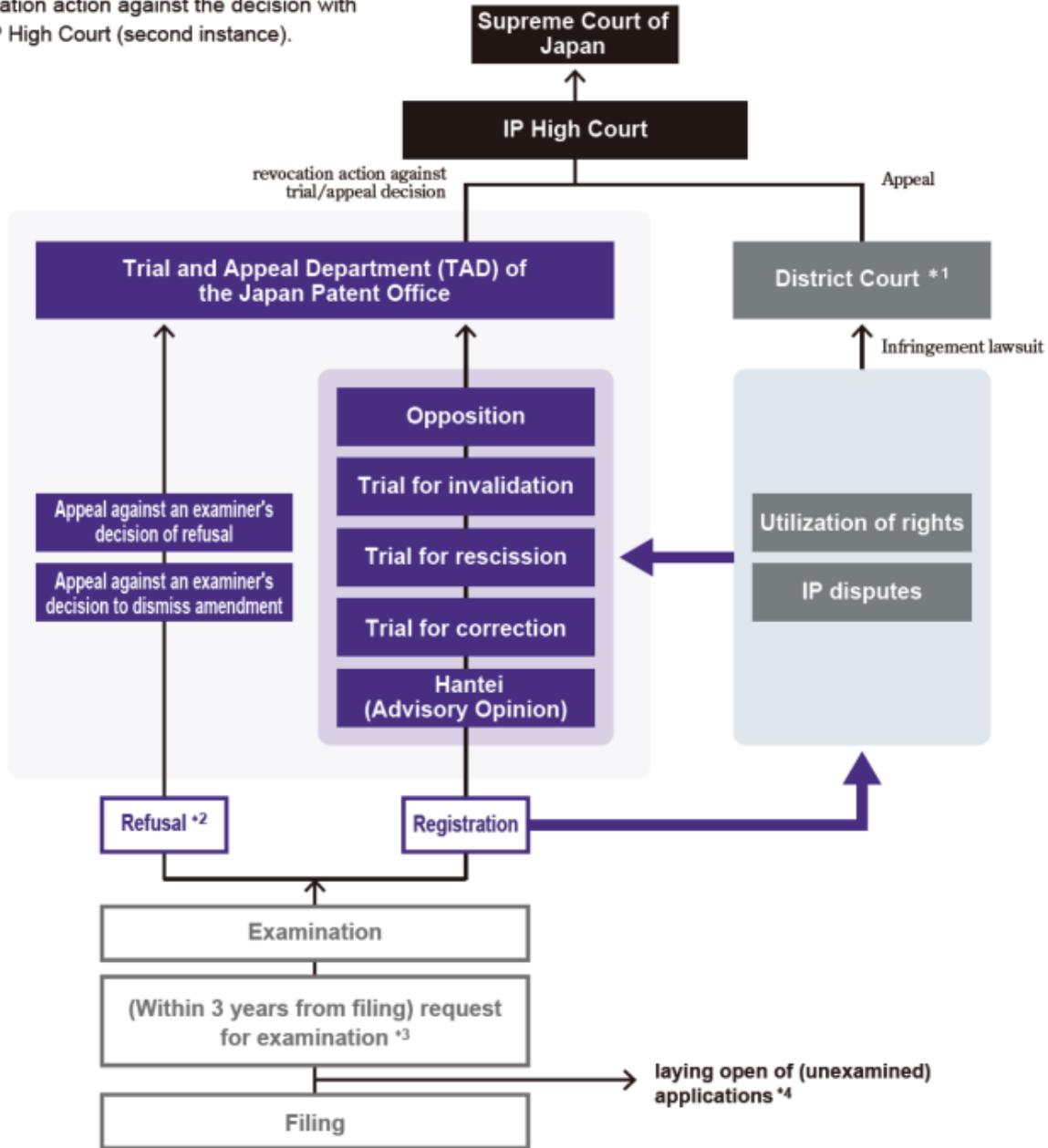
The Boards of Appeal are responsible for deciding on appeals against first instance decisions taken by the EUIPO concerning European Union trade marks and registered Community designs. The decisions of the Boards are, in turn, liable to actions before the General Court, whose judgments are subject to a right to appeal to the Court of Justice of the European Union (EU) on points of law. The Boards of Appeal are independent and, in deciding a case, are not bound by any instructions.

The Boards of Appeal is headed by the President of the Boards of Appeal who is appointed by the Council of Ministers from a list prepared by the Management Board of the Office. The Boards of Appeal consist of five Boards plus the Grand Board. The Presidium is responsible for laying down the rules and organizing the work of the Boards.

The Boards of Appeal Operations Area, which includes the Registry, the Knowledge, Information & Support Service, and the Litigation Service, ensures their smooth functioning. Additionally, the EUIPO Mediation Centre, which offers Alternative Dispute Resolution Services (ADRS), is run and organized by the Boards of Appeal.

Please refer to the chart shown below.

revocation action against the decision with the IP High Court (second instance).



*1 the Tokyo District Court and the Osaka District Court for patents and utility models

*2 In the case of patents, designs, and trademarks

*3 In the case of patents

*4 In the case of patents and trademarks

* Another trial and appeal system includes commissioning of the provision of an expert opinion.

KIPO

The IPTAB is an independent organization that conducts patent trials under the direction of the President of the IPTAB by the President.

A party who disagrees with a decision made by a KIPO examiner can challenge it through the IPTAB, such as invalidation or cancellation trial requests. If they disagree with the IPTAB's decision, they can appeal to the Patent Court, which is a higher court. Other than that, there is no other option to challenge it under different laws.

As such, the IPTAB is an administrative body but its trial follows civil procedure laws and decisions cannot be reconsidered. Moreover, appeals against decisions typically follow a two-tiered system. Despite being an administrative litigation process, the IPTAB's trials possess quasi-judicial characteristics.

The IPTAB is composed of 10 trial groups and 36 trial teams, a trial policy division and a litigation division

USPTO

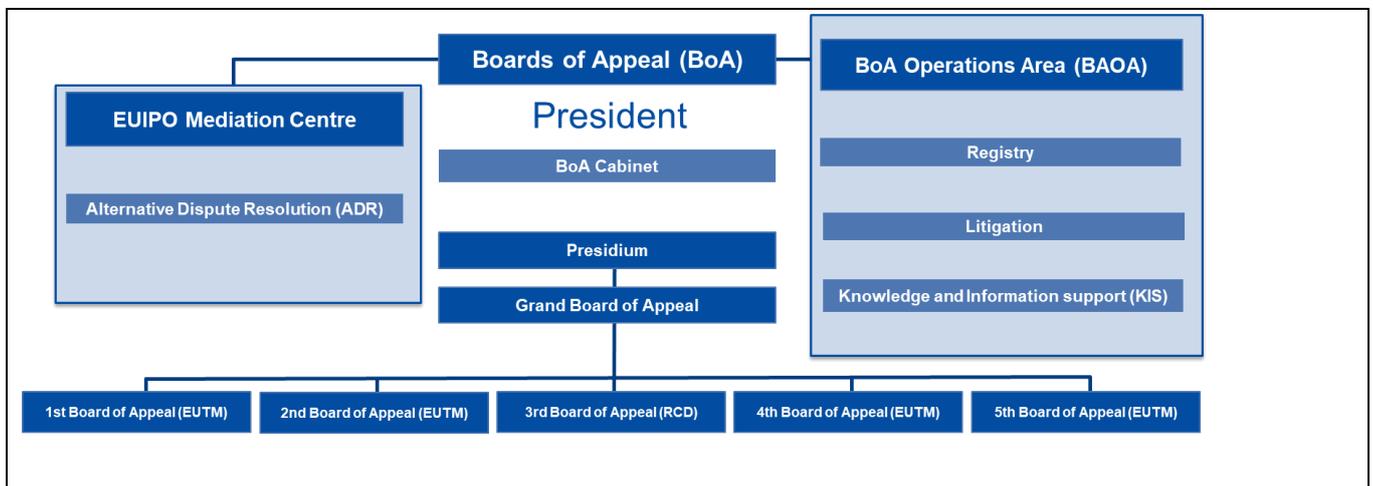
The TTAB is an administrative tribunal of the USPTO. The TTAB is empowered to determine only the right to register. The TTAB falls under the Deputy Director of the USPTO. It is lateral to the other divisions, e.g., TMEQ, OPIA, Office of the Solicitor.

2) How is your appeal body structured?

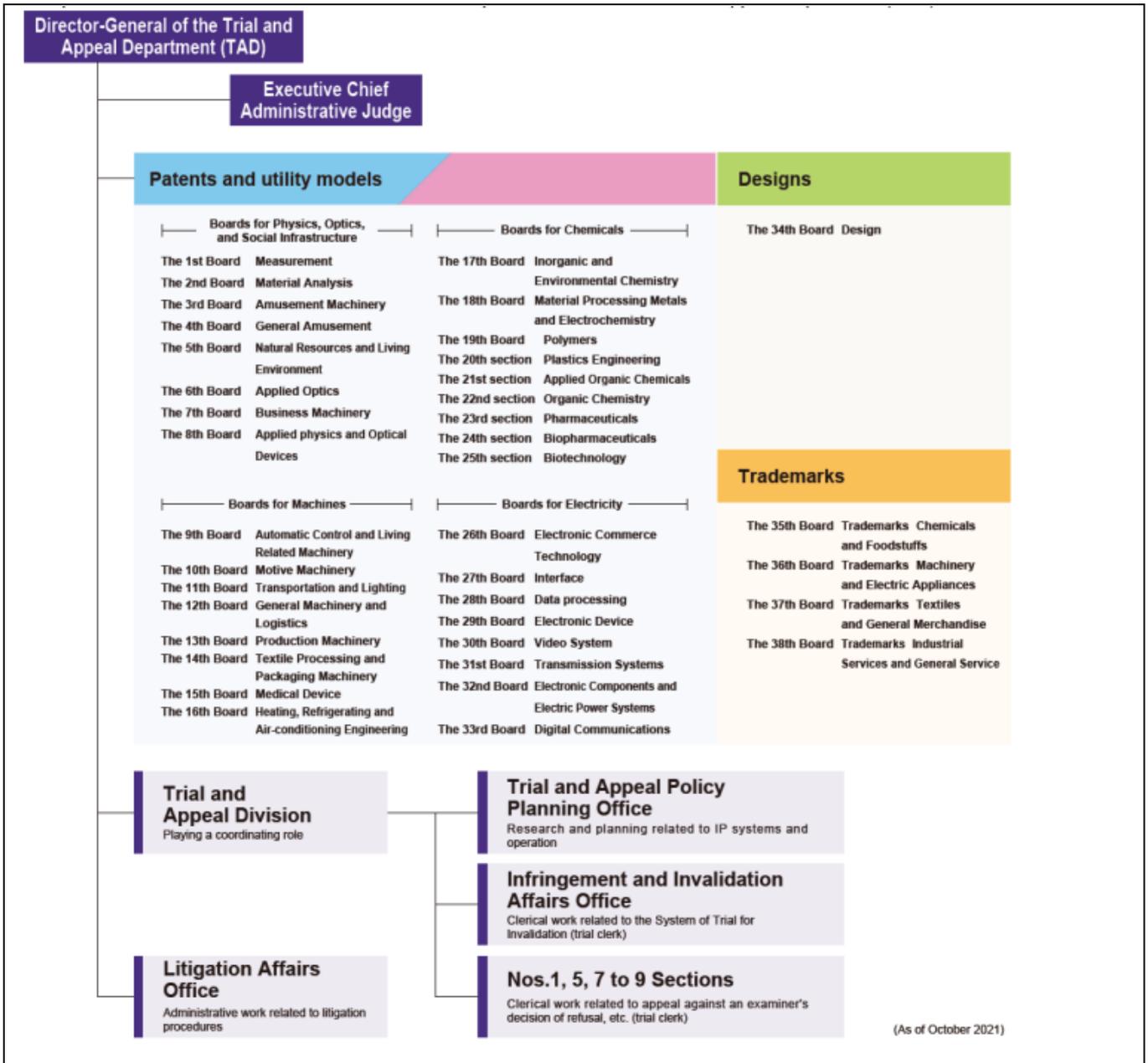
CNIPA

Please refer to responses to questions No.53.

EUIPO



[JPO](#)



(As of October 2021)

[KIPO](#)

See the answer to Q53

[USPTO](#)

It comprises staff that include the Chief Judge, Deputy Chief Judge, Administrative Trademark Judges, Interlocutory Attorneys, Paralegals, Customer Service Representatives, Data Analysis and Electronic Systems staff. The USPTO Director, Deputy Director, the Commissioner for Patents and the Commissioner for Trademarks also are members of the TTAB by statute, but rarely serve on panels. All final decisions are handled by a three-judge panel assigned by either the Chief Judge or Deputy Chief Judge.

3) Please indicate whether your appeal body is supported by an Administrative Support Unit, such as a Secretariat or a Registry:

CNIPA

Our appeal body is supported by contractual examiners, the draft of decision made by whom shall be checked and issued by members in our appeal body.

EUIPO

The Registry of the Boards of Appeal is, inter alia, responsible for the receipt, dispatch, safekeeping and notification of all documents relating to the proceedings before the Boards of Appeal and for the compilation of the relevant files. In particular, the Registry has to ensure that the deadlines and other formal conditions relating to the presentation of the appeal and of the statement of grounds are respected. The Registry is also responsible for the allocation of files in accordance with the criteria laid down by the Presidium of the Boards of Appeal.

The Registry is headed by the Registrar, who has the following duties:

- Sign the decisions taken by the Boards of Appeal in respect of appeals;
- Take and sign the minutes of oral proceedings and of the taking of evidence;
- Provide, either on its own motion or upon request of the Board of Appeal, reasoned opinions to the Board of Appeal on procedural and formal requirements including on irregularities pursuant to Article 23(2) of this Regulation;
- Submit the appeal, in accordance with Article 34(1) of this Regulation, to the instance of the Office which adopted the contested decision;
- Order, on behalf of the Board of Appeal, in the cases referred to in Article 33(a) and (b) of this Regulation, the reimbursement of the appeal fee.

JPO

A trial or appeal clerk undertakes clerical affairs in respect of record preparation and service of process for the trial or appeal record and, at the order of a chief administrative judge, undertakes any other clerical affairs for that case (Article 144-2(4) of the Patent Act as applied mutatis mutandis pursuant to Article 56(1) of the Trademark Act).

KIPO

The Trial Policy Division is responsible for administrative affairs, in particular, planning, formality examination and quality assurance.

USPTO

No. TTAB staff includes paralegals and administrative staff to support operations and manage oral hearings.

4) Does your appeal body act independently from the other departments?

[CNIPA](#)

No.

[EUIPO](#)

Yes.

The President of the Boards of Appeal and the chairpersons and members of the Boards of Appeal shall be independent. In their decisions, they shall not be bound by any instructions. (Article 166(7) EUTMR)

[JPO](#)

Yes.

[KIPO](#)

Yes.

[USPTO](#)

Yes, but the USPTO Director may reconsider, and modify or set aside, a decision of the TTAB.

5) Please briefly explain the appointment procedure of the appeal body's members/judges.

[CNIPA](#)

Some of appeal body's members are recruited directly, and some are transferred from other examination departments.

[EUIPO](#)

Pursuant to Article 166 EUTMR, the President of the Boards of Appeal and the chairpersons of the Boards shall be appointed, in accordance with the procedure laid down in Article 158 EUTMR (see below) for the appointment of the Executive Director, for a term of five years. They shall not be removed from office during this term, unless there are serious grounds for such removal and the Court of Justice, on application by the institution which appointed them, takes a decision to this effect.

The members of the Boards of Appeal shall be appointed by the Management Board for a term of five years.

The members of the Boards of Appeal shall not be removed from office unless there are serious grounds for such removal and the Court of Justice, after the case has been referred to it by the Management Board on the recommendation of the President of the Boards of Appeal, and after consulting the chairperson of the Board to which the member concerned belongs, takes a decision to this effect.

“Article 158 EUTMR

Appointment and removal of the Executive Director and extension of term of office

1. The Executive Director shall be engaged as a temporary agent of the Office under Article 2(a) of the Conditions of Employment.
2. The Executive Director shall be appointed by the Council by simple majority, from a list of candidates proposed by the Management Board, following an open and transparent selection procedure. Before being appointed, the candidate selected by the Management Board may be invited to make a statement before any competent European Parliament committee and to answer questions put by its members. For the purpose of concluding the contract with the Executive Director, the Office shall be represented by the chairperson of the Management Board.”

JPO

Administrative judge qualifications are possessed by those who have completed the prescribed training courses out of persons who are at or above the prescribed grade of the salary schedule and fall under any of the followings:

1. A person being in official duties as an administrative judge for at least five years at the JPO.
2. A person being involved in industrial administration, etc. work for at least ten years in aggregate, including at least three years of experience in engaging examination tasks at the JPO.
3. A person being involved in industrial administration, etc. work for at least twelve years in aggregate, and being recognized as having equivalent or superior academic knowledge and experience to those listed in 1 and 2.

A trial or appeal is conducted by a panel consisting of either three or five administrative judges (Article 136(1) of the Patent Act as applied mutatis mutandis pursuant to Article 56(1) of the Trademark Act). The Commissioner of the JPO designates the administrative judges that make up the panel for each case under trial or appeal (Article 137(1) of the Patent Act as applied mutatis mutandis pursuant to Article 56(1) of the Trademark Act).

https://www.japaneselawtranslation.go.jp/ja/laws/view/4097#je_ch7at21

Trial or appeal clerk qualifications are possessed by those who are at or above the prescribed grade of the salary schedule and fall under any of the requirements of the prescribed number of years of service or academic experience and who have completed the prescribed training course (Article 6 of the Order for Enforcement of the Patent Act as applied mutatis mutandis pursuant to Article 8(2) of the Order for Enforcement of the Trademark Act).

KIPO

Depending on users, it will be classified as follows

- Inner users including judges: KIPOnet
- Parties and representatives: Patent-ro (www.patent.go.kr)
- General users: KIPRIS

USPTO

The hiring officials for the judges are the Chief Judge and Deputy Chief Judge through consultation with the USPTO Director and Deputy Director, with formal appointment by the Secretary of Commerce, in consultation with the USPTO Director.

6) Can the decision of the appeal body be further appealed? How many stages of appeal are available? Please specify courts / bodies where decisions of your appeal body can be challenged and indicate who is entitled to challenge the decisions in your jurisdiction

[EUIPO](#)

The final decision of the EUIPO Boards of Appeal can be challenged before the General Court in accordance with Article 72 EUTMR. The action shall be open to any party to proceedings before the Board of Appeal adversely affected by its decision.

The second level for revision of a judgement of the General Court is the Court of Justice. However, in 2019 the new Article 58a of the Statute of the Court of Justice of the European Union establishes a filtering mechanism for appeals brought before the Court of Justice against General Court decisions concerning the decisions of the EUIPO Boards of Appeal. An appeal shall be allowed to proceed, wholly or in part, in accordance with the detailed rules set out in the Rules of Procedure, where it raises an issue that is significant with respect to the unity, consistency or development of Union law.

Article 72 EUTMR

Actions before the Court of Justice

1. Actions may be brought before the General Court against decisions of the Boards of Appeal in relation to appeals.
2. The action may be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the TFEU, infringement of this Regulation or of any rule of law relating to their application or misuse of power.
3. The General Court shall have jurisdiction to annul or to alter the contested decision.
4. The action shall be open to any party to proceedings before the Board of Appeal adversely affected by its decision.
5. The action shall be brought before the General Court within two months of the date of notification of the decision of the Board of Appeal.
6. The Office shall take the necessary measures to comply with the judgment of the General Court or, in the event of an appeal against that judgment, the Court of Justice.

[CNIPA](#)

Where a party is dissatisfied with the appeal body ruling and files an administrative litigation to court within one month, the appeal body shall respond to the lawsuit as the defendant, and in cases except review of refusal, the other party involved in inter parties cases shall respond to the lawsuit as a third party.

The first-instance administrative lawsuit shall go to Beijing Intellectual Property Court. The second-instance shall fall in the jurisdiction of Beijing Higher People's Court.

In principle, the second-instance shall be the last instance. However, under some special circumstances, there is a retrial procedure to the Supreme People's Court of China. This retrial procedure is independent from first-

instance and second-instance, rehearing the judgment which has been taken effect to correct the substantial or procedural error in the judgment.

JPO

It is possible to file an appeal in two steps against the decision by an appeal body. In concrete, if a party disagrees with the decision by an appeal body, the party may file an appeal with the Intellectual Property High Court (Article 63(1) of the Trademark Act, Article 2(ii) of the Act for Establishment of the Intellectual Property High Court), and if the party also disagrees with the decision thereof, it is possible to file an appeal with the Supreme Court (Article 311(1) of the Code of Civil Procedure).

An appeal against the decision may be filed by a party (the person who received the trial or appeal decision or the person who received the decision to dismiss the amendment) and an intervenor (Article 178(2) of the Patent Act as applied mutatis mutandis pursuant to Article 63(2) of the Trademark Act).

< Act for Establishment of the Intellectual Property High Court >

<https://www.japaneselawtranslation.go.jp/ja/laws/view/3777>

< Code of Civil Procedure >

<https://www.japaneselawtranslation.go.jp/ja/laws/view/4421>

KIPO

Legal remedies for trial decision are available through the two-tier trial system: the Patent Court and the Supreme Court. Those who can bring an action against a decision are limited to parties to the trial, participants or those who applied to participate in the trial but whose application was rejected (Article 162 of the Act)

As such, unlike general administrative litigations where those with legal interest in seeking the cancellation of dispositions have plaintiff standing, the Trademark Law restricts the scope of individuals who have plaintiff standing.

USPTO

A TTAB decision affirming the refusal of an examiner can be appealed only by the applicant to a U.S. district court or the U.S. Court of Appeals for the Federal Circuit (CAFC).

7) Please indicate any relevant time limit to challenge the appeal body decisions from the moment they are issued:

CNIPA

Please refer to answer above.

EUIPO

The action shall be brought before the General Court within two months of the date of notification of the decision of the Board of Appeal. (Article 72 EUTMR)

JPO

An appeal may not be instituted once thirty days have passed since the date that a transcript of the trial or appeal decision, or the ruling was served (Article 178(3) of the Patent Act as applied mutatis mutandis pursuant to Article 63(2) of the Trademark Act).

However, the chief administrative judge may establish an additional time frame for a person in a distant location or an area with transportation difficulties by the judge's ex officio (Article 178(5) of the Patent Act as applied mutatis mutandis pursuant to Article 63(2) of the Trademark Act).

The additional time frame is 15 days for a person who lives in the area that has been established by the chief administrative judge and 90 days for an overseas resident. Both additional time frames shall be integrated into the original time limit (Manual for Trial and Appeal Proceedings 25-04).

< Manual for Trial and Appeal Proceedings 25-04 >

https://www.jpo.go.jp/e/system/trial_appeal/document/sinpan-binran/25-04_e.pdf

KIPO

Parties to a trial, participants or those who applied to participate in the trial but had their application rejected should file a lawsuit with the Patent Court within 30 days from the date of receipt of a certified copy of the trial ruling or decision (Article 162 of the Act)

USPTO

Must appeal to a U.S. district court or CAFC within 63 days of TTAB final decision.

8) Do you have rules of procedures of the appeal body? If possible, please provide reference.

CNIPA

Yes. https://sbj.cnipa.gov.cn/sbj/zcwj/201405/t20140530_6477.html (Chinese version)

EUIPO

Yes. The Rules of Procedure of the Boards of Appeal are published on EUIPO website:

<https://www.euipo.europa.eu/en/boards-of-appeal/rules-of-procedure>

JPO

Yes. Please refer to the following webpage.

https://www.jpo.go.jp/e/system/trial_appeal/sinpan-binran.html

KIPO

Regarding trial procedures, they are regulated by the Trademark Act, Trademark Enforcement Regulations, and the Trial Affair Handling Regulations. Internally, a Trial Handbook is used. Those laws and regulations are published on the website and can be freely accessed and downloaded. (However, not all documents are provided with foreign language translation.)

[USPTO](#)

The USPTO has issued Trademark Rules of Practice found in Title 37 of the Code of Federal Regulations, Part 2. The rules for ex parte appeals are found in Rules 2.141 to 2.145.

9) Are you contemplating any changes in your rules of procedure? If so, what are they?

[CNIPA](#)

Not yet.

[EUIPO](#)

The Boards of Appeal Action Plan has 5 different Focus Areas and the objective of Focus Area 3 is to increase transparency and ensure accountability and scrutiny of the work of the Boards. Under Focus Area 3 there is the Key Initiative 12 which aims to involve the stakeholders in regular and structured discussions on relevant case-law matters.

And under this Key Initiative the Boards have launched the project to define a revision cycle for the Rules of Procedure which started as a pilot in 2022. The project has now become operational, and the first revision cycle started in March 2023. Following the first revision cycle and internal and external consultations, the updated Rules of Procedure were adopted by the BoA Presidium on 12 December 2023 and entered into force on 1 March 2024.

In 2024, the revision cycle for the Boards of Appeal Rules of Procedure has been updated from an annual to a biennial (two-year) cycle, and a new consolidated version will be published every two years.

The new cycle comprises two main phases:

1. Initial Phase: This phase focuses on internally collecting proposals for amendments, analysing them, and drafting the initial version of the proposed amendments.
2. Consultation and Adoption Phase: This phase includes internal and external consultations, formal adoption, and post-adoption activities such as translations and publication.

To address urgent needs for changes to the Rules of Procedure, a new fast-track procedure has been incorporated into the cycle.

Currently, the collection of internal proposals for changes is ongoing, with external consultations involving all interested stakeholders scheduled for 2025.

[JPO](#)

We have changed our rules of procedure.

On June 14, 2023, the "Act on the Partial Revision of the Unfair Competition Prevention Act, etc." was promulgated, including the Act on Special Provisions for Procedures related to Industrial Property Right which stipulates procedures before the JPO, and went into effect on January 1, 2024. After the enforcement of the Act, all application documents to be submitted to the JPO that could not be submitted electronically has become able to be submitted electronically in principle.

[KIPO](#)

[USPTO](#)

No

3 Activities of appeal bodies

1) Do you have a quality management system in place for appeal processes?

CNIPA

Yes.

The quality management system combines pre-supervision with post-evaluation, combines active verification with routine spot checks and links the evaluation results with performance management. Pre-supervision refers to the due process supervision and the processing period time limit supervision of unconcluded cases; post-evaluation refers to qualitative evaluation of the procedural and substantive aspects of the cases that have been concluded.

The quality management system adopts manual and information means such as daily management, case sampling, public opinion feedback, complaint letters and informationized monitoring, monitors and evaluates the procedural and substantive issues such as pendency requirements, the application of law, the wording of ruling documents and the response to subsequent judicial review. The adjudication divisions shall be responsible for daily quality management and monitoring of cases handled by them, and shall take corresponding reward and punishment measures.

The division responsible for lawsuit carries out quality sampling of cases by checking judgments of litigation-related cases, verifies and summarizes the errors explicitly mentioned in the judgment or the relevant facts that may affect the quality, when necessary, this division could retrieve case files and ask the case examiner about relevant matters. For cases with verified errors, the relevant information will be fed back to the adjudication divisions. In principle, the proportion of sampling inspection is 3% of the annual adjudication decisions, and the division responsible for lawsuit may adjust it according to the number of annual adjudication decisions and the number of administrative litigations.

The division responsible for lawsuit shall summarize the errors or problems on a quarterly basis, conduct statistical analysis and form a quality inspection report.

EUIPO

Yes.

EUIPO Quality Management System

The Boards of Appeal contribute to the EUIPO Quality Management System in the following areas:

- Contribution to reporting on the Key Performance Indicators (timeliness) defined for the Boards as well as on the Balance Score Card Indicators.
- Contribution to the Corporate and Operational Risk Registers by identifying and assessing potential problems that could affect the execution of the Office's activities and the achievement of its strategic and business objectives.
- Preparation and participation to Internal and External Audits.
- Reporting on the Work Programme, Strategic Plan and Consolidated Annual Activity Report which contains in Annex the BoA Annual report.

Quality Group

The Quality Group is composed by Boards of Appeal staff with a wide variety of profiles covering all possible knowledge areas. Some of the regular tasks carried out by the group include:

- Revision and update of the operational Risk Register;
- Contribute to Board internal audits;

- Maintenance of the action log including preventive and corrective actions steaming from internal and external audits and improvements coming from staff proposals, complaints, risks and surveys;
- Maintenance of BoA process cards and work instructions
- Updating of templates
- Propose ways of working method improvements;
- ISO 9001 and ISO 27001 awareness sessions and supervision;
- Revision and update of the Boards of Appeal Manual.

Internal Quality Checks (IQC)

Apart for the normal workflow including the deliberation and revision on the substance of draft decisions before approval, the following quality checks are done throughout the appeal process.

The Boards of Appeal performs a 4 stages quality checks:

First Stage: Check at the procedural part of the proceedings, in the process called Final Procedural Check (FPC).

The FPC is performed by the Registry on 100% of cases and following the FPC Guidelines

FPC states whether the appeal complies with all the regulatory requirements to be admissible. The report, which corresponds to a legal obligation, is forwarded together with the file to the Chairperson of the corresponding Board for decision on the appeal.

Second Stage: Check of the draft decision in relation to the case file; in the process called Quality Reading (QR) which includes Fact Check and a Linguistic Revision of the draft decisions.

Third Stage: Check that the Boards of Appeal decisions are made available online through eSearch Case Law , for information and consultation of the general public in the interest of transparency and predictability.

Fourth Stage: Close as Final check (CAF)

After the BoA decision has become final, the Registry verifies that the procedure of notification was correct and proceeds with the closure of the file for all decisions following the Guideline on Closing an Appeal as Final.

JPO

Yes.

We implement the following measures and activities:

studying at external and internal study groups (Trial and Appeal Practitioner Study Group, Court Precedents Study Group) and sharing those studies with administrative judges, establishing a consultation system (Executive Chief Administrative Judge, and consultants on trial/appeal decisions and court judgement), checking decisions by each Director of the Board of Trial and Appeal (for all cases), developing tools such as a collection of checkpoints and examples for drawing up decisions, conducting training, conducting trial/appeal decision reviews, etc.

KIPO

Not applicable

USPTO

TTAB employees are subject to various forms of quality review as part of the day-to-day operations and as part of their job performance reviews.

2) Do you have systems in place to ensure consistency of decisions brought by different appeal divisions?

CNIPA

Yes.

The examiner shall inquire the results of the previous case associated with the pending case, and set it out in the examiner's opinions column in the trademark registration and management automation system, if the conclusion of the pending case is inconsistent with the previous case, the examiner shall indicate it. For related cases that have not been concluded, the examiner shall communicate with other examiner timely and pay attention to maintaining the consistency of the ruling results.

EUIPO

Yes, the Boards of Appeal have created Consistency Circles (CCs) which are internal discussion fora established with the purpose of enhancing the consistency of the Boards' decision-making practice and alignment with the case law of the European Courts (Key Initiative 6 of the BoA Action Plan 2021-2026).

The five CCs are CC Absolute Grounds, CC Relative Grounds, CC Goods and Services, CC Designs and CC Procedure and Registry. Each CC is composed of participants from all areas of the Boards of Appeal to ensure a diversity of expertise and views. The CCs analyse and discuss case law in order to identify trends and detect possible divergences. They draw up Case Law Research Reports on trade mark and design topics and practice notes on appeal procedural matters. The CCs provide legal consultation to the Boards and prepare analysis at the request of the Grand Board or the Presidium.

Case Law Research reports are published on EUIPO website:

<https://www.euipo.europa.eu/en/the-office/boards-of-appeal/publications/research-reports>

JPO

Yes.

We utilize various search tools (search through the Decision on Appeal/Trial Gazette, etc.), checking decisions by each Director of the Board of Trial and Appeal, sharing the Decision on Appeal/Trial Gazette.

KIPO

Pursuant to Article 147 of the Act, in order to promote procedural efficiency while avoiding inconsistency between decisions, consolidations of proceedings is stipulated to avoid duplication of trials. Judges(panels) may, at their discretion, decide if consolidation is desirable based on the purpose of consolidating proceedings.

The principle of res judicata also serves to ensure consistency by preventing conflicting decisions that could undermine the integrity of finalized rulings.

[USPTO](#)

The TTAB issues precedential decisions that bind the TTAB in subsequent cases to ensure consistency. TTAB cases are decided by three-judge panels to help promote consistency.

3) Do your appeal (review) bodies have established relations with external stakeholders (users, courts, etc.)?

[CNIPA](#)

Yes, our appeal body have established relations with Beijing Intellectual Property Court, Beijing Higher People's Court and the Supreme People's Court of China.

The main type of interaction with courts are meetings such as annual seminar, aiming to reach consensus on some divergence.

[EUIPO](#)

Yes, the Boards of Appeal have established close cooperation relationships with external stakeholders listed below.

EU IPOs and their Appeal Bodies

The Boards of Appeal intensively cooperate with EU IPOs. Representatives from the BoA are actively engaged in the working groups of the European Cooperation projects. Furthermore, the BoA has created a network of EU IPO's Appeal Bodies. The aim is to promote knowledge sharing and the exchange of best practices, as well as further advancing the harmonisation of IP practice across the EU. The network will meet regularly once or two times per year.

National EU IP Courts / judges

The Judges Quality Assurance and Legal Practice Panels (JQALPP) have been established in 2019. This network of judges from European Union Trade Mark and Community Design Courts (EUTM/CD Courts) aims to put in place a mechanism to review EUTM and RCD legal and decision-making practice. The JQALPP focuses on a problem-driven analysis where selected Case Law Research Reports serve as a basis to discuss selected topics. This framework allows national IP judges to share experiences and learn from each other and it offers a perfect opportunity to collect national decisions and judgments in the eSearch Case Law database that complements existing case-law databases.

IAAPN: Inter-Agency Appeal Proceedings Network

The close cooperation with Appeal Bodies of EU Agencies under the Inter-Agency Proceedings Network has been developed. The objectives of the IAAPN are to promote the cooperation, coordination, sharing of knowledge and best practices on appeal proceedings and issues of common interest among the EU Agencies.

European Patent Office (EPO)

EUIPO and the EPO Boards of Appeal have developed a close relationship in recent years. The participation of the EPO BoA in the EUIPO BoA networks and projects enriches discussions, brings valuable insights, and benefits these bodies and their users alike.

WIPO

In the area of ADR, the BoA cooperates with the WIPO Arbitration and Mediation Centre. Moreover, the WIPO Judicial Institute has established a forum of judges from around the world (IP Judges Forum) for dialogue and exchange of information and practices to increase the availability of information about IP and Courts. Participation

of the BoA in this network contribute to worldwide discussions on specific IP topics among judges and experts of international renown.

Appeal Bodies of TM5 Offices

The Boards of Appeal cooperate closely with the appeal bodies of the TM5 offices (through bilateral cooperation but also under this joint project to share knowledge and experience and discuss important case-law to effectively monitor trends in trade mark and design appeal practices. This cooperation offers possibilities for the Boards of Appeal to be involved in broad discussions on various issues in the field of IP effective dispute resolution (EDR) and contribute to developing more coherent practices in these areas to the benefit of EU IP users.

Non-EU IP Offices

The Boards of Appeal cooperate with non-EU IPOs to share knowledge and experience and discuss important case law to effectively monitor trends in appeal practices.

User Associations

Within the framework of the BoA Action Plan, the User Focus Group's regular meetings have been established to foster a common understanding of intellectual property dispute resolution practices and to reinforce a continuous dialogue between BoA and the User Associations. User feedback is of utmost importance for the Boards of Appeal to be able to better understand users' needs and continue to offer high-quality, effective, efficient, coherent, and modern services. The UFG meetings are organised together with the EUIPO User Group Meetings twice a year.

General Court

The BoA in cooperation with the General Court of the European Union organise the Tripartite Event, which facilitates the exchange of practices and case law with the User Associations and the General Court of the European Union. This event take place biennially, with the next event in 2026 and preparations starting in 2025.

The BoA Registry organises meetings with the Registry of the General Court on an annual basis. They are organised by rotation, once in Alicante and then in Luxembourg. This activity is described in a separate business case on BoA Registry activities.

[JPO](#)

Yes.

1. We annually exchange views with industry associations.
2. We convene every year a study group called the "Trial and Appeal Practitioner Study Group consisting of industry, patent attorneys and lawyers and administrative judges (in which judges participate as observers).
 1. Industrial associations: conducted through dialog. Topics vary from association to association.
 2. Trial and Appeal Practitioner Study Group: conducted through dialog. We have discussion and consideration in several sessions based on actual case examples of court decisions.

[KIPO](#)

We are continuing our relationship by holding annual meetings with the Korea Intellectual Property Association (a user organization) and the Patent Court.

Interaction mainly takes place in the form of meetings, conferences and seminars.

USPTO

The USPTO has a Trademark Public Advisory Committee (TPAC) of external stakeholders. The Chief Judge reports out on the TTAB's operations at TPAC quarterly meetings, and meets regularly with a TPAC subcommittee dedicated to the TTAB. TTAB employees also routinely give presentations and meet with external stakeholder groups.

Board judges or interlocutory attorneys regularly make presentations on Board practice during continuing legal education (CLE) programs run by various stakeholder groups.

4 Use of AI technologies

1) Do you use/have plans to use AI-based tools for appeal processes? (e.g. chatbot, automatic tagging, AI proofreading tools, AI drafting tools)

[EUIPO](#)

Under the BoA Action Plan, AI related projects have been launched.

Firstly, there is a working group which has as its main goal to implement or analyse one use case every year related to AI different technologies (machine learning, natural language processing or translation). So far, two use cases have been tested: a) one based on Semantic Search to extract relevant info from decisions; and b) a Chatbot which will be evolved from current algorithm to GPT3 algorithm.

In the coming months the BoA will be actively participating in ChatGPT “proof of concept” related to summarization.

Some exploratory work has been carried out to preliminary analyse the potential use of AI for certain areas such as: summarization; proofreading, data extraction, etc. In these cases, the efficiency gains are clear.

As for decision preparation or decision drafting, BoA is very attentive to the evolution of the technology which have definitively a huge potential to help the human to take better decisions but at the same time, we need to be very cautious since the AI has as well the potential to introduce additional bias in the decision.

[CNIPA](#)

Yes, we have plans to use AI-based tools for appeal processes, but it is still just at the model design stage.

[JPO](#)

No. We do not have a specific plan.

[KIPO](#)

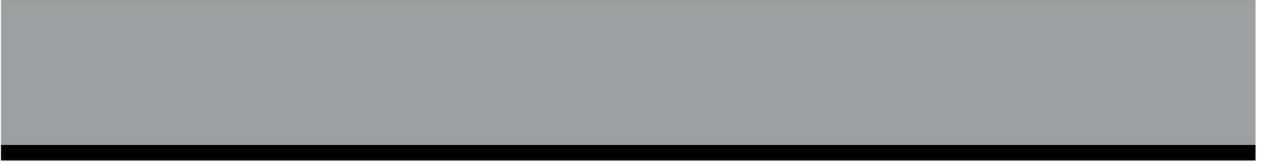
Yes. We are using AI and achieving results according to the detailed plan.

We are using AI for formality examination and plan to apply it for searching related precedents and drafting trial decisions.

[USPTO](#)

The USPTO has no immediate plans to incorporate AI-based tools in the appeal processes.

TM5



TM5

