

March 10, 2014/2014年3月10日

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Trademark Appeal Board
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中华人民共和国
国家工商总局商标评审委员会
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Subject: Comments on SAIC's Trademark Review and Adjudication Rules (Vision for Public Comments)

主题：对国家工商总局关于《商标评审规则（征求意见稿）》的意见

The American Intellectual Property Law Association ("AIPLA"), located in Arlington, Virginia, close by the United States Patent and Trademark Office ("USPTO"), is the largest association of intellectual property ("IP") practitioners in the United States. We have approximately 14,000 members from law firms, government agencies, the judiciary, and academia, including many foreign members from China and other countries.

美国知识产权法律协会（AIPLA），位于弗吉尼亚州阿灵顿，相距美国专利和商标局（USPTO）不远，是美国规模最大的知识产权从业者协会，拥有会员大约14,000多名，会员来自律师事务所、政府机构、司法机构和学术机构，其中许多会员为来自中国及其他国家的外国成员。

We commend State Administration for Industry & Commerce (SAIC) of the People's Republic of China on providing the public with the opportunity to comment on the recently-published Trademark Review and Adjudication Rules (Vision for Public Comments). AIPLA appreciates the opportunity to provide the attached comments on the Trademark Review and Adjudication Rules for SAIC's consideration, and we hope this is a transparent and productive exchange of views on improving the Trademark Review and Adjudication Rules in China to the benefit of all legitimate trademark rights holders, domestic and foreign alike.

我们十分赞赏中国国家工商总局商标评审委员会（“**贵委员会**”）给予公众就最近发布的《商标评审规则（征求意见稿）》发表意见的机会。AIPLA很高兴有机会提交其对《商标评审规则（征求意见稿）》的意见（**见随附件**）供贵委员会审议。为国内外所有合法商标权持有人利益，我们希望这是有关改进中国国家《商标评审规则》的透明及建设性地交换意见。

AIPLA'S COMMENTS ON
SAIC'S TRADEMARK REVIEW AND ADJUDICATION RULES
AIPLA对国家工商总局关于《商标评审规则（征求意见稿）》
的意见

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If SAIC has any questions, requires further information, or wants to discuss AIPLA's comments, or other trademark issues, please let us know.

贵委员会如有任何疑问，需要进一步信息或与AIPLA讨论我们的意见或其他商标事务，敬请告知我们。

Sincerely,

A handwritten signature in black ink, appearing to read 'Wayne Sobon', with a long horizontal flourish extending to the right.

Wayne Sobon

President

American Intellectual Property Law Association

美国知识产权法律协会主席

Attachment: AIPLA'S COMMENTS ON SAIC'S TRADEMARK REVIEW AND ADJUDICATION RULES (VERSION FOR PUBLIC COMMENTS)

附件：AIPLA对国家工商总局关于《商标评审规则（征求意见稿）》的意见

现行商标评审规则与 2014 年国家工商总局征求意见稿修改对照表

The Comparison Table between the Current Trademark Review and Adjudication Rules and the Draft for
Comment by SAIC

2005 年现行商标评审规则	Current Trademark Review and Adjudication Rules (2005)	2014 年商标评审规则（征求意见稿）	Trademark Review and Adjudication Rules (Draft for Comment)	AIPLA Comments on 2014 Draft (Chinese)	AIPLA Comments on 2014 Draft (English)
第一章总则	Chapter1 General Provisions	第一章总则	Chapter1 General Provisions		Chapter 1
<p>第一条根据《中华人民共和国商标法》（以下简称商标法）和《中华人民共和国商标法实施条例》（以下简称实施条例）的规定，制定本规则。</p>	<p>Article1 These Rules are formulated in accordance with the provisions of the <u>Trademark Law of the People's Republic of China</u> (hereinafter, the "<u>Trademark Law</u>") and the <u>Implementing Regulations for the "Trademark Law of the People's Republic of China"</u> (hereinafter, the "Implementing Regulations").</p>	<p>第一条 为规范商标评审程序，依据《中华人民共和国商标法》（以下简称商标法）和《中华人民共和国商标法实施条例》（以下简称实施条例）的规定，制定本规则。</p>	<p>Articles 1 To regulate the trademark review and adjudication procedure, the Rules are formulated in accordance with the provisions of the <i>Trademark Law of the People's Republic of China</i> (hereinafter referred to as the "Trademark Law") and the <i>Implementing Regulations for the "Trademark Law of the People's Republic of China"</i> (hereinafter referred to as "Implementing Regulations").</p>		

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<p>第二条依据商标法及其实施条例的规定，国家工商行政管理总局商标评审委员会（以下简称商标评审委员会）负责处理下列商标评审案件：</p> <p>（一）不服国家工商行政管理总局商标局（以下简称商标局）驳回商标注册申请的决定，依据商标法第三十二条规定申请复审的案件；</p> <p>（二）不服商标局的异议裁定，依据商标法第三十三条规定申请复审的案件；</p> <p>（三）对已经注册的商标，依据商标法第四十一条规定请求裁定撤销的案件；</p> <p>（四）不服商标局依照商标法第四十一条第一款、第四十四条、第四十五条的规定作出撤销或者维持注册商标的决定，依据商标法第四十九条规定申请复审的案件。</p>	<p>Article 2 According to the Trademark Law and its implementing regulations, the Trademark Review and Adjudication Board of the State Administration for Industry and Commerce (hereinafter, the "TRAB") is responsible for handling the following trademark review and adjudication cases:</p> <p>(1) Cases involving a reexamination application filed pursuant to Article 32 of the Trademark Law due to dissatisfaction with a decision on dismissing a trademark registration application rendered by the Trademark Office of the State Administration for Industry and Commerce (hereinafter, the "Trademark Office");</p> <p>(2) Cases involving a reexamination application filed pursuant to Article 33 of the Trademark Law due to dissatisfaction with a decision on opposition rendered by the Trademark Office;</p>	<p>第二条依据商标法及实施条例的规定，国家工商行政管理总局商标评审委员会（以下简称商标评审委员会）负责处理下列商标评审案件：</p> <p>（一）不服国家工商行政管理总局商标局（以下简称商标局）驳回商标注册申请决定，依据商标法第三十四条规定申请复审的案件；</p> <p>（二）不服商标局不予注册决定，依据商标法第三十五条第三款规定申请复审的案件；</p> <p>（三）对已经注册的商标，依据商标法第四十四条第一款、第四十五条第一款规定请求无效宣告的案件；</p> <p>（四）不服商标局宣告注册商标无效决定，依据商标法第四十四条第二款规定申请复审的案件。</p> <p>（五）不服商标局撤销或不予撤销注册商标决定，依据商标法第五十四条规定申请复审的案件。</p> <p>在商标评审程序中，前款第（一）项所指请求复审的商</p>	<p>Article 2 According to the Trademark Law and its implementing regulations, the Trademark Review and Adjudication Board of the State Administration for Industry and Commerce (hereinafter referred to as "TRAB") is responsible for handling the following trademark review and adjudication cases:</p> <p>(1) Cases involving a reexamination application filed pursuant to Article 34 of the Trademark Law due to dissatisfaction with a decision on dismissing a trademark registration application rendered by the Trademark Office of the State Administration for Industry and Commerce (hereinafter referred to as "Trademark Office");</p> <p>(2) Cases involving a reexamination application filed pursuant to the third item in Article 35 of the Trademark Law due to dissatisfaction with a decision rejecting trademark registration rendered by the Trademark Office;</p> <p>(3) Cases involving a request filed pursuant to the first item of Article 44 and the first item of Article 45 in the Trademark Law to announce invalidation for a registered trademark;</p>		

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	<p>(3) Cases involving a request filed pursuant to Article 41 of the Trademark Law to cancel a registered trademark by a ruling; and</p> <p>(4) Cases involving a reexamination application filed pursuant to Article 49 of the Trademark Law due to dissatisfaction with a decision on canceling or maintaining a registered trademark rendered by the Trademark Office pursuant to Paragraph 1 of Article 41, or Article 44 or 45, of the Trademark Law.</p>	<p>标统称为申请商标，第（二）项所指请求复审的商标统称为被异议商标，第（三）项所指请求无效宣告的商标统称为争议商标，第（四）、（五）项所指请求复审的商标统称为复审商标。本规则中，前述 商标统称为评审商标。</p>	<p>(4) Cases involving a reexamination application filed pursuant to the second item of Article 44 in the Trademark Law due to dissatisfaction with a decision on announcing invalidation for a registered trademark rendered by the Trademark Office;</p> <p>(5) Cases involving a reexamination application filed pursuant to Article 54 of the Trademark Law due to dissatisfaction with a decision on canceling or maintaining a registered trademark rendered by the Trademark Office. During the trademark review and adjudication procedure, trademarks for which reexamination is requested in Item (1) of the preceding Article 2 are called application trademarks, trademarks for which reexamination is requested in Item (2) are called opposed trademarks, trademarks for which invalidation announcement is requested in Item (3) are called disputable trademarks, and trademarks for which reexamination is requested in Item (4) and (5) are called reexamined trademarks. In the Rules, all trademarks mentioned above are called reviewed trademarks.</p>		

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<p>第三条当事人参加商标争议案件的评审活动，应当以书面形式办理。</p>	<p>Article 3 The participation by the parties concerned in the activities involved in the review and adjudication of a trademark dispute case shall be handled in written form.</p>	<p>第三条当事人参加商标评审活动，可以以书面方式或者数据电文方式办理。 数据电文方式办理的具体办法由商标评审委员会另行制定。</p>	<p>Article 3 The participation by the parties concerned in the activities involved in the trademark review and adjudication shall be handled in written form or data message form. Detailed methods of using the data message form is separately formulated by the TRAB.</p>		
<p>四条商标评审委员会审理商标争议案件实行书面审理，但依据实施条例第三十三条规定决定公开评审的情形除外。</p>	<p>Article 4 The TRAB hears trademark dispute cases in documentary form, except where it decides to conduct a public review and adjudication pursuant to Article 33 of the Implementing Regulations.</p>	<p>第四条商标评审委员会审理商标评审案件实行书面审理，但依据实施条例第六十三条规定决定进行口头审理的除外。 口头审理的具体办法由商标评审委员会另行制定。</p>	<p>Article 4 The TRAB hears trademark review and adjudication cases in documentary form, except where it decides to conduct a normal hearing pursuant to Article 63 of the Implementing Regulations Detailed methods for implementing an oral hearing is separately formulated by the TRAB.</p>	<p>第四条并未对口头审理的具体标准作出规定。美国知识产权协会建议对此作出修改，明确何种情形下进行口头审理。 不清楚此条款是针对什么情况下进行口头审理还是口头审理时所采用的程序。</p>	<p>Article 4 provides no criteria for when an oral hearing will be conducted. AIPLA respectfully requests that the Draft be revised to identify the circumstances in which an oral hearing will be held. It is unclear whether this relates to the circumstances when an oral hearing will be held or the procedures when one is held.</p>
<p>第五条商标评审委员会依据商标法、实施条例和本规则作出的决定和裁定，应当以书面形式通知有关当事人，并说明理由。</p>	<p>Article 5 With respect to a decision or ruling rendered by the TRAB pursuant to the Trademark Law, the Implementing Regulations, and these Rules, the TRAB shall notify the relevant party concerned in writing of the same and state the reasons for such decision or ruling.</p>	<p>第五条商标评审委员会依据商标法、实施条例和本规则作出的决定和裁定，应当以书面方式或者数据电文方式送达有关当事人，并说明理由。</p>	<p>Article 5 With respect to a decision or ruling rendered by the TRAB pursuant to the Trademark Law, the Implementing Regulations, and the Rules, the TRAB shall notify the relevant party concerned in written form or data message form and state the reasons for such decision or ruling.</p>	<p>该条并未明确何种方式的通讯属于“数据电文方式”。美国知识产权协会建议《征求意见稿》明确数据电文应经由官方电子备案系统送达，以确保做出充分通知。</p>	<p>It is unclear what forms of communication are contemplated as “data message form.” AIPLA recommends that the Draft clarify that the data message would be through a formal electronic filing system that would ensure adequate notice.</p>

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<p>第六条除本规则另有规定外，商标评审委员会审理商标争议案件实行合议制度，由商标评审人员组成合议组进行审理。</p> <p>合议组审理案件，实行少数服从多数的原则。</p>	<p>Article 6 Except as otherwise set forth in these Rules, the TRAB shall implement the collegiate system in hearing any trademark dispute case, and a collegiate panel composed of trademark adjudicators shall be formed to conduct the hearing.</p> <p>Any such collegiate panel shall, in their hearing of cases, apply the principle of subordinating the minority to the majority.</p>	<p>第六条 除本规则另有规定外，商标评审委员会审理商标评审案件实行合议制度，由商标评审人员三人以上的单数组成合议组进行审理。</p> <p>合议组审理案件，实行少数服从多数的原则。</p>	<p>Article 6 Except as otherwise set forth in the Rules, the TRAB shall implement the collegiate system in hearing any trademark review and adjudication case, and a collegiate panel composed of at least three (singular number) trademark adjudicators shall beformed to conduct the hearing.</p> <p>Any such collegiate panel shall, in their hearing of cases, apply the principle of subordinating the minority to the majority.</p>	<p>美国知识产权协会认同采用三名评审人员的合议制度。美国专利商标局的商标评审与上诉委员会（TTAB）采用的正是三名评审人员的合议制度，并认为该制度可促进案件审理的统一性和一致性。</p>	<p>AIPLA supports the Draft for implementing a three-adjudicator panel framework. The USPTO Trademark Trial and Appeal Board has employed a three-judge panel system and submits that this system helps foster greater uniformity and consistent decision-making.</p>
<p>第七条当事人或者利害关系人依据实施条例第九条的规定申请商标评审人员回避的，应当以书面形式办理，并说明理由。</p>	<p>Article 7 Any application filed by a party concerned or an interested party pursuant to Article 9 of the Implementing Regulations for the withdrawal by a trademark adjudicator from the case in question shall be in written form and accompanied by a statement of the reasons.</p>	<p>第七条当事人或者利害关系人依据实施条例第七条的规定申请商标评审人员回避的，应当以书面方式办理，并说明理由。</p>	<p>Article 7 Any application filed by a party concerned or an interested party pursuant to Article 7 of the Implementing Regulations for the withdrawal by a trademark adjudicator from the case in question shall be in written form and accompanied by a statement of the reasons.</p>		
<p>第八条在商标评审期间，当事人有权依法处分自己的商标权和与商标评审有关的权利。顾及社会公共利益、第三方权利的前提下，当事人之间可以自行以书面形式达成和解，商标评审委员会也可以进行调解。</p>	<p>Article 8 During the course of a trademark review and adjudication, the parties concerned are entitled to dispose of their trademark rights and their rights relating to the trademark review and adjudication pursuant to the law. The parties may reach a written settlement at their own discretion, or the TRAB may conduct a mediation, provided that the social public interest and the rights of any third party are taken into consideration.</p>	<p>第八条在商标评审期间，当事人有权依法处分自己的商标权和与商标评审有关的权利。在不影响社会公共利益、第三方权利的前提下，当事人之间可以自行或经调解以书面方式达成和解。</p> <p>对于当事人达成和解的案件，商标评审委员会可以结案，也可以作出决定或者裁定。</p>	<p>Article 8 During thecourse of a trademark review and adjudication, the partiesconcerned are entitled to dispose of their trademark rights and their rightsr elating to the trademark review and adjudication pursuant to the law. On thepremise that the social public interestand the rightsof any third party are not affected, the parties may reach reconciliation in written form based on their own discretion or mediation.</p> <p>For a case on which parties reach reconciliation, theTRAB shall close the case or render a decision or ruling.</p>	<p>美国知识产权协会注意到，《征求意见稿》的本条删除了对社会公共利益的考量，准许当事人之间自行就商标纠纷达成和解。虽然商标问题很少牵涉到严重的不正当竞争问题，但是私下达成的和解协议的条款仍可能对社会公共利益产生不利影响。因此，美国知识产权协会建议出于对公共利益的考量，商标评审委员会应保留对和解的审批权。</p>	<p>AIPLA notes that the Draft removes public interest considerations and permits the parties to settle trademark disputes in their sole discretion. Although trademark issues rarely raise substantial unfair competition issues, it is nonetheless possible that public interest may be affected by the terms of a private settlement. AIPLA recommends that the TRAB reserve the right to approve the settlement on public interest grounds.</p>

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<p>第九条共有商标的当事人参加商标评审活动，应当指定一人为代表人；没有指定代表人的，以其在商标注册申请书或者商标注册簿中载明的顺序第一人为代表人。代表人参与评审的行为对其所代表的当事人发生法律效力，但代表人变更、放弃评审请求或者承认对方当事人的评审请求，必须有被代表的当事人书面授权。</p>	<p>Article 9 To participate in the activities involved in a trademark review and adjudication, each party to a jointly owned trademark shall appoint a person to act as the party's representative. If no representative has been appointed, the party listed as the first in the written application for trademark registration or the register of the trademark shall be the representative. The participation by such a representative in the review and adjudication shall be effective as to the party being represented; however, change of a representative, waiver of a request for review and adjudication, or acknowledgement of the other party's request for review and adjudication must be subject to the written authorization of the party being represented.</p>	<p>第九条共有商标的当事人参加商标评审程序，以商标注册申请书中或者商标注册簿中顺序排列的第一人为代表人，但共有人可以通过书面授权形式变更代表人。</p> <p>除前款规定情形外，商标评审案件的共同申请人应当指定一人为代表人。</p> <p>代表人参与评审的行为对其所代表的当事人发生法律效力，但代表人变更、放弃评审请求或者承认对方当事人评审请求的，应当有被代表的当事人书面授权。</p> <p>商标评审委员会的文件送达代表人的，视为送达其代表的所有当事人。</p>	<p>Article 9 When parties of a jointly owned trademark participate in the activities involved in a trademark review and adjudication, the party listed as the first in the written application for trademark registration or the register of the trademark shall be the representative. However, the parties may change the representative in the form of written authorization.</p> <p>Except the preceding situation, each joint applicant of the trademark review and adjudication case shall appoint a person to act as the party's representative.</p> <p>The participation by such a representative in the review and adjudication shall be effective as to the party being represented; however, change of a representative, waiver of a request for review and adjudication, or acknowledgement of the other party's request for review and adjudication must be subject to the written authorization of the party being represented.</p> <p>Documents sent from the TRAB to a representative shall be deemed to be sent to all parties being represented.</p>	<p>不清楚《征求意见稿》规定商标评审委员会的文件只送达给一名代表人出于何种理由。这样的程序有可能造成共同申请人中的其中一人对评审程序具有过大的影响力，从而侵害其他共同申请人的权益。美国知识产权协会建议商标评审委员会直接联系并通知每一位共同申请人的代表人。</p>	<p>It is unclear why only one representative will be notified under the proposed draft. This procedure may give one of the joint owners undue influence over the proceedings and prejudice the other joint owner(s). Specifically, AIPLA recommends that the TRAB continue to deal directly with and notify the representative of each joint owner.</p>

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<p>十条外国人或者外国企业办理商标评审事宜，在中国有经常居所或者营业所的，可以委托国家认可的具有商标代理资格的组织代理，也可以直接办理；在中国没有经常居所或者营业所的，应当委托国家认可的具有商标代理资格的组织代理。</p> <p>代理权限发生变更、代理关系解除或者变更代理人的，当事人或者代理人应当及时书面告知商标评审委员会。</p>	<p>Article 10 To handle matters related to trademark review and adjudication, a foreign or foreign enterprise, if having a habitual residence or place of business in China, may either entrust an organization qualified to be a trademark agency and recognized by the State to act as the agent thereof or handle the matters directly; if having no habitual residence or place of business in China, the foreign or foreign enterprise shall entrust an organization qualified to be a trademark agency and recognized by the State to act as the agent thereof.</p> <p>In the event of a change to the scope of agency authority, termination of agency relationship, or change of agent, the party concerned or the agent shall promptly inform the TRAB in writing.</p>	<p>第十条外国人或者外国企业办理商标评审事宜，在中国有经常居所或者营业所的，可以委托依法设立的商标代理机构办理，也可以直接办理；在中国没有经常居所或者营业所的，应当委托依法设立的商标代理机构办理。</p>	<p>Article 10 To handle matters related to trademark review and adjudication, a foreigner or foreign enterprise, if having a habitual residence or place of business in China, may either entrust a trademark agency established in accordance with the law to act as the agent thereof or handle the matters directly; if having no habitual residence or place of business in China, the foreigner or foreign enterprise shall entrust a trademark agency established in accordance with the law to act as the agent thereof.</p>		
<p>第十条 代理权限发生变更、代理关系解除或者变更代理人的，当事人或者代理人应当及时书面告知商标评审委员会。</p>	<p>Article 10 In the event of a change to the scope of agency authority, termination of agency relationship, or change of agent, the party concerned or the agent shall promptly inform the TRAB in writing.</p>	<p>第十一条代理权限发生变更、代理关系解除或者变更代理人的，当事人应当及时书面告知商标评审委员会。</p>	<p>Article 11 In the event of a change to the scope of agency authority, termination of agency relationship, or change of agent, the party concerned shall promptly inform the TRAB in written form.</p>		
<p>十一条 当事人及其代理人可以申请查阅本案有关材料。</p>	<p>Article 11 A party concerned and the agent thereof may apply for access to the materials related to their case.</p>	<p>第十二条当事人及其代理人可以申请查阅本案有关材料。</p>	<p>Article 12 A party concerned and the agent thereof may apply for access to the materials related to their case.</p>		
<p>第二章 申请与受理</p>	<p>Chapter II: Application and Acceptance</p>	<p>第二章 申请与受理</p>	<p>Chapter II: Application and Acceptance</p>		

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<p>第十二条申请商标评审，应当符合下列条件：</p> <p>（一）申请人须有合法的主体资格；</p> <p>（二）在法定期限内提出；</p> <p>（三）属于商标评审委员会的评审范围；</p> <p>（四）依法提交符合规定的申请书及有关证据材料；</p> <p>（五）有明确的评审请求、事实根据和理由；</p> <p>（六）依法缴纳评审费用。</p>	<p>Article12 An application for trademark review and adjudication shall meet the following conditions:</p> <p>(1) The applicant must have the legitimate subject qualification;</p> <p>(2) The application is filed within the statutory time limit;</p> <p>(3) The application falls within the scope of review and adjudication of theTRAB;</p> <p>(4) The written applicationand related evidentiary materials that conform to the relevant provisions are submitted pursuant to the law;</p> <p>(5) The specific request, factual basis, and grounds are clearly stated therein; and</p> <p>(6) The review and adjudication fee is paid pursuant to the law.</p>	<p>第十三条申请商标评审，应当符合下列条件：</p> <p>（一）申请人须有合法的主体资格；</p> <p>（二）在法定期限内提出；</p> <p>（三）属于商标评审委员会的评审范围；</p> <p>（四）依法提交符合规定的申请书及有关材料；</p> <p>（五）有明确的评审请求、事实、理由和法律依据；</p> <p>（六）依法缴纳评审费用。</p>	<p>Article 13 An application for trademark review and adjudication shall meet the following conditions:</p> <p>(1) The applicant must have the legitimate subject qualification;</p> <p>(2) The application is filed within the statutory time limit;</p> <p>(3) The application falls within the scope of review and adjudication of the TRAB;</p> <p>(4) The written application and relevant materials that conform to the relevant provisions are submitted pursuant to the law;</p> <p>(5) The specific request, facts, reasons, and legal grounds are clearly stated therein;</p> <p>(6) The review and adjudication fee is paid pursuant to the law.</p>	<p>美国知识产权协会不认同申请人必须详细说明申请评审的理由和法律依据的规定，因为该规定似乎要求申请必须详细列举诉求的依据，这与很多其他国家在同类程序中实行的“通知诉达”标准不符。</p>	<p>AIPLA does not support the requirement that the reasons and legal grounds for the request should be specified because this appears to require that the application plead the basis with specificity, which is inconsistent with the standards of notice pleading that govern comparable proceedings in many other countries.</p>

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<p>第十三条申请商标评审，应当向商标评审委员会提交申请书；有被申请人的，应当按照被申请人的数量提交相应份数的副本；申请人的商标发生转让、移转，已向商标局提出申请但是尚未核准公告的，申请人应当提供相应的证明文件；基于商标局的决定书或者裁定书申请复审的，还应当同时附送商标局的决定书或者裁定书。</p>	<p>Article 13 Applying for a trademark review and adjudication shall be subject to submission of a written application to the TRAB. If one or more respondents are on the application, the duplicates of the application to be submitted shall be in the same number as the number of the respondents. If the trademark of the applicant is to be assigned or transferred, and an application has been filed with the Trademark Office for that purpose with the approval yet to be granted and publication yet to be made, the applicant shall submit the relevant supporting documents. If an application for reexamination is filed on the basis of a written decision or ruling of the Trademark Office, the application shall also be accompanied by that decision or ruling.</p>	<p>第十四条申请商标评审，应当向商标评审委员会提交申请书；有被申请人的，应当按照被申请人的数量提交相应份数的副本；评审商标发生转让、移转、变更，已向商标局提出申请但是尚未核准公告的，当事人应当提供相应的证明文件；基于商标局的决定书申请复审的，还应当同时附送商标局的决定书。</p>	<p>Article 14 Applying for a trademark review and adjudication shall be subject to submission of a written application to the TRAB. If one or more respondents are on the application, the duplicates of the application to be submitted shall be in the same number as the number of the respondents. If the reviewed trademark is to be assigned, transferred, or changed, and an application has been filed with the Trademark Office for that purpose with the approval yet to be granted and publication yet to be made, the party concerned shall submit the relevant supporting documents. If an application for reexamination is filed on the basis of a written decision of the Trademark Office, the application shall also be accompanied by that decision.</p>		

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<p>第十四条申请书应当载明下列事项：</p> <p>（一）申请人的名称、住所地、通讯地址、联系人和联系电话。评审申请有被申请人的，应当载明被申请人的名称和住所地。委托商标代理组织办理商标评审事宜的，还应当载明商标代理组织的名称、通讯地址、联系人和联系电话；</p> <p>（二）争议商标及其申请号或者初步审定号、注册号和刊登该商标的《商标公告》的期号；</p> <p>（三）明确的评审请求和所根据的事实、理由及法律依据。</p>	<p>Article 14 The written application shall set forth the following matters:</p> <p>(1) Name, domicile, mailing address, contact person, and contact phone number of the applicant, and the name and domicile of the respondent(s), if any, shall be specified therein, accompanied by specifying, if a trademark agency is entrusted to handle the matters related to trademark review and adjudication, the name, mailing address, contact person, and the contact phone number of the trademark agency;</p> <p>(2) Name of the disputed trademark and its application number or preliminary approval number, its registration number, and the issue number of the Trademark Gazette in which the trademark is published; and</p> <p>(3) Specific request, facts, grounds, and legal basis for the review and adjudication.</p>	<p>第十五条申请书应当载明下列事项：</p> <p>（一）申请人的名称、住所地、通信地址、联系人和联系电话。评审申请有被申请人的，应当载明被申请人的名称和地址。委托商标代理机构办理商标评审事宜的，还应当载明商标代理机构的名称、地址、联系人和联系电话；</p> <p>（二）评审商标及其申请号或者初步审定号、注册号和刊登该商标的《商标公告》的期号；</p> <p>（三）明确的评审请求和所依据的事实、理由及法律依据。</p>	<p>Article 15 The written application shall set forth the following matters:</p> <p>(1) Name, mailing address, contact person, and contact phone number of the applicant. The name and address of the respondent(s), if any, shall be specified therein. If a trademark agency is entrusted to handle the matters related to trademark review and adjudication, the name, address, contact person, and the contact phone number of the rademark agency shall be specified;</p> <p>(2) Name of the reviewed trademark and its application number or preliminary approval number, its registration number, and the issue number of the <i>Trademark Gazette</i> in which the trademark is published;</p> <p>(3) Specific request, facts, reasons, and legal grounds for the review and adjudication.</p>		
<p>第十五条商标评审申请不符合本规则第十二条第（一）、（二）、（三）项规定条件之一的，商标评审委员会不予受理，书面通知申请人，并说明理由。</p>	<p>Article 15 If an application for trademark review and adjudication does not meet the conditions set forth in Item (1), (2), or (3) of Article 12 of these Rules, the TRAB shall not accept the application and shall notify the applicant in writing, with the reasons for such non-acceptance stated in the notification.</p>	<p>第十六条商标评审申请不符合本规则第十三条第（一）、（二）、（三）、（六）项规定条件之一的，商标评审委员会不予受理，书面通知申请人，并说明理由。</p>	<p>Article 16 If an application for trademark review and adjudication does not meet the conditions set forth in Item (1), (2), (3), or (6) of Article 13 of the Rules, the TRAB shall not accept the application and shall notify the applicant in written form, with the reasons for such non-acceptance stated in the notification.</p>		

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<p>第十六条商标评审申请不符合本规则第十二条第（四）、（五）、（六）项规定条件之一的，或者未按照实施条例和本规则规定提交有关证明文件的，商标评审委员会应当向申请人发出补正通知，限其自收到补正通知之日起 30 日内补正。</p> <p>经补正仍不符合规定的，商标评审委员会不予受理，书面通知申请人，并说明理由。期满未补正的，依据实施条例第三十条规定，视为申请人撤回评审申请，商标评审委员会应当书面通知申请人。</p>	<p>Article 16 If an application for trademark review and adjudication does not meet the conditions set forth in Item (4), (5), or (6) of Article 12 of these Rules, or if the relevant supporting documents are not submitted in accordance with the Implementing Regulations and these Rules, the TRAB shall issue to the applicant a notification making a supplement and/or correction, ordering the applicant to make a supplement and/or correction within 30 days of the receipt of the notification.</p> <p>If the application still does not conform to the relevant provisions after having been supplemented and/or corrected, the TRAB shall not accept the application and shall notify the applicant in writing, with the reasons for such non-acceptance stated in the notification. Failure to make a supplement and/or correction within the time limit shall, pursuant to Article 30 of the Implementing Regulations, be deemed as the applicant's withdrawal of the application, in which case the TRAB shall notify the applicant in writing.</p>	<p>第十七条商标评审申请不符合本规则第十三条第（四）、（五）、（六）项规定条件之一的，或者未按照实施条例和本规则规定提交有关证明文件的，或者有其他需要补正情形的，商标评审委员会应当向申请人发出补正通知，申请人应当自收到补正通知之日起十五日内补正。</p> <p>经补正仍不符合规定的，商标评审委员会不予受理，书面通知申请人，并说明理由。未在规定的期限内补正的，依据实施条例第六十条规定，视为申请人撤回评审申请，商标评审委员会应当书面通知申请人。</p>	<p>Article 17 If an application for trademark review and adjudication does not meet the conditions set forth in Item (4) or (5) of Article 13 of the Rules, or if the relevant supporting documents are not submitted in accordance with the Implementing Regulations and the Rules, or in other situations that require a supplement and/or correction, the TRAB shall issue to the applicant a notification on making a supplement and/or correction, ordering the applicant to make a supplement and/or correction within 15 days of receiving the notification.</p> <p>If the application still does not conform to the relevant provisions after having been supplemented and/or corrected, the TRAB shall not accept the application and shall notify the applicant in written form, with the reasons for such non-acceptance stated in the notification. Failure to make a supplement and/or correction within the time limit shall, pursuant to Article 60 of the Implementing Regulations, be deemed as the applicant's withdrawal of the application, in which case the TRAB shall notify the applicant in written form.</p>	<p>美国知识产权协会担忧第十三条要求申请人必须详细说明注册“理由”和“法律依据”的规定会被作为不进行正式审查而拒绝注册的依据。美国知识产权协会建议删除这些额外的规定。</p> <p>此外，十五日的补正期对外籍申请人可能过于苛刻。通常中国律师要将通知书传达给外国客户、提供翻译件、并与申请人讨论对策。美国知识产权协会担心十五日的期限不足以准备适当的答复。</p>	<p>AIPLA is concerned that the specification of the “reasons” and “legal grounds” for registration under Article 13 may be used as a basis to deny registration without formally examining the application and recommends that removal of these further requirements be deleted.</p> <p>In addition, the 15-day response time may impose an undue burden on foreign applicants. Typically Chinese counsel will need to communicate the action, provide a translation and discuss the action with the foreign client. AIPLA is concerned that the 15-day period may not provide adequate time for a considered response.</p>

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<p>第十七条商标评审申请经审查符合受理条件的，商标评审委员会应当在 30 日内向申请人发出《受理通知书》。</p>	<p>Article 17 If an application for trademark review and adjudication is determined, through examination, as meeting the conditions for acceptance, the TRAB shall issue a written Acceptance Notice to the applicant within 30 days.</p>	<p>第十八条商标评审申请经审查符合受理条件的，商标评审委员会应当及时及时向申请人发出《受理通知书》。</p>	<p>Article 18 If an application for trademark review and adjudication is determined, through examination, as meeting the conditions for acceptance, the TRAB shall issue a written <i>Acceptance Notice</i> to the applicant in time.</p>	<p>美国知识产权协会注意到，原条款规定《受理通知书》应在三十日内发出，而新条款则删除了该三十日的期限，商标评审委员会具体何时发出《受理通知书》不得而知。美国知识产权协会建议保留三十日的通知期限，以确保行政执行的更有规律。</p>	<p>AIPLA notes that this action was formerly issued within 30 days. By eliminating this 30 day time period, it is unclear when the action will be issued. AIPLA recommends that the 30 day time frame be restored because it ensures greater administrative regularity.</p>

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<p>第十八条商标评审委员会已经受理的商标评审申请，有下列情形之一的，属于不符合受理条件，应当依据实施条例第三十条规定予以驳回：</p> <p>（一）违反商标法第四十二条规定，对核准注册前已经提出异议并经裁定的商标，又以相同的事实和理由申请裁定的；</p> <p>（二）违反实施条例第三十五条规定，申请人撤回商标评审申请后，又以相同的事实和理由再次提出评审申请的；</p> <p>（三）违反实施条例第三十五条规定，对商标评审委员会已经作出的裁定或者决定，以相同的事实和理由再次提出评审申请的；</p> <p>（四）其他不符合受理条件的情形。</p> <p>商标评审委员会驳回商标评审申请，应当书面通知申请人，并说明理由。</p>	<p>Article 18 An application for trademark review and adjudication that has been accepted by the TRAB shall be regarded as not satisfying the conditions for acceptance and be dismissed pursuant to Article 30 of the Implementing Regulations, if the application falls under any of the following circumstances:</p> <p>(1) It is for a ruling on a trademark on which an opposition has been filed and a previous ruling has been rendered prior to the approval of the registration of that trademark, with the same facts and grounds as the basis, thereby violating <u>Article 42</u> of the <u>Trademark Law</u>;</p> <p>(2) It is for a review and adjudication on a trademark on which a previous application for review and adjudication has been withdrawn by the applicant, with the same facts and grounds as the basis, thereby violating Article 35 of the Implementing Regulations;</p> <p>(3) It is for a review and adjudication after the TRAB has made a ruling or decision on a previous application, with the same facts and grounds as the basis, thereby violating Article 35 of the Implementing Regulations; or</p> <p>(4) It falls under any other circumstance where the conditions for acceptance are not satisfied.</p> <p>The TRAB shall, in the case of dismissing an application for review and adjudication, notify the applicant in writing and state the reasons for such dismissal.</p>	<p>第十九条商标评审委员会已经受理的商标评审申请，有下列情形之一的，属于不符合受理条件，应当依据实施条例第六十条规定予以驳回：</p> <p>（一）违反实施条例第六十条规定，申请人撤回商标评审申请后，又以相同的事实和理由再次提出评审申请的；</p> <p>（二）违反实施条例第六十条规定，对商标评审委员会已经作出的裁定或者决定，以相同的事实和理由再次提出评审申请的情形。</p> <p>（三）其他不符合受理条件的情形。</p> <p>对经不予注册复审程序予以核准注册的商标提出无效宣告请求的，不受前款第二项规定限制。</p> <p>商标评审委员会驳回商标评审申请，应当书面通知申请人，并说明理由。</p>	<p>Article 19 An application for trademark review and adjudication that has been accepted by the TRAB shall be regarded as not satisfying the conditions for acceptance and be dismissed pursuant to Article 60 of the Implementing Regulations, if the application falls under any of the following circumstances:</p> <p>(1) It is for a review and adjudication on a trademark on which a previous application for review and adjudication has been withdrawn by the applicant, with the same facts and reasons as the basis, thereby violating Article 65 of the Implementing Regulations;</p> <p>(2) It is for a review and adjudication after the TRAB has made a ruling or decision on a previous application, with the same facts and reasons as the basis, thereby violating Article 65 of the Implementing Regulations;</p> <p>(3) It falls under any other circumstance where the conditions for acceptance are not satisfied.</p> <p>For trademark registration applications that are approved during the review after being previously rejected, the request for announcing invalidation of the trademark is not restricted by Item (2) of Article 19.</p> <p>The TRAB shall, in the case of dismissing an application for review and adjudication, notify the applicant in written form and state the reasons for such dismissal.</p>	<p>美国知识产权协会担心《征求意见稿》中新加入的语句的目的并不明确。</p>	<p>AIPLA is concerned that the additional language added by the Draft is unclear as to what the effect of the provision is intended to be.</p>

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<p>第二十三条 商标评审申请书及有关证据材料应当按照规定的格式和要求填写、提供。未按照规定格式和要求填写、提供的，商标评审委员会向申请人发出补正通知，限其自收到补正通知之日起 30 日内补正。经补正仍不符合规定或者期满未补正的，适用本规则第十六条第二款的规定处理。</p> <p>……</p>	<p>Article 23 A written application for trademark review and adjudication and the related evidentiary materials shall be prepared and submitted pursuant to the specified format and requirements. In the event of failure to do so, the TRAB shall notify the applicant to make a supplement and/or correction, instructing the applicant to make the supplement and/or correction within 30 days of the receipt of the notification. If the application or materials still do not conform with the relevant requirements after being supplemented and/or corrected, or the applicant fails to make the supplement and/or correction within the time limit, Paragraph 2 of Article 16 of these Rules shall apply.</p> <p>……</p>	<p>第二十条当事人参加评审活动，应当按照对方当事人 的数量，提交相应份数的申请书、答辩书、质证意见及证据材料副本，副本内容应与正本内容相同。不符合前述要求且经补正仍不符合要求的，按照 第十七条第二款的规定，不予 受理评审申请，或者视为未提交相关材料。</p>	<p>Article 20 When parties concerned participate in the review and adjudication activities, the duplicates of written applications, statements of reply, examination comments, and evidentiary materials to be submitted shall be in the same number as that of the opposite parties concerned. Content in the duplicate shall be the same as that in the original version. If the application does not conform to the aforesaid provisions, or if the application still does not conform to the provisions after having been supplemented and/or corrected, the TRAB, in accordance with provisions of the second item in Article 17, shall not accept the application or deem that relevant materials are not submitted.</p>	<p>美国知识产权协会注意到，原条文规定，如申请书不符合要求，申请人尚有补正的机会，但是《征求意见稿》却删除了该补正期。具体而言，《征求意见稿》规定，（1）申请书不符合要求的；或（2）申请书经补正后仍不符合要求的，评审申请将不予受理。从该新条文的措辞看来，评审申请可在未向申请人提供补正机会的情况下被驳回。美国知识产权协会建议修改此条文，明确申请人有修改补充的机会。尤其对外籍申请人而言，能够修改不符合要求的申请书是重要的。美国知识产权协会 AIPLA 恳请保留原有补正的条文，以免造成申请人丧失补正的权利。</p>	<p>AIPLA notes that the original provision provided an opportunity to cure deficiencies. The Draft, however, removes this cure period. Specifically, the Draft provides that the application will not be accepted if: (1) the application does not conform; or (2) still does not conform after having been supplemented or corrected. As presently worded, the application could be rejected without giving the applicant an opportunity to amend or supplement. AIPLA requests that this provision be amended to make clear that the applicant is given an opportunity to supplement or correct the application. Particularly with respect to foreign applicants, the ability to cure deficient filings may be critical. AIPLA respectfully requests that the Draft restore the original cure provisions because it may be needed by applicants to prevent loss of rights.</p>

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<p>第十九条评审申请有被申请人的，商标评审委员会受理后，应当及时将申请书副本及有关证据材料送达被申请人，限其自收到申请书副本之日起 30 日内向商标评审委员会提交答辩书，并按照申请人的数量提交相应份数的副本；期满未提交或逾期提交的，视为放弃答辩。</p>	<p>Article 19 If there is a respondent under an application for review and adjudication the TRAB shall, after accepting the application, promptly serve the duplicate of the written application and the relevant evidentiary materials on the respondent and instruct the respondent to submit a statement of reply to the TRAB within 30 days of receiving the duplicate of the application, and to submit the duplicates of the reply in the same number as the number of the applicants. If the statement of reply is not submitted when the time limit expires or the submission of the statement of reply exceeds the time limit, the reply shall be deemed to have been waived.</p>	<p>第二十一条评审申请有被申请人的，商标评审委员会受理后，应当及时将申请书副本及有关证据材料送达被申请人。被申请人应当自收到申请书副本之日起三十日内向商标评审委员会提交答辩书及其副本；未在规定时间内答辩的，不影响商标评审委员会的评审。</p>	<p>Article 21 If there is a respondent under an application for review and adjudication, the TRAB shall, after accepting the application, promptly deliver the duplicate of the written application and the relevant evidentiary materials to the respondent. The respondent shall submit a statement of reply and its duplicates to the TRAB within 30 days of receiving the duplicate of the application. In case that the statement of reply is not submitted within time limit, trade mark review and adjudication conducted by theTRAB will not be affected.</p>	<p>美国知识产权协会认同对本条所作的修改。被申请人不提交答辩书可能存在多方面的原因，美国知识产权协会认为被申请人的基本权利不应当因为不提交答辩书而受到负面影响。</p>	<p>AIPLA commends the revision. There may be many reasons why a respondent may not submit a reply and AIPLA respectfully submits that Respondent’s substantive rights should not be adversely affected by their failure to do so.</p>

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<p>第二十一条申请人提交申请书或者被申请人提交答辩书时，应当同时提交能够证明其身份的有效证件。申请人或者被申请人的名称应当与所提交的证件相一致。</p> <p>当事人名称或者住所等事项发生变更的，应当提供相应的证明文件。</p> <p>第二十三条</p> <p>……</p> <p>商标评审答辩书及有关证据材料应当按照规定的格式和要求填写、提供。未按照规定格式和要求填写、提供的，商标评审委员会向被申请人发出补正通知，限其自收到补正通知之日起 30 日内补正。经补正仍不符合规定或者期满未补正的，不影响商标评审委员会的评审。</p>	<p>Article 21 When an applicant submits a written application or a respondent submits a statement of reply, the applicant or respondent shall also submit a valid certificate that is capable of proving the identity thereof. The name of the applicant or respondent shall be the same as that on the submitted identity certificate.</p> <p>In the event of a change in items such as the name and domicile of a party concerned, the party shall furnish the relevant supporting documents.</p> <p>Article 23</p> <p>A statement of reply for trademark review and adjudication and the relevant evidentiary materials shall be prepared and submitted pursuant to the specified format and requirements. In the event of failure to do so, the TRAB shall notify the respondent to make a supplement and/or correction, instructing the respondent to make the supplement and/or correction within 30 days of the receipt of the notification. If the reply or materials still do not conform with the relevant requirements after being supplemented and/or corrected, or the respondent fails to make the supplement and/or correction within the time limit, the review and adjudication of the TRAB will not be affected.</p>	<p>第二十二条 被申请人参加答辩应当有合法的主体资格。</p> <p>商标评审答辩书及有关证据材料应当按照规定的格式和要求填写、提供。</p> <p>不符合第二款规定或者有其他需要补正情形的，商标评审委员会向被申请人发出补正通知，被申请人应自收到补正通知之日起十五日内补正。经补正仍不符合规定或者未在法定期限内补正的，视为未答辩，不影响商标评审委员会的评审。</p>	<p>Article 22 To participate in the reply, the respondent shall have the legitimate subject qualification.</p> <p>The statement of reply to the trademark review and adjudication and relevant evidentiary materials shall be filled and provided in the specified form at and according to requirements.</p> <p>Insituations that does not conform to provisions of the preceding item or in other situations that require a supplement and/or correction, the TRAB shall issue to the respondent a notification on making a supplement and/or correction, ordering the respondent to make a supplement and/or correction within 15 days of receiving the notification. If the reply still does not conform to the provisions after having been supplemented and/or corrected or a supplement and/or correction is not conducted within the time limit, the TRAB shall deem that the respondent does not submit the statement of reply. The review and adjudication is not affected.</p>	<p>基于前文就第二十一条所提的理由，美国知识产权协会认同对该条所作的相应修改。但是，十五日的补正期对于外籍申请人是不够的。美国知识产权协会恳请将十五日的期限延长至三十日，以便中国代理人有足够时间与外籍代理人及其客户沟通与讨论。</p>	<p>For the reasons stated above with respect to Article 21, AIPLA endorses the comparable changes in this Article. Nonetheless, the provision of a 15 day period does not allow adequate time for foreign applicants. AIPLA respectfully requests that this 15 day time limit be enlarged to 30 days to permit adequate time for Chinese counsel to communicate and confer with foreign counsel and their clients.</p>

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<p>第二十条 当事人需要在提出评审申请或者答辩后补充有关证据材料的，应当在申请书或者答辩书中声明，并自提交申请书或者答辩书之日起3个月内一次性提交与申请书或答辩书相同份数的证据材料；未在申请书或答辩书中声明或者期满未提交的，视为放弃补充有关证据材料。但是，期满后基于新的事实形成的证据或者确有其他正当理由的除外。</p> <p>对当事人在法定期限内提供的证据材料，有对方当事人的，商标评审委员会应当将该证据材料发送给对方当事人，限其在指定期限内进行质证。</p>	<p>Article 20 If a party concerned submits any relevant evidentiary material as a supplement after filing an application for review and adjudication or submitting a reply, the party shall declare the same in the written application or statement of reply, and shall, within three months of submitting the application or reply, submit the evidentiary materials in the same number of copies as the number of the application or reply. Failure to include the said declaration in the written application or statement of reply and failure to submit the said evidentiary material within the time limits shall both be deemed a waiver to submit any evidentiary material as a supplement, except where any evidence is formed based on new facts after the expiration of the time limit or there truly is any other justification.</p> <p>With respect to any evidentiary material submitted by the party concerned, if there is an opposite party concerned thereunder, the TRAB shall deliver the evidentiary material to that opposite party and instruct the party to conduct the examination of the evidence within a specified time limit.</p>	<p>第二十三条当事人需要在提出评审申请或者答辩后补充有关证据材料的，应当在申请书或者答辩书中声明，并自提交申请书或者答辩书之日起三十日内一次性提交；未在申请书或答辩书中声明或者期满未提交的，视为放弃补充证据材料。但是，期满后提交的基于新的事实形成的或者确有其他正当理由的证据，经质证后，商标评审委员会可以采信。</p> <p>对当事人在法定期限内提供的证据材料，有对方当事人的，商标评审委员会应当将该证据材料副本送达给对方当事人。当事人应当在收到证据材料副本之日起三十日内进行质证。</p>	<p>Article 23 If a party concerned submits any relevant evidentiary material as a supplement after filing an application for review and adjudication or submitting a reply, the party shall declare the same in the written application or statement of reply, and shall, within 30 days of submitting the application or reply, submit all materials at one time. Failure to include the said declaration in the written application or statement of reply and failure to submit the said evidentiary material within the time limit shall both be deemed a waiver to submit any evidentiary material as a supplement. However, any evidence submitted is formed based on new facts after the expiration of the time limit or there truly is any other justification may be trusted by the TRAB after examination.</p> <p>With respect to any evidentiary Material submitted by the party concerned, if there is an opposite party concerned thereunder, the TRAB shall deliver the duplicate of the evidentiary material to the opposite party. The party shall conduct the examination of the evidence within 30 days of receiving the duplicate of the evidentiary material.</p>	<p>美国知识产权协会对《征求意见稿》加入“其他正当理由”的规定表示关注。美国知识产权协会恳请《征求意见稿》增加对期满后证据提交正当性的审查标准，例如，能够证明有正当理由的。</p>	<p>AIPLA is concerned about the justification requirement added by the draft. AIPLA respectfully requests that the draft include some standard for the TRAB to determine whether the late submission of evidence was justified, such as for good cause shown.</p>

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<p>第二十二條 当事人应当对其提交的证据材料逐一分类编号和制作目录清单，对证据材料的来源、证明的具体事实作简要说明，并签名盖章。</p> <p>商标评审委员会收到当事人提交的证据材料后，应当按目录清单核对证据材料，并由经办人员在回执上签收，注明提交日期。</p>	<p>Article 22 With respect to the evidentiary materials submitted by a party concerned, the party shall classify and number each of them, produce a table of contents thereof, provide a brief description of the source thereof and the specific facts that they support, and affix signature and seal thereto.</p> <p>The TRAB shall, after receiving the evidentiary materials submitted by the party, verify the materials against the table of contents; additionally, the person who handles the matter shall affix his/her signature to the return receipt as acknowledgment of receipt and indicate the submission date therein.</p>	<p>第二十四條当事人应当对其提交的证据材料逐一分类编号和制作目录清单，对证据材料的来源、待证的具体事实作简要说明，并签名盖章。</p> <p>商标评审委员会收到当事人提交的证据材料后，应当按目录清单核对证据材料，并由经办人员在回执上签收，注明提交日期。</p>	<p>Article 24 With respect evidentiary materials submitted by a party concerned, the party shall classify and number each of them, produce a table of contents thereof, provide a brief description of the source thereof and the specific facts to be proved, and affix signature and seal thereto.</p> <p>The TRAB shall, after receiving the evidentiary materials submitted by the party, verify the materials against the table of contents; additionally, the person who handles the matter shall affix his/her signature to the return receipt as acknowledgment of receipt and indicate the submission date therein.</p>		
		<p>第二十五條 当事人名称或者通信地址等事项发生变更的，应当及时通知商标评审委员会，并依需要提供相应的证明文件。</p>	<p>Article 25 When the name or mailing address of a party concerned is changed, the party concerned shall notify the TRAB of the change in time as well as provide the relevant supporting documents.</p>	<p>美国知识产权协会认同《征求意见稿》中关于当事人名称或地址变更时应及时通知商标评审委员会的规定。为了使该规定更加明确，美国知识产权协会建议规定变更通知应在三十日内提交商标评审委员会。确定此期限可以为商标评审程序建立一个更为客观、确切的标准。</p>	<p>AIPLA endorses the requirement that change of name or address should be timely filed. In order to make the requirement clearer, AIPLA respectfully requests that the change be filed within 30 days because this will provide a more objective and definite standard during the procedure of trademark review and adjudication.</p>

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		<p>第二十六条 在商标评审程序中，当事人的商标发生转让、移转的，受让人或者承继人应当及时以书面方式声明承受相关主体地位，参加后续评审程序并承担相应的评审后果。</p> <p>未书面声明且不影响评审案件审理的，商标评审委员会可以将受让人或者承继人列为当事人作出决定或裁定；未书面声明导致申请人丧失评审主体资格的，商标评审委员会应当依据本规则第十九条的规定驳回评审申请或者依据本规则第三十条的规定予以结案。</p>	<p>Article 26 In the event of assignment or transfer of any trademark right of a party concerned during the procedure of trademark review and adjudication, the assignee or heir shall, in a timely manner, declare the relevant subject status thereof in writing, and shall participate in the subsequent review and adjudication procedures and accordingly bear the consequences of the review and adjudication.</p> <p>If the relevant subject status is not declared in writing and the review and adjudication case still can be heard, the TRAB may consider the assignee or heir as the party concerned and render a decision or ruling. If the applicant loses the subject qualification for review and adjudication because the relevant subject status is not declared in writing, the TRAB shall, in accordance with provisions in Article 19 of the Rules, dismiss the application for review and adjudication, or shall, in accordance with provisions in Article 30 of the Rules, close the case.</p>	<p>美国知识产权协会认同《征求意见稿》加入该项允许受让人以相关主体地位参加评审程序的规定。</p>	<p>AIPLA endorses the requirements added by the Draft that the assignee participate as a real party in interest in the TRAB proceedings.</p>
第三章 审理	Chapter III: Hearing	第三章 审理	Chapter III: Hearing		

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<p>第二十四条商标评审委员会审理商标评审案件应当组成合议庭进行审理。合议组由商标评审人员 3 人以上的单数组成。但有下列情形之一的案件，可以由商标评审人员一人独任评审：</p> <p>（一） 商标局作出驳回决定、异议裁定所引证的商标在评审时已经丧失专用权或者在先权利的；</p> <p>（二） 被请求裁定撤销的商标已经丧失专用权的；</p> <p>（三） 商标局作出驳回决定所引证的商标归申请人所有，因申请人未及时办理变更手续被商标局驳回，评审时申请人已向商标局申请办完变更手续的；</p> <p>（四） 商标局作出驳回决定所引证的他人 在先申请或者注册商标，评审时已核准转让给申请人的；</p> <p>（五） 其他可以独任评审的案件。</p>	<p>Article 24 Hearing of trademark review and adjudication cases by the TRAB shall be conducted by a collegiate panel that it has formed. The number of rademark adjudicators composing a collegiate panel shall be an odd number not less than three. However, the review and adjudication may be conducted solely by one trademark adjudicator if the case falls within any of the following circumstances:</p> <p>(1) The exclusiveright to use, or pre-existing right to,the trademark cited in a decision on dismissal or ruling on opposition rendered by the Trademark Office has already ceased to exist at the time of the review and adjudication of the trademark;</p> <p>(2) The exclusive right to use a trademark has already ceased to exist at the time of filing of a request to cancel that trademark by a ruling;</p> <p>...</p>	<p>第二十七条 商标评审委员会审理商标评审案件实行合议制度。但有下列情形之一的案件，可以由商标评审人员一人独任评审：</p> <p>（一）仅涉及商标法第三十条和第三十一条所指在先商标权利冲突的案件中，评审时权利冲突已消除的；</p> <p>（二）被请求撤销或无效宣告的商标已经丧失专用权的；</p> <p>（三）依据本规则第三十条规定应予结案的；</p> <p>（四）其他可以独任评审的案件。</p>	<p>Article 27 Hearing of trademark review and adjudication cases by the TRAB shall follow the panel discussion system. However, the review and adjudication may be conducted solely by one trademark adjudicator if the case falls within any of the following circumstances:</p> <p>(1) The right conflict has already ceased to exist at thetime of the review and adjudication of the pre-existing trademark right conflict case specified in Article 30 and 31 of the Trademark Law;</p> <p>(2) The exclusive right to use a trademark ha salready ceased to exist at the time of filing of a request to revoke the trademark or announce that the trademarkis invalid;</p> <p>(3) The case shall be closed according to Article 30 of the Rules;</p> <p>(4) Other cases where review and Adjudication may be conducted solely by one adjudicator.</p>	<p>美国知识产权协会认同《征求意见稿》中实行的商标评审合议制，并建议所有商标评审程序都实行合议制，因为合议制能够促进案件裁定的统一性和一致性。因此，美国知识产权协会建议将所有涉及独任评审之条文一律改为合议制。</p>	<p>AIPLA supports the panel adjudication system implemented by the Draft and recommends that it be employed in all cases because it fosters consistency and uniformity in decision-making. For these reasons, AIPLA respectfully requests that the provisions relating to sole adjudicator decision be replaced with panel adjudication in the Draft.</p>

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	<p>...</p> <p>(3) The ownership of the trademark cited in a decision on dismissal rendered by the Trademark Office is vested in the applicant, which dismissal is due to the applicant's failure to complete the formalities for change with the Trademark Office in a timely manner, and thereafter the applicant has applied to the Trademark Office for going through such formalities and has completed them at the time of the review and adjudication;</p> <p>(4) With respect to a trademark under an earlier application for registration filed by another or a trademark registered by another at an earlier time, which is cited in a decision on dismissal rendered by the Trademark Office, the transfer of the trademark has been approved, through verification, at the time of the review and adjudication; or</p> <p>(5) Other cases where review and adjudication may be conducted solely by one adjudicator.</p>				

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<p>第二十五条当事人或者利害关系人依据实施条例第九条和本规则第七条的规定对商标评审人员提出回避申请的，被申请回避的商标评审人员在商标评审委员会作出是否回避的决定前，应当暂停参与本案的审理工作。商标评审委员会在作出决定、裁定后收到当事人或者利害关系人提出的回避申请的，不影响评审决定、裁定的有效性。但评审人员确实存在需要回避的情形的，商标评审委员会应当依法作出处理。</p>	<p>Article 25 If a party concerned or an interested party applies, pursuant to Article 9 of the Implementing Regulations and Article 7 of these Rules, to request a withdrawal by a trademark adjudicator from the case, the trademark adjudicator whose withdrawal is requested shall suspend his/her participation in the hearing of the case before the TRAB renders a decision on whether or not he/she shall withdraw from the case.</p> <p>Where the TRAB receives, after rendering a decision or ruling, a withdrawal application filed by a party concerned or an interested party, the validity of the decision or ruling on th review and adjudication shall not be affected. However, if there truly exists any circumstance that requires the withdrawal by an adjudicator from a case, the TRAB shall handle the matter pursuant to the law.</p>	<p>第二十八条当事人或者利害关系人依据实施条例第七条和本规则第七条的规定对商标评审人员提出回避申请的，被申请回避的商标评审人员在商标评审委员会作出是否回避的决定前，应当暂停参与本案的审理工作。商标评审委员会在作出决定、裁定后收到当事人或者利害关系人提出的回避申请的，不影响评审决定、裁定的有效性。但评审人员确实存在需要回避的情形的，商标评审委员会应当依法作出处理。</p>	<p>Article 28 If a party concerned or an interested party applies, pursuant to Article 7 of the Implementing Regulations and Article 7 of the Rules, to request a withdrawal by a trademark adjudicator from the case, the trademark adjudicator whose withdrawal is requested shall suspend his/her participation in the hearing of the case before the TRAB renders a decision on whether or not he/she shall withdraw from the case.</p> <p>Where theTRAB receives, after rendering a decision or ruling, a withdrawal application filed by a party concerned or an interested party, the validity of the decision or ruling on the review and adjudication shall not be affected.</p> <p>However, if there truly is any circumstance that requires the withdrawal by an adjudicator from a case, theTRAB shall handle the matter pursuant to the law.</p>		

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<p>第二十六条 商标评审委员会对当事人提出的回避申请，应当在收到申请后 7 日内，以书面形式作出决定，并书面通知申请人。申请人对商标评审委员会作出的不回避决定不服的，可以在收到决定后 3 日内申请复议一次。复议期间，被申请回避的商标评审人员，不停止参与本案的审理工作。商标评审委员会对复议申请应当在 3 日内作出复议决定，并书面通知复议申请人。</p>	<p>Article 26 Within seven days of receiving a withdrawal application filed by a party concerned, the TRAB shall render a written decision and notify the applicant in writing. If the applicant is dissatisfied with the decision of the TRAB on refusal to withdraw, the applicant may, within three days of receiving the decision, apply for a one-time reconsideration. During the reconsideration, the trademark adjudicator whose withdrawal is requested shall not cease his/her participation in the hearing of the case concerned. The TRAB shall render its decision on reconsideration within three days, and shall notify the applicant in writing.</p>	<p>第二十九条 商标评审委员会审理商标评审案件，应当按照实施条例第五十四条、第五十五条、第五十六条、第五十七条、第五十八条的规定予以审理。</p>	<p>Article 29 When hearing trademark review and adjudication cases, TRAB shall pursuant to Article 54, 55, 56, 57, and 58 of the Implementing Regulations.</p>		

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<p>第二十七条 商标评审委员会审理不服商标局驳回商标注册申请决定的复审案件，除应当适用商标法第十条、第十一条、第十二条和第十六条第一款规定外，应当针对商标局的驳回决定和申请人申请复审的事实、理由、请求以及评审时的事实状态进行评审。商标评审委员会根据本条前述规定作出复审决定前应当听取申请人的意见。</p>	<p>Article 27 When hearing a reexamination case involving dissatisfaction with a decision on dismissing a trademark registration application rendered by the Trademark Office, the TRAB shall, in addition to applying Article 10, Article 11, Article 12, and Paragraph 1 of Article 16 of the Trademark Law, also conduct the review and adjudication on the dismissal decision of the Trademark Office, the facts, grounds, and request for the applicant's reexamination application, and the status of the facts at the time of the review and adjudication. The TRAB shall listen to the applicant's opinions before rendering a decision on reexamination pursuant to the aforesaid provisions of this Article.</p>				
<p>第二十八条 商标评审委员会审理不服商标局异议裁定的复审案件，应当针对当事人复审申请和答辩的事实、理由及请求进行评审。</p>	<p>Article 28 When hearing a reexamination case involving dissatisfaction with a decision on opposition rendered by the Trademark Office, the TRAB shall conduct the review and adjudication on the facts, grounds, and request for the reexamination application and reply of the party concerned.</p>				

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<p>第二十九条 商标评审委员会审理依据商标法第四十一条请求裁定撤销注册商标的案件，应当针对当事人申请和答辩的事实、理由及请求进行评审。</p>	<p>Article 29 When hearing a case involving a request filed pursuant to Article 41 of the Trademark Law to cancel a registered trademark by aruling, the TRAB shall conduct the review and adjudication on the facts, grounds, and request for the application and reply of the party concerned.</p>				

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<p>第三十条商标评审委员会审理不服商标局依照商标法第四十一条第一款规定作出撤销注册商标决定的复审案件，应当针对商标局的决定和申请人申请复审的事实、理由及请求进行评审。</p> <p>商标评审委员会审理不服商标局依照商标法第四十四条、第四十五条规定作出撤销或者维持注册商标决定的复审案件，应当针对商标局作出撤销或者维持注册商标决定时所依据的事实、理由和法律适用进行评审。但是，依据商标法第四十四条第（四）项申请复审的案件当事人需要补充证据且有正当理由的除外。</p>	<p>Article 30 When hearing a reexamination case involving dissatisfaction with a decision on cancelling a registered trademark rendered by the Trademark Office pursuant to Paragraph 1 of Article 41 of the Trademark Law, the TRAB shall conduct the review and adjudication on the decision of the Trademark Office and the facts, grounds, and request for the reexamination application of the party concerned.</p> <p>When hearing a case of reexamination on a dissatisfaction with a decision on cancelling or maintaining a registered trademark rendered by the Trademark Office pursuant to Articles 44 and 45 of the Trademark Law, the TRAB shall conduct the review and adjudication on the facts, grounds, and application of law based on which the Trademark Office renders its decision on cancelling or maintaining the registered trademark, except where the party concerned in the case of reexamination for which the party applies pursuant to Item (4) of Article 44 of the Trademark Law needs to submit supplementary evidence with a justification.</p>				

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第三十一条在商标评审程序中，当事人的商标权发生转让、移转的，受让人或者承继人应当及时以书面形式声明承受 转让人的地位，参加后续评审程 序并承担相应的评审后果。	Article 31 In the event of assignment or transfer of any trademark right of a party concerned during the course of a trademark review and adjudication, the assignor heir shall, in a timely manner, declare the assign/heir status thereof in writing, and shall participate in the subsequent review and adjudication procedures and accordingly bear the consequences of the review and adjudication.				
第三十二条有下列情形之一的，终止评审： （一）申请人死亡或者终止后没有继承人或者继承人放弃 评审权利的； （二）申请人撤回评审申请的； （三）当事人自行和解或者经商标评审委员会调解后达成 协议的； （四）其他应当终止评审的情形。 终止评审的，商标评审委员 会予以结案，书面通知有关当事 人，并说明理由。	Article 32 Under any of the following circumstances, the review and adjudication shall terminate: (1) The applicant dies or terminates either without a successor or with a successor waiving the right of review and adjudication; (2) The applicant withdraws the review and adjudication application; (3) The parties concerned reach a settlement on their own or reach an agreement through mediation of the TRAB; (4) Any other circumstance under which the review and adjudication shall terminate. Where the review and adjudication terminates, the TRAB shall close the case and notify the relevant parties concerned in writing, accompanied by a statement of the reasons.	第三十条有下列情形之一 的，终止评审，予以结案： （一）申请人死亡或者终 止后没有继承人或者继承人 放弃评审权利的； （二）申请人撤回评审申 请的； （三）当事人自行或者经 调解达成和解协议，可以 结案的； （四）其他应当终止评审 的情形。 商标评审委员会予以结 案，应当书面通知有关当事 人，并说明理由。	Article 30 Under any of the following circumstances, the review and adjudication shall terminate and cases shall be closed: (1) The applicant dies or terminates either without a successor or with a successor waiving the right of review and adjudication; (2) The applicant withdraws the review and adjudication application; (3) The parties concerned reach a settlement on their own or reach an agreement through mediation and the case can be closed; (4) Any other circumstance under which the review and adjudication shall terminate. The TRAB shall close the case and notify the relevant parties concerned in writing, accompanied by a statement of the reasons.	美国知识产权协会认同《征求意见 稿》尊重当事人达成的和解协议的作 法，但是因为这可能会影响公共利益， 美国知识产权协会建议商标评审委员会 保留审批和解协议的权力来保障公众利 益。	AIPLA commends the deference to settlement by the parties but because public interest concerns may be affected, encourages the TRAB to reserve authority to review and approve settlement agreements to ensure that they are consistent with the public interest.

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<p>第三十三条合议组审理案件应当制作合议笔录，并由合议组成员签名。合议组成员有不同意见的，应当如实记入合议笔录。</p> <p>经审理终结的案件，商标评审委员会依法作出决定、裁定。</p>	<p>Article 33 Hearing of a case by a collegiate panel shall be subject to preparation of the written record of the discussion, with the signatures of the panel members affixed thereto. Any dissenting opinion of a panel member, if any, shall be truthfully included in the said record.</p> <p>After a case is closed through hearing, the TRAB shall render its decision or ruling pursuant to the law.</p>	<p>第三十一条合议组审理案件应当制作合议笔录，并由合议组成员签名。合议组成员有不同意见的，应当如实记入合议笔录。</p> <p>经审理终结的案件，商标评审委员会依法作出决定、裁定。</p>	<p>Article 31 Hearing of a case by a collegiate panel shall be subject to preparation of the written record of the discussion, with the signatures of the panel members affixed thereto. Any dissenting opinion of a panel member, if any, shall be truthfully included in the said record.</p> <p>After a case is closed through hearing, the TRAB shall render its decision or ruling pursuant to the law.</p>		
<p>第三十四条商标评审委员会作出的决定书、裁定书应当载明下列内容：</p> <p>（一） 评审请求、争议的事实和理由；</p> <p>（二） 决定或者裁定认定的事实、理由和适用的法律依据；</p> <p>（三） 决定或者裁定结论；</p> <p>（四） 可供当事人选用的后续程序和时限；</p> <p>（五） 决定、裁定作出的日期。</p> <p>决定书、裁定书由合议组成员署名，加盖商标评审委员会印章。</p>	<p>Article 34 A written decision or ruling rendered by the TRAB shall include:</p> <p>(1) Review and adjudication request and facts and grounds for the dispute at issue;</p> <p>(2) Facts, grounds, and applicable legal basis for the decision or ruling;</p> <p>(3) Conclusion of the decision or ruling;</p> <p>(4) Subsequent procedures and time limit for selection by the parties concerned; and</p> <p>(5) Date on which the decision or ruling is rendered.</p> <p>The decision or ruling shall be affixed with the signatures of the members of the collegiate panel and the seal of the TRAB.</p>	<p>第三十二条商标评审委员会作出的决定、裁定应当载明下列内容：</p> <p>（一） 当事人的评审请求、争议的事实、理由和证据；</p> <p>（二） 决定或者裁定认定的事实、理由和适用的法律依据；</p> <p>（三） 决定或者裁定结论；</p> <p>（四） 可供当事人选用的后续程序和时限；</p> <p>（五） 决定、裁定作出的日期。</p> <p>决定、裁定由合议组成员署名，加盖商标评审委员会印章。</p>	<p>Article 32 A decision or ruling rendered by the TRAB shall include:</p> <p>(1) Review and adjudication request and facts, grounds and evidences for the dispute at issue of the parties concerned;</p> <p>(2) Facts, grounds, and applicable legal basis for the decision or ruling;</p> <p>(3) Conclusion of the decision or ruling;</p> <p>(4) Subsequent procedures and time limit for selection by the parties concerned;</p> <p>(5) Date on which the decision or ruling is rendered.</p> <p>The decision or ruling shall be affixed with the signatures of the members of the collegiate panel and the seal of the TRAB.</p>	<p>美国知识产权协会对商标评审委员会作出的决定、裁定应当载明其依据的证据的规定表示认同。美国知识产权协会相信这项规定将促进案件审理的统一性和一致性，同时将进一步促进基于法规的公正审理。</p>	<p>AIPLA commends the TRAB for including in its decision or ruling a discussion of the evidence on which the decision is based. AIPLA believes that this procedure will enhance consistency and uniformity in decision-making and further support principled decisions based on a rule of law.</p>

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<p>第三十五条对商标评审委员会作出的决定、裁定，当事人不服向人民法院起诉的，应当在向人民法院递交起诉状的同时或者至迟 15 日内将该起诉状副本抄送或者另行书面告知商标评审委员会。</p> <p>商标评审委员会自所作出的决定、裁定发出之日起 60 日内未收到来自人民法院或者案件当事人任何有关该决定、裁定之起诉信息的，视为有关当事人未向法院起诉，该决定、裁定移送商标局执行。</p>	<p>Article 35 Where a party concerned is dissatisfied with a decision or ruling rendered by the TRAB and files a lawsuit with a people's court, the party shall, either simultaneously when delivering a statement of claim or, at the latest, within 15days of the delivery, submit a duplicate of the statement of claim to theTRAB or otherwise inform the TRAB in writing.</p> <p>Within 60 days of the delivery of a decision or ruling rendered by the TRAB, if the TRAB receives no information on a lawsuit concerning that decision or ruling from the relevant people's court or the parties concerned in the case, the parties shall be deemed to have not filed any lawsuit with a court, and the decision or ruling shall be transferred to the Trademark Office for enforcement.</p>	<p>第三十三条对商标评审委员会作出的决定、裁定，当事人不服向人民法院起诉的，应当在向人民法院递交起诉状的同时或者至迟 15 日内将 该起诉状副本抄送或者另行 将起诉信息书面告知商标评审委员会。</p> <p>除商标评审委员会作出的准予初步审定或予以核准 注册的決定外，商标评审委员会自作出决定、裁定之日起四 个月内未收到来自人民法院 应诉通知的，该决定、裁定移送商标局执行。</p> <p>商标评审委员会自收到 当事人起诉状副本或者书面 起诉通知之日起四个月内未 收到来自人民法院应诉通知 的，相关决定、裁定移送商标 局执行。</p>	<p>Article 33 Where a party concerned is dissatisfied with a decision or ruling rendered by the TRAB and files a lawsuit with a people's court, the party shall, either simultaneously when delivering a statement of claim or, at the latest, within 15 days of the delivery, submit a duplicate of the statement of claim to the TRAB or otherwise inform the TRAB with the lawsuit in writing.</p> <p>In addition to the decision of preliminary approval or registration approval rendered by theTRAB, within 4 months of the delivery of a decision or ruling rendered by theTRAB, if the TRAB receives no notice of appearance from the people's court, the decision or ruling shall betransferred to the Trademark Office for enforcement.</p> <p>Within 4months of a duplicate of the statement of claim or written notice of indictment received by theTRAB from the party concerned, if the TRAB receives no notice of appearance from the people's court, relevant decision or ruling shall be transferred to the Trademark Office for enforcement.</p>	<p>美国知识产权协会认同要求将涉及相关商标的诉讼告知商标评审委员会的规定。但是，考虑到《征求意见稿》计划商标评审委员会和人民法院协调执法，因此就任何该等诉讼，最好是由人民法院直接向商标评审委员告知其审理的状态及作出的裁定。美国知识产权协会建议《征求意见稿》规定，就涉及商标评审委员会程序标的的商标的任何诉讼，由人民法院直接通报商标评审委员会其审理状态。</p>	<p>AIPLA commends the requirement that the TRAB be informed of any lawsuit involving the mark. Nonetheless, AIPLA respectfully submits that because the Draft contemplates that enforcement will be coordinated between the TRAB and the People’s Court, the People’s Court is in the best position to inform the TRAB directly of the pendency of any such lawsuit as well as any decision. AIPLA requests that the Draft be amended to require that the People’s Courts inform the TRAB directly of the pendency of any lawsuit involving a trademark that is or has been the subject of TRAB proceedings.</p>

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		<p>第三十四条 在一审行政诉讼程序中，若因商标评审决定、裁定所引证的商标已经丧失在先权利导致决定、裁定事实认定、法律适用发生变化的，在原告撤诉的情况下，商标评审委员会可以撤回原决定或裁定，并依据新的事实，重新作出商标评审决定或裁定。</p> <p>商标评审决定、裁定送达当事人后，商标评审委员会发现存在文字错误等非实质性错误的，可以向评审当事人发送更正通知书对错误内容进行更正。</p>	<p>Article 34 In the administrative litigation procedure of the first instance, if decision, ruling of facts, and applicable laws change due to the fact that the pre-existing right to use the trademark cited in a decision or ruling on the trademark review and adjudication ceased to exist, and the accuser withdraws his/her lawsuit, the TRAB may withdraw the original decision or ruling and render new decision or ruling on the trademark review and adjudication according to the new fact.</p> <p>After the decision or ruling on the trademark review and adjudication is delivered to the party concerned, if the TRAB finds spelling mistakes and other minor errors that do not make much difference, the TRAB may send a correction notice to the interested parties for error correction.</p>	<p>美国知识产权协会认同《征求意见稿》协调和维护人民法院和商标评审委员会执法一致性。美国知识产权协会鼓励商标评审委员会确保执法一致性，从而避免出现行政部门和法院对同一商标的裁决存在冲突的情形。</p>	<p>AIPLA supports the Draft for seeking to coordinate and ensure consistency between enforcement in the People's Court and the TRAB's decision. AIPLA encourages the TRAB to ensure consistency of enforcement so that there is no conflict between administrative and judicial enforcement of the same mark.</p>

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		<p>第三十五条 商标评审决定、裁定经人民法院生效判决撤销的，商标评审委员会应当重新组成合议组，及时审理，并作出重审决定、裁定。</p> <p>重审程序中，商标评审委员会对当事人新提出的评审请求和法律依据不列入重审范围；对当事人补充提交的足以影响案件审理结果的证据可以予以采信，有对方当事人 的，应当送达对方当事人予以 质证。</p>	<p>Article 35 If the decision or ruling on the trademark review and adjudication is canceled by the people's court, the TRAB shall form a new collegiate panel to hear the case in time and render new decision or ruling.</p> <p>In the retrial procedure, the TRAB will not include the new review and adjudication request and legal basis rendered by the party concerned in the scope of retrial; supplementary evidence submitted by the party concerned which may affect the trial result may be accepted and shall be sent to the opposite party for cross-examination if the opposite party exists.</p>	<p>因为执法的一致性对可预见的法律权利非常重要，美国知识产权协会认同商标评审委员会重审的规定。如上所述，人民法院和商标评审委员会的裁决不一致会削弱公众对法律制度的可预测性和公正性的信心。</p> <p>美国知识产权协会注意到，《征求意见稿》中允许商标评审委员会重审案件，包括引进新的证据。美国知识产权协会鼓励《征求意见稿》采用附加程序来确保商标评审委员会与人民法院审理的一致性，而不仅仅是由商标评审委员会重审。例如，采用人民法院审理时已经持有却未在诉讼中使用的证据时，可要求当事人必须说明其正当理由。</p>	<p>Because consistency in enforcement is critical to predictable legal rights, AIPLA supports the review of the decision by the TRAB. As noted above, inconsistency of decisions between the People's Court and the TRAB undermines public confidence in the predictability and fairness of the legal system.</p> <p>AIPLA recognizes that the Draft permits retrial of the issues, including the introduction of additional evidence by the TRAB. AIPLA encourages the Draft to employ additional procedures to ensure consistency in adjudication between the TRAB and the People's Court and not merely that the TRAB review its decision. For example, a showing of good cause may be imposed for introducing evidence that was available to the party at the time of the adjudication by the People's Court but not introduced in the lawsuit.</p>
<p>第三十六条商标评审委员会根据当事人的请求或者实际需要，可以决定对评审申请进行公开评审。</p>	<p>Article 36 As requested or actually needed by a party concerned, the TRAB may decide to conduct a public review and adjudication for a review and adjudication application.</p>				
<p>第三十七条当事人请求进行公开评审的，应当提出需要进行公开评审的具体理由。</p>	<p>Article 37 Where a party concerned requests a public review and adjudication, the party shall state the specific reasons for the necessity of conducting such a public review and adjudication.</p>				

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第三十八条 申请人请求进行公开评审的，应当自收到被申请人的答辩书副本之日起 15 日内以书面形式向商标评审委员会提出；被申请人请求进行公开评审的，应当在向商标评审委员会提交答辩书或者补充有关证据材料时一并提出。	Article 38 If the applicant requests a public review and adjudication, the applicant shall file a written request to the TRAB within 15 days of receiving the duplicate of the respondent's statement of reply; if the respondent requests a public review and adjudication, the respondent shall file the request simultaneously when submitting the statement of reply or the related supplementary evidence to the TRAB.				
第三十九条 公开评审的具体程序由商标评审委员会另行规定。	Article 39 The specific procedures for public review and adjudication shall be separately formulated by the TRAB.				
第四章 证据规则	Chapter IV: Rules on Evidence	第四章 证据规则	Chapter IV Rules on Evidence		

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<p>第四十条当事人对自己提出的评审请求所依据的事实或者反驳对方评审请求所依据的事实有责任提供证据加以证明。没有证据或者证据不足以证明当事人的事实主张的，由负有举证责任的当事人承担不利后果。一方当事人对另一方当事人陈述的案件事实明确表示承认的，另一方当事人无需举证。对一方当事人陈述的事实，另一方当事人既未表示承认也未否认的，视为对该项事实的承认。当事人委托代理人参加评审的，代理人的承认视为当事人的承认。但未经特别授权的代理人对事实的承认直接导致承认对方评审请求的除外；当事人在场但对其代理人的承认不作否认表示的，视为当事人的承认。</p>	<p>Article 40 A party concerned shall be subject to burden of proof to establish the facts that serve as the basis for the party to file a review and adjudication request or for the party to refute the other party's review and adjudication request. In the absence or insufficiency of evidence to establish the facts alleged by a party concerned, the party subject to burden of proof shall bear the adverse consequences resulting therefrom.</p> <p>Where a party concerned expressly acknowledges the facts of the relevant case that are stated by the other party concerned, such other party shall be exempted from the burden of proof.</p> <p>With respect to any fact stated by a party concerned, if the other party concerned neither acknowledges nor denies the fact, such other party shall be deemed to have acknowledged the fact.</p> <p>Where a party concerned entrusts an agent to participate in a review and adjudication, the agent's acknowledgement shall be deemed that party's acknowledgement, except where the acknowledgement by an agent that is not subject to special authorization directly results in the acknowledgement of the other party's review and adjudication review. Where the entrusting party is present, the party's failure to express any objection to the agent's acknowledgement shall be deemed the party's acknowledgement.</p>	<p>第三十六条当事人对自己提出的评审请求所依据的事实或者反驳对方评审请求所依据的事实有责任提供证据加以证明。</p> <p>证据包括书证、物证、视听资料、电子数据、证人证言、鉴定意见、当事人的陈述等。</p> <p>没有证据或者证据不足以证明当事人的事实主张的，由负有举证责任的当事人承担不利后果。</p> <p>一方当事人对另一方当事人陈述的案件事实明确表示承认的，另一方当事人无需举证，但商标评审委员会认为确有必要举证的除外。</p> <p>当事人委托代理人参加评审的，代理人的承认视为当事人的承认。但未经特别授权的代理人对事实的承认直接导致承认对方评审请求的除外；当事人在场但对其代理人的承认不作否认表示的，视为当事人的承认。</p>	<p>Article 36 A party concerned shall be subject to burden of proof to establish the facts that serve as the basis for the party to file a review and adjudication request or for the party to refute the other party's review and adjudication request.</p> <p>Evidence includes documentary evidence, physical evidence, audio-visual materials, electronic evidence, testimonies of witnesses, expert opinions, and statements of parties concerned.</p> <p>In the absence or insufficiency of evidence to establish the facts alleged by a party concerned, the party subject to burden of proof shall bear the adverse consequences resulting therefrom. Where a party concerned expressly acknowledges the facts of the relevant case that are stated by the other party concerned, such other party shall be exempted from the burden of proof, except that the TRAB deems it necessary.</p> <p>Where a party concerned entrusts an agent to participate in a review and adjudication, the agent's acknowledgement shall be deemed that party's acknowledgement, except where the acknowledgement by an agent that is not subject to special authorization directly results in the acknowledgement of the other party's review and adjudication review. Where the entrusting party is present, the party's failure to express any objection to the agent's acknowledgement shall be deemed the party's acknowledgement.</p>	<p>美国知识产权协会认同《征求意见稿》列出可予以采信的证据类别，因为这样可以提高程序的透明度和可预测性。美国知识产权协会认为，明确可予以采信的证据的标准有助于促进案件审理的统一性和一致性。</p>	<p>AIPLA supports the Draft as specifying the types of evidence that may be admitted because this increases the transparency and predictability of the proceedings. AIPLA respectfully submits that identifying evidentiary standards by which the admissibility of such evidence will be determined would foster greater consistency and uniformity in decision-making.</p>

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<p>第四十一条下列事实，当事人无需举证证明：</p> <p>（一）众所周知的事实；</p> <p>（二）按照法律规定推定的事实；</p> <p>（三）已经依法证明的事实；</p> <p>（四）根据日常生活经验法则推定的事实；</p> <p>（五）其他依法无需举证的事实。</p> <p>但当事人有相反证据足以推翻的除外。</p>	<p>Article 41 A party concerned shall be free from presenting proof to establish the following facts:</p> <p>(1) Facts that are commonly known to the public;</p> <p>(2) Facts that are inferred on the basis of statutory provisions;</p> <p>(3) Facts that have been duly established pursuant to the law;</p> <p>(4) Facts that are inferred on the basis of the rules of day-to-day living experiences; and</p> <p>(5) Other factsof which establishment by presenting proof is not required pursuant to the law, unless a party concerned has evidence to th econtrary that is sufficient to refute the said facts.</p>	<p>第三十七条下列事实，当事人无需举证证明：</p> <p>（一）众所周知的事实；</p> <p>（二）自然规律及定理；</p> <p>（三）根据法律规定或者已知事实和日常生活经验法则，能推定出的另一事实；</p> <p>（四）已为人民法院发生法律效力裁判所确认的事实；</p> <p>（五）已为仲裁机构的生效裁决所确认的事实；</p> <p>（六）已为有效公证文书所证明的事实。</p> <p>前款（一）、（三）、（四）、（五）、（六）项，有相反证据足以推翻的除外。</p>	<p>Article 37 A party concerned shall be free from presenting proof to establish the followingfacts:</p> <p>(1) Facts that are commonly known to the public;</p> <p>(2) Nature laws and theorem;</p> <p>(3) Facts that are inferred based on statutory provisions or known facts and routine experience and principles;</p> <p>(4) The facts confirmed by the judgments with legal effect of the people's courts;</p> <p>(5) The facts confirmed by the awards with legal effect of the arbitration organization;</p> <p>(6) The facts proved by the effective notarial documents.</p> <p>Unless a party concerned has Evidence to thecontrary that is sufficient to refute the said facts in the preceding Item (1), (2), (3), (4), (5), and (6).</p>	<p>美国知识产权协会认同《征求意见稿》提高证据标准的作法，因为这可以促进案件审理的统一性和一致性。不过，其中提到的“定理”一词的含义并不明确。如果是指一个在学科领域普遍接受的数学公式的话，加入“定理”的规定符合自然规律。但如果该处的“定理”指的是未被证明的理论，那么美国知识产权协会建议删除该词。</p>	<p>AIPLA supports the draft as furthering consistent evidentiary standards because it encourages consistency and uniformity in decision-making. The reference to theorem, however, is unclear. If the reference is to a mathematical theorem that isgenerally accepted in the scientific community, the inclusion of theorem is consistent with laws of nature. If it indicates a theory that is unproven, AIPLA recommends that this term be deleted.</p>

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<p>第四十二条当事人向商标评审委员会提供书证的，应当提供原件，包括原本、正本和副本。提供原件有困难的，可以提供相应的复印件、照片、节录本；提供由有关部门保管的书证原件的复制件、影印件或者抄录件的，应当注明出处，经该部门核对无异后加盖其印章。</p> <p>当事人向商标评审委员会提供物证的，应当提供原物。提供原物有困难的，可以提供相应的复制件或者证明该物证的照片、录像等其他证据；原物为数量较多的种类物的，提供其中的一部分。</p> <p>一方当事人对另一方当事人所提书证、物证的复制件或者照片等存在怀疑并有相应证据支持的，或者商标评审委员会认为有必要的，被质疑的当事人应当提供或者出示有关证据的原件或经公证的复印件。</p>	<p>Article 42 Any documentary evidence submitted by a party concerned to the TRAB shall be accompanied by the original documents, including the original version, original, and duplicate. Where it is difficult for the party to provide the original documents, a corresponding photocopy, photo, or excerpt version may be provided instead. In the event of providing a reproduction, photocopy, or transcription of any original documentary evidence that is under the custody of a relevant authority, the source shall be indicated therein and the seal of that authority shall be affixed thereto upon authentication by the authority.</p> <p>Any physical evidence submitted by a party concerned to the TRAB shall be the original object. Where it is difficult for the party to provide the original object, a corresponding reproduction, or other evidence such as a photo or video demonstrating the said physical evidence, may be provided instead. Where the original object is an object of variety in a relatively large quantity, a part thereof may be provided instead.</p> <p>...</p>	<p>第三十八条当事人向商标评审委员会提供书证的，应当提供原件，包括原本、正本和副本。提供原件有困难的，可以提供相应的复印件、照片、节录本；提供由有关部门保管的书证原件的复制件、影印件或者抄录件的，应当注明出处，经该部门核对无异后加盖其印章。</p> <p>当事人向商标评审委员会提供物证的，应当提供原物。提供原物有困难的，可以提供相应的复制件或者证明该物证的照片、录像等其他证据；原物为数量较多的种类物的，可以提供其中的一部分。</p> <p>一方当事人对另一方当事人所提书证、物证的复制件、照片、录像等存在怀疑并有相应证据支持的，或者商标评审委员会认为有必要的，被质疑的当事人应当提供或者出示有关证据的原件或经公证的复印件。</p>	<p>Article 38 Any documentary evidence submitted by a party concerned to the TRAB shall be accompanied by the original documents, including the original version, original, and duplicate. Where it is difficult for the party to provide the original documents, a corresponding photocopy, photo, or excerpt version may be provided instead. In the event of providing a reproduction, photocopy, or transcription of any original documentary evidence that is under the custody of a relevant authority, the source shall be indicated therein and the seal of that authority shall be affixed thereto upon authentication by the authority.</p> <p>Any physical evidence submitted by a party concerned to the TRAB shall be the original object. Where it is difficult for the party to provide the original object, a corresponding reproduction, or other evidence such as a photo or video demonstrating the said physical evidence, may be provided instead. Where the original object is an object of variety in a relatively large quantity, a part thereof may be provided instead.</p> <p>...</p>	<p>美国知识产权协会认同《征求意见稿》加入录像证据的规定，因为这可以保证证据标准的同期性。</p>	<p>AIPLA supports the Draft for including video evidence, maintaining contemporaneous the evidentiary standards.</p>

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	<p>...</p> <p>Where a party concerned has doubt over the reproduction, photo, etc., of any documentary evidence or physical evidence submitted by the other party concerned and has evidence in support of the doubt, or the TRAB deems it necessary, the challenged party shall provide or present the original or a notarized photocopy of the relevant evidence.</p>		<p>...</p> <p>Where a party concerned has doubt over the reproduction, photo, video, etc. of any documentary evidence or physical evidence submitted by the other party concerned and has evidence in support of the doubt, or the TRAB deems it necessary, the challenged party shall provide or present the original or a notarized photocopy of the relevant evidence.</p>		
<p>第四十三条当事人向商标评审委员会提供的证据系在中华人民共和国领域外形成，或者在香港、澳门、台湾地区形成，对方当事人对该证据的真实性存在怀疑并有相应证据支持的，或者商标评审委员会认为必要的，应当依照有关规定办理相应的公证认证手续。</p>	<p>Article 43 Where any evidence submitted by a party concerned to the TRAB originates outside the territory of the People's Republic of China or from the Hong Kong, Macau, or Taiwan regions, and the other party concerned has doubt over the authenticity of the evidence and has evidence in support of the doubt, or the TRAB deems it necessary, the corresponding notarization and authentication formalities shall be gone through in accordance with the relevant provisions.</p>	<p>第三十九条当事人向商标评审委员会提供的证据系在中华人民共和国领域外形成，或者在香港、澳门、台湾地区形成，对方当事人对该证据的真实性存在怀疑并有相应证据支持的，或者商标评审委员会认为必要的，应当依照有关规定办理相应的公证认证手续。</p>	<p>Article 39 Where any evidence submitted by a party concerned to the TRAB originates outside the territory of the People's Republic of China or from the Hong Kong, Macau, or Taiwan regions, and the other party concerned has doubt over the authenticity of the evidence and has evidence in support of the doubt, or the TRAB deems it necessary, the corresponding notarization and authentication formalities shall be gone through in accordance with the relevant provisions.</p>	<p>美国知识产权协会指出，《征求意见稿》认为在中国领域外形成的证据存在固有质疑。在美国知识产权协会看来，这样的假定没有根据的，而且还会削弱国际取证标准性。美国知识产权协会鼓励起草人允许根据任何有效证据对中国境外形成的事实进行认定，而不应明确要求证据提交者办理费时和繁琐的认证程序，因为该等手续不仅不会提高证据的可信度，还会增加证据提交者的支出。</p>	<p>AIPLA expresses its concern that the Draft treats evidence originating outside the territory of China as inherently suspect. This presumption is, in AIPLA's view, unjustified and undermines international evidentiary standards. AIPLA encourages the drafters to permit proof of facts originating outside of China through any competent evidence, without expressly requiring that the proponent of the evidence undertake time-consuming and tedious legalization procedures because such procedures do not enhance the reliability of the evidence and increase the proponent's costs.</p>

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<p>第四十四条当事人向商标评审委员会提供外文书证或者外文说明资料，应当附有中文译文。提交外文证据的当事人未提交中文译文的，该外文证据视为未提交。</p> <p>对方当事人对译文具体内容有异议的，应当对有异议的部分提交中文译文。必要时，可以委托双方当事人认可的单位对全文、或者所使用部分或者有异议的部分进行翻译。</p> <p>双方当事人对委托翻译达不成协议的，商标评审委员会可以指定专业翻译单位对全文、或者所使用部分或者有异议部分进行翻译。委托翻译所需费用由双方当事人各承担 50%；拒绝支付翻译费用的，视为其承认对方提交的译文。</p>	<p>Article 44 If any documentary evidence or explanatory material submitted by a party concerned to the TRAB is in a foreign language, the Chinese translation shall be attached thereto. If the party that has submitted any evidence in a foreign language fails to submit the Chinese translation thereof, such evidence in a foreign language shall be deemed to have not been submitted.</p> <p>If the other party concerned raises an objection against the specific content of the Chinese translation, the Chinese translation of the portion under objection shall be submitted. When necessary, an organization mutually accepted by the parties concerned may be trusted to render a translation of the entire document, or of the portion to be used, or of the portion under objection.</p> <p>If the parties concerned fail to reach an agreement on the entrustment for translation, the TRAB may designate a professional translation agency to translate the entire document, the portion to be used, or the portion under objection. The two parties shall each bear 50% of the costs incurred for the entrusted translation. The refusal of either party to pay the translation fee shall be deemed as the party's acceptance of the translation provided by the other party.</p>	<p>第四十条当事人向商标评审委员会提供外文书证或者外文说明资料，应当附有中文译文。未提交中文译文的，该外文证据视为未提交。</p> <p>对方当事人对译文具体内容有异议的，应当对有异议的部分提交中文译文。必要时，可以委托双方当事人认可的单位对全文、或者所使用或 有异议的部分进行翻译。</p> <p>双方当事人对委托翻译 达不成协议的，商标评审委员会可以指定专业翻译单位对全文、或者所使用的或 有异议 的部分进行翻译。委托翻译所需费用由双方当事人各承担 50%；拒绝支付翻译费用的，视为其承认对方提交的译文。</p>	<p>Article 40 If any documentary evidence or explanatory material submitted by a party concerned to the TRAB is in a foreign language, the Chinese translation shall be attached thereto. If the party that has submitted any evidence in a foreign language fails to submit the Chinese translation thereof, such evidence in a foreign language shall be deemed to have not been submitted.</p> <p>If the other party concerned raises an objection against the specific content of the Chinese translation, the Chinese translation of the portion under objection shall be submitted. When necessary, an organization mutually accepted by the parties concerned may be entrusted to render a translation of the entire document, or of the portion to be used, or of the portion under objection.</p> <p>If the parties concerned fail to reach an agreement on the entrustment for translation, the TRAB may designate a professional translation agency to translate the entire document, the portion to be used, or the portion under objection. The two parties shall each bear 50% of the costs incurred for the entrusted translation. The refusal of either party to pay the translation fee shall be deemed as the party's acceptance of the translation provided by the other party.</p>	<p>美国知识产权协会认同《征求意见稿》中新增的允许只对有异议的部分，而不是全文提交中文译文的规定。但是，由于仅有争议的部分是非常相关的美国知识产权协会建议《征求意见稿》指定在必要的情况下，只有有争议的部分需要被第三方翻译。</p>	<p>AIPLA supports the Draft for including a revision that the portion under dispute may be translated rather than the entire document but, because only the portion on dispute is material, recommends that the Draft specify that only the portion being disputed shall be translated by the third party, if necessary.</p>

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<p>第四十五条 对单一证据有无证明力和证明力大小可以从下列方面进行审核认定：</p> <p>（一） 证据是否原件、原物，复印件、复制品与原物、原物是否相符；</p> <p>（二） 证据与本案事实是否相关；</p> <p>（三） 证据的形式、来源是否符合法律规定；</p> <p>（四） 证据的内容是否真实；</p> <p>（五） 证人或者提供证据的人，与当事人有无利害关系。</p>	<p>Article 45 Whether or not a piece of evidence is strong enough to provide proof and the level of the strength can be determined by examining and verifying:</p> <p>(1) whether the evidence is the original document or object or, in the case of a photocopy or reproduction, whether it corresponds to the original document or object;</p> <p>(2) whether the evidence is relevant to the facts of the case;</p> <p>(3) whether the form and source of the evidence conform to the statutory provisions;</p> <p>(4) whether the contents of the evidence are truthful; and</p> <p>(5) whether the witness or the person providing the evidence is an interested party to either of the parties concerned.</p>	<p>第四十一条对单一证据有无证明力和证明力大小可以从下列方面进行审核认定：</p> <p>（一）证据是否原件、原物，复印件、复制品与原物、原物是否相符；</p> <p>（二）证据与本案事实是否相关；</p> <p>（三）证据的形式、来源是否符合法律规定；</p> <p>（四）证据的内容是否真实；</p> <p>（五）证人或者提供证据的人，与当事人有无利害关系。</p>	<p>Article 41 Whether or not a piece of evidence is strong enough to provide proof and the level of the strength can be determined by examining and verifying:</p> <p>(1) Whether the evidence is the original document or object or, in the case of a photocopy or reproduction, whether it corresponds to the original document or object;</p> <p>(2) Whether the evidence is relevant to the facts of the case;</p> <p>(3) Whether the form and source of the evidence conform to the statutory provisions;</p> <p>(4) Whether the content of the evidence is truthful;</p> <p>(5) Whether the witness or the person providing the evidence is an interested party to either of the parties concerned.</p>		
<p>第四十六条 评审人员对案件的全部证据，应当从各证据与案件事实的关联程度、各证据之间的联系等方面进行综合审查判断。</p>	<p>Article 46 The adjudicators shall carry out a comprehensive examination and judgment on all the evidence for the case at issue from such perspectives as the degree of relevance of each piece of evidence to the facts of the case and the association between different pieces of evidence.</p>	<p>第四十二条 评审人员对案件的全部证据，应当从各证据与案件事实的关联程度、各证据之间的联系等方面进行综合审查判断。有对方当事人的，未经交换质证的证据不应当予以采信。</p>	<p>Article 42 The adjudicators shall carry out a comprehensive examination and judgment on all the evidence for the case a tissue from such perspectives as the degree of relevance of each piece of evidence to the facts of the case and the association between different pieces of evidence.</p> <p>If there is an opposite party concerned, the evidence without cross-examination shall not be trusted.</p>	<p>美国知识产权协会认同《征求意见稿》起草人强调用交换质证来辩证证据的作法。美国知识产权协会鼓励修改《征求意见稿》，明确指出具决定意义的是对方当事人有交换质证的机会，而不是对方当事人是否利用了这个机会。此外，美国知识产权协会建议起草人确认在有些情况下，如果证据有足够的可靠性，即使对方当事人反对，未经交换质证的证据也可予以采信。</p>	<p>AIPLA commends the drafters' emphasis on cross-examination as a mechanism for authenticating proffered evidence. AIPLA encourages revision of the draft to make clear that it is the opportunity for the opponent to cross-examine, and not whether or not the opponent has availed itself of this opportunity, that is dispositive. Further, AIPLA encourages the drafters to acknowledge that there may be circumstances in which the evidence is supported by sufficient indicia of reliability that it may be accepted, even over objection and without the opportunity for cross-examination.</p>

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<p>第四十七条下列证据不能单独作为认定案件事实的依据：</p> <p>（一） 未成年人所作的与其年龄和智力状况不相适应的证言；</p> <p>（二） 与一方当事人有亲属关系、隶属关系或者其他密切关系的证人所作的对该当事人有利的证言，或者与一方当事人有不利关系的证人所作的对该当事人不利的证言；</p> <p>（三） 应当参加公开评审作证而无正当理由不参加公开评审作证的证人证言；</p> <p>（四） 难以识别是否经过修改的视听资料；</p> <p>（五） 无法与原件、原物核对的复制件或者复制品；</p> <p>（六） 经一方当事人或者他人改动，对方当事人不予认可的证据材料；</p> <p>（七） 其他不能单独作为认定案件事实依据的证据材料。</p>	<p>Article 47 The following evidence cannot independently serve as the basis for establishing the facts involved in a case:</p> <p>(1) Testimony given by a minor, which is not consistent with a person of the same age and intelligence level;</p> <p>(2) Testimony given by a witness who is a relative or subordinate of, or otherwise closely affiliated with either party concerned, which is in favor of that party or testimony given by a witness who is in an unfavorable relationship with either party concerned, which is unfavorable to that party;</p> <p>(3) Testimony given by a witness who is required to testify in a public review and adjudication but fails to do so without any justification;</p> <p>(4) Audio-visual material that is not easily discernable as to whether it has been altered or not;</p> <p>(5) Reproduced document or object that is impossible to be verified against the original document or object;</p> <p>(6) Evidentiary material that is altered by either party concerned or a third party and that the other party concerned refuses to accept;</p> <p>(7) Any other evidentiary material that cannot independently serve as the basis for establishing the facts involved in a case.</p>	<p>第四十三条下列证据不能单独作为认定案件事实的依据：</p> <p>（一） 未成年人所作的与其年龄和智力状况不相适应的证言；</p> <p>（二） 与一方当事人有亲属关系、隶属关系或者其他密切关系的证人所作的对该当事人有利的证言，或者与一方当事人有不利关系的证人所作的对该当事人不利的证言；</p> <p>（三） 应当参加口头审理作证而无正当理由由不参加的证人证言；</p> <p>（四） 难以识别是否经过修改的视听资料；</p> <p>（五） 无法与原件、原物核对的复制件或者复制品；</p> <p>（六） 经一方当事人或者他人改动，对方当事人不予认可的证据材料；</p> <p>（七） 其他不能单独作为认定案件事实依据的证据材料。</p>	<p>Article 43 The following evidence cannot independently serve as the basis for establishing the facts involved in a case:</p> <p>(1) Testimony given by a minor, which is not consistent with a person of the same age and intelligence level;</p> <p>(2) Testimony given by a witness who is a relative or subordinate of, or otherwise closely affiliated with either party concerned, which is in favor of that party or testimony given by a witness who is in an unfavorable relationship with either party concerned, which is unfavorable to that party;</p> <p>(3) Testimony given by a witness who is required to testify in an oral hearing but fails to do so without any justification;</p> <p>(4) Audio-visual material that is not easily discernable as to whether it has been altered or not;</p> <p>(5) Reproduced document or object that is impossible to be verified against the original document or object;</p> <p>(6) Evidentiary material that is altered by either party concerned or a third party and that the other party concerned refuses to accept;</p> <p>(7) Any other evidentiary material that cannot independently serve as the basis for establishing the facts involved in a case.</p>	<p>美国知识产权协会认同《征求意见稿》对证据的标准作出明确规定，因为这可以促进案件审理的统一性和一致性。不过，美国知识产权协会建议起草人删除本条的第（二）、（四）和（五）项，因为证据核查人员应当获准根据提交的证据认定证据材料是否真实。特别是第（五）项中的“无法”规定似乎过于苛刻。</p>	<p>AIPLA supports the Draft for specifying evidentiary standards because these encourage uniformity and consistency in decision-making. AIPLA, however, encourages the drafters to eliminate the exclusions of Paragraphs (2), (4), and (5) because the finder of fact should be permitted to determine whether or not the material is authentic based on the evidence presented. Specifically, the “impossibility” standard of Paragraph (5) appears to be extreme.</p>

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<p>四十八条一方当事人提出的下列证据，对方当事人提出 异议但没有足以反驳的相反证 据的，商标评审委员会应当确认 其证明力： （一）书证原件或者与书证原件核对无误的复印件、照片、副本、节录本； （二） 物证原物或者与物证原物核对无误的复制件、照片、录像资料等； （三） 有其他证据佐证并以合法手段取得的、无疑点的视听资料或者与视听资料核对无 误的复制件。</p>	<p>Article 48 With respect to the following evidence produced by a party concerned, the TRAB shall acknowledge the strength of proof provided thereby if the other party concerned raises an objection but has no evidence to the contrary that is sufficient to serve as a refutation: (1) In the case of any documentary evidence, the original document or its photocopy, photo, duplicate, or excerpt that is verified to correspond with the original documentary evidence; (2) In the case of any physical evidence, the original object or its reproduction, photo, or video recording material, etc. that is verified to correspond with the original physical evidence; (3) In the case of any audio-visual material, its original or a reproduction that is verified to correspond with the original, being supported by any other evidence and obtained by lawful means and free of any questionable point.</p>	<p>第四十四条一方当事人提出的下列证据，对方当事人 提出异议但没有足以反驳的 相反证据的，商标评审委员会 应当确认其证明力： （一）书证原件或者与书证原件核对无误的复印件、照片、副本、节录本； （二）物证原物或者与物 证原物核对无误的复制件、照片、录像资料等； （三）有其他证据佐证并 以合法手段取得的、无疑点的 视听资料或者与视听资料核 对无误的复制件。</p>	<p>Article 44 With respect to the following evidence produced by a party concerned, the TRAB shall acknowledge the strength of proof provided thereby if the other party concerned raises an objection but has no evidence to the contrary that is sufficient to serve as a refutation: (1) In the case of any documentary evidence, the original document or its photocopy, photo, duplicate, or excerpt that is verified to correspond with the original documentary evidence; (2) In the case of any physical evidence, the original object or its reproduction, photo, or video recording material, etc. that is verified to correspond with the original physical evidence; (3) In the case of any audio-visual material, its original or a reproduction that is verified to correspond with the original, being supported by any other evidence and obtained by lawful means and free of any questionable point.</p>	<p>美国知识产权协会认同《征求意见稿》继续采纳以经核对无误的复印件代替原件的规定，因为这有助于提高程序的效率并降低当事人的费用。</p>	<p>AIPLA supports the Draft for continuing to provide the admissibility of verified copies, in lieu of the original documents because this enhances the efficiency of the proceedings and reduces the parties costs.</p>
<p>第四十九条 一方当事人委托鉴定部门作出的鉴定结论，另一当事人没有足以反驳的相反 证据和理由的，可以认定其证明力。</p>	<p>Article 49 With respect to the appraisal conclusions of an appraisal agency entrusted by a party concerned, the strength of proof provided thereby may be acknowledged if the other party concerned has no evidence to the contrary or reason that is sufficient to serve as a refutation.</p>	<p>第四十五条一方当事人委托鉴定部门作出的鉴定结 论，另一方当事人没有足以反 驳的相反证据和理由的，可以 确认其证明力。</p>	<p>Article 45 With respect to the appraisal conclusions of an appraisal agency entrusted by a party concerned, the strength of proof provided thereby may be acknowledged if the other party concerned has no evidence to the contrary or reason that is sufficient to serve as a refutation.</p>		

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<p>第五十条 一方当事人提出的证据，另一方当事人认可或者提出的相反证据不足以反驳的，商标评审委员会可以确认其证明力。</p> <p>一方当事人提出的证据，另一方当事人有异议并提出反驳证据，对方当事人对反驳证据认可的，可以确认反驳证据的证明力。</p>	<p>Article 50 With respect to any evidence produced by a party concerned, the TRAB may acknowledge the strength of proof provided by the evidence if it is acknowledged by the other party concerned or the evidence to the contrary produced by the other party concerned is not sufficient to serve as a refutation.</p> <p>With respect to any evidence produced by a party concerned, if the other party concerned raises an objection and produces evidence to the contrary, and the opposite party acknowledges such evidence to the contrary, the strength of proof provided thereby may be acknowledged.</p>	<p>第四十六条 一方当事人提出的证据，另一方当事人认可或者提出的相反证据不足以反驳的，商标评审委员会可以确认其证明力。</p> <p>一方当事人提出的证据，另一方当事人有异议并提出反驳证据，对方当事人对反驳证据认可的，可以确认反驳证据的证明力。</p>	<p>Article 46 With respect to any evidence produced by a party concerned, the TRAB may acknowledge the strength of proof provided by the evidence if it is acknowledged by the other party concerned or the evidence to the contrary produced by the other party concerned is not sufficient to serve as a refutation.</p> <p>With respect to any evidence produced by a party concerned, if the other party concerned raises an objection and produces evidence to the contrary, and the opposite party acknowledges such evidence to the contrary, the strength of proof provided thereby may be acknowledged.</p>		

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<p>第五十一条 双方当事人对同一事实分别举出相反的证据，但都没有足够的依据否定对方证据的，商标评审委员会应当结合案件情况，判断一方提供证据的证明力是否明显大于另一方提供证据的证明力，并对证明力较大的证据予以确认。</p> <p>因证据的证明力无法判断导致争议事实难以认定的，商标评审委员会应当依据举证责任分配原则作出判断。</p>	<p>Article 51 Where both parties concerned produce evidence to the contrary for the same fact, but neither of them has sufficient basis to refute the evidence of the opposite party, the TRAB shall, by taking into consideration the particulars of the case, assess whether the strength of proof provided by the evidence produced by one of the parties is obviously greater than that of the evidence produced by the other party, and acknowledge the evidence with greater strength of proof.</p> <p>Where it is impossible to measure the strength of proof provided by any evidence, thus making it difficult to establish any disputed fact, the TRAB shall make a determination in accordance with the principles for allocating the burden of proof.</p>	<p>第四十七条双方当事人对同一事实分别举出相反的证据，但都没有足够的依据否定对方证据的，商标评审委员会应当结合案件情况，判断一方提供证据的证明力是否明显大于另一方提供证据的证明力，并对证明力较大的证据予以确认。</p> <p>因证据的证明力无法判断导致争议事实难以认定的，商标评审委员会应当依据举证责任分配原则作出判断。</p>	<p>Article 47 Where both parties concerned produce evidence to the contrary for the same fact, but neither of them has sufficient basis to refute the evidence of the opposite party, the TRAB shall, by taking into consideration the particulars of the case, assess whether the strength of proof provided by the evidence produced by one of the parties is obviously greater than that of the evidence produced by the other party, and acknowledge the evidence with greater strength of proof.</p> <p>Where it is impossible to measure the strength of proof provided by any evidence, thus making it difficult to establish any disputed fact, the TRAB shall make a determination in accordance with the principles for allocating the burden of proof.</p>		
<p>第五十二条 评审过程中，当事人在申请书、答辩书、陈述及其委托代理人的代理词中承认的对己方不利的事实和认可的证据，商标评审委员会应当予以确认，但当事人反悔并有相反证据足以推翻的除外。</p>	<p>Article 52 With respect to the facts and evidence acknowledged by a party concerned in the written application, statement of reply, and statement of the party and the representation statement of the party's agent during the review and adjudication process, if any such factor evidence is unfavorable to that party, the TRAB shall establish it, except where the party retracts the acknowledgment and produces sufficient evidence to the contrary to refute the fact or evidence.</p>	<p>第四十八条评审程序中，当事人在申请书、答辩书、陈述及其委托代理人的代理词中承认的对己方不利的事实和认可的证据，商标评审委员会应当予以确认，但当事人反悔并有相反证据足以推翻的除外。</p>	<p>Article 48 With respect to the facts and evidence acknowledged by a party concerned in the written application, statement of reply, and statement of the party and the representation statement of the party's agent during the review and adjudication process, if any such fact or evidence is unfavorable to that party, the TRAB shall establish it, except where the party retracts the acknowledgment and produces sufficient evidence to the contrary to refute the fact or evidence.</p>		

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<p>第五十三条 当事人对自己的主张，只有本人陈述而不能提出其他相关证据的，其主张不予支持。但对方当事人认可的除外。</p>	<p>Article53 If any allegation of a party concerned is accompanied by the party's own statement only, without production of any other relevant evidence, such allegation shall not be upheld unless acknowledged by the opposite party.</p>				

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<p>第五十四条商标评审委员会就数个证据对同一事实的证明力，可以依照下列原则认定：</p> <p>（一） 国家机关以及其他职能部门依职权制作的公文文书优于其他书证；</p> <p>（二） 鉴定结论、档案材料以及经过公证或者登记的书证优于其他书证、视听资料和证人证言；</p> <p>（三） 原件、原物优于复制件、复制品；</p> <p>（四） 法定鉴定部门的鉴定结论优于其他鉴定部门的鉴定结论；</p> <p>（五） 原始证据优于传来证据；</p> <p>（六） 其他证人证言优于与当事人有亲属关系或者其他密切关系的证人提供的对该当事人有利的证言；</p> <p>（七） 参加公开评审作证的证人证言优于未参加公开评审作证的证人证言；</p> <p>（八） 数个种类不同、内容一致的证据优于一个孤立的证据。</p>	<p>Article 54 The TRAB may apply the following principles in acknowledging the strength of proof provided by multiple pieces of evidence produced to support the same fact:</p> <p>(1) Official documents prepared by State authorities and other functional departments on the basis of their power of office take precedence over other Documentary evidence;</p> <p>(2) Appraisal conclusions, archive materials, and notarized or registered documentary evidence take precedence over other documentary evidence, audio-visual materials, and testimonies of witnesses;</p> <p>(3) Original documents or objects take precedence over reproduced documents or objects;</p> <p>(4) Appraisal conclusions of statutory appraisal agencies take precedence over appraisal conclusions of other appraisal agencies;</p> <p>(5) Original evidence takes precedence over hearsay evidence;</p> <p>(6) Testimonies given by other witnesses take precedence over testimonies that are in favor of a party concerned and given by witnesses who are relatives of or otherwise closely affiliated to that party concerned;</p> <p>...</p>	<p>第四十九条商标评审委员会就数个证据对同一事实的证明力，可以依照下列原则认定：</p> <p>（一） 国家机关以及其他职能部门依职权制作的公文文书优于其他书证；</p> <p>（二） 鉴定结论、档案材料以及经过公证或者登记的书证优于其他书证、视听资料和证人证言；</p> <p>（三） 原件、原物优于复制件、复制品；</p> <p>（四） 法定鉴定部门的鉴定结论优于其他鉴定部门的鉴定结论；</p> <p>（五） 原始证据优于传来证据；</p> <p>（六） 其他证人证言优于与当事人有亲属关系或者其他密切关系的证人提供的对该当事人有利的证言；</p> <p>（七） 参加口头审理作证的证人证言优于未参加口头审理作证的证人证言；</p> <p>（八） 数个种类不同、内容一致的证据优于一个孤立的证据。</p>	<p>Article 49 The TRAB may apply the following principles in acknowledging the strength of proof provided by multiple pieces of evidence produced to support the same fact:</p> <p>(1) Official documents prepared by State authorities and other functional departments on the basis of their power of office take precedence over other documentary evidence;</p> <p>(2) Appraisal conclusions, archive materials, and notarized or registered documentary evidence take precedence over other documentary evidence, audio-visual materials, and testimonies of witnesses;</p> <p>(3) Original documents or objects take precedence over reproduced documents or objects;</p> <p>(4) Appraisal conclusions of statutory appraisal agencies take precedence over appraisal conclusions of other appraisal agencies;</p> <p>(5) Original evidence takes precedence over hearsay evidence;</p> <p>(6) Testimonies given by other witnesses take precedence over testimonies that are in favor of a party concerned and given by witnesses who are relatives of or otherwise closely affiliated to that party concerned;</p> <p>...</p>	<p>美国知识产权协会认同《征求意见稿》对是否采纳证据的标准作出明确规定，因为这可以提高案件审理的统一性和一致性。不过，美国知识产权协会建议起草人根据证据的证明力及可信度决定是否采纳证据，而不是以证据是否为官方文件作为是否采信的标准。此外，证人进行现场作证可能出于多方面的原因，美国知识产权协会建议起草人将重点放在证据的可信度方面，而不是是否于现场审理时提供。此外，与当事人有亲属关系或者其他密切关系的证人提供的对该当事人有利的证言也可能是可信的，应予以认定其可信程度而不应根据该利益关系而削弱该证据的价值。</p>	<p>AIPLA supports the Draft for specifying standards for the admissibility of evidence because this enhances the consistency and uniformity of decision-making. Nonetheless, AIPLA encourages the drafters to determine the admissibility of evidence based on the strength and credibility of the evidence and not based on the status of documentation as an official document. Further, there are many reasons why a witness may not testify live at a hearing and AIPLA encourages the drafters to focus instead on the credibility of the evidence, even if it is not presented live. Further, evidence in support of an interested party may nonetheless be credible and the weight it is given should be determined rather than diminishing the value of the evidence based on such an interest.</p>

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	<p>...</p> <p>(7) Testimonies given by witnesses who have testified in the public review and adjudication take precedence over testimonies given by witnesses who have not;</p> <p>(8) Multiple pieces of evidence of different types and consistent contents take precedence over a single piece of evidence.</p>		<p>...</p> <p>(7) Testimonies given by witnesses who have testified in the oral hearing take precedence over testimonies given by witnesses who have not;</p> <p>(8) Multiple pieces of evidence of different types and consistent content take precedence over a single piece of evidence.</p>		
第五章 期间、送达	Chapter V: Time Limits and Service	第五章期间、送达	Chapter V Time Limits and Service		
<p>第五十五条 期间包括法定期间和商标评审委员会指定的期间。</p> <p>期间以日、月、年计算。期间开始的当日，不计算在期间内。</p> <p>期间届满的最后一日是节假日的，以节假日后的第一个工作日为期间届满的日期。</p>	<p>Article 55 Time limits shall include statutory time limits and time limits specified by the TRAB.</p> <p>Time limits shall be on the basis of day, month, or year. The date on which a time limit commences shall not be included in that time limit.</p> <p>If a time limit ends on a holiday, the date on which the time limit ends shall be the first working day following that holiday.</p>	<p>第五十条期间包括法定期间和商标评审委员会指定的期间。期间应当依据实施条例第十二条的规定计算。</p>	<p>Article 50 Time limits shall include statutory time limits and time limits specified by the TRAB. Time limits shall be calculated in accordance with Article 12 of the Implementing Regulations.</p>	<p>美国知识产权协会认同《征求意见稿》指定期限的规定，因为这可以提高可预测性。</p>	<p>AIPLA supports the specification of time limits because it increases predictability.</p>

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<p>第五十六条 当事人向商标评审委员会提交的文件或者材料的日期，直接递交的，以递交日为准；邮寄的，以寄出的邮戳日为准；邮戳日不清晰或者没有邮戳的，以商标评审委员会实际收到日为准，但是当事人能够提出实际邮戳日证据的除外。</p>	<p>Article 56 The date on which a party concerned submits any document or material to the TRAB shall be the date of delivery, in the case of submission by direct delivery, or shall be the date indicated on the postmark that is affixed at the time of dispatch of the mail, in the case of submission by mail. If the postmark date is illegible or there is no postmark date, the date of submission shall be the date on which the TRAB actually receives the document or material, except where the party concerned is able to produce evidence in support of the actual postmark date.</p>	<p>第五十一条 当事人向商标评审委员会提交的文件或者材料的日期，直接递交的，以递交日为准；邮寄的，以寄出的邮戳日为准；邮戳日不清晰或者没有邮戳的，以商标评审委员会实际收到日为准，但是当事人能够提出实际邮戳日证据的除外。通过邮政企业以外的快递企业递交的，以收到日期为准。以数据电文方式提交的，以商标评审委员会电子系统收到的日期为准。</p>	<p>Article 51 The date on which a party concerned submits any document or material to the TRAB shall be the date of delivery, in the case of submission by direct delivery, or shall be the date indicated on the postmark that is affixed at the time of dispatch of the mail, in the case of submission by mail. If the postmark date is illegible or there is no postmark date, the date of submission shall be the date on which the TRAB actually receives the document or material, except where the party concerned is able to produce evidence in support of the actual postmark date. The date of submission shall be the date on which the TRAB actually receives the document or material if submission is delivered by express enterprises out of postal enterprises. The date of submission shall be the date on which the electronic system of the TRAB actually receives the document or material if the submission is delivered in the data message form.</p>		

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<p>第五十七条商标评审委员会的各种文件，可以通过邮寄、直接递交或者其他方式送达当事人。当事人委托商标代理组织的，文件送达商标代理组织视为送达当事人。</p> <p>商标评审委员会向当事人送达各种文件的日期，邮寄的，以当事人收到的邮戳日为准；邮戳日不清晰或者没有邮戳的，或者没有被邮局退回的，自文件发出之日起满 15 日，视为送达当事人；直接递交的，以递交日为准。文件无法邮寄或者无法直接递交的，可以通过公告方式送达当事人，自公告发布之日起满 30 日，该文件视为已经送达。</p>	<p>Article 57 The various documents of the TRAB may be served on the parties concerned by mail, direct delivery, or other means. Where any party concerned entrusts a trademark agency, service of any document on the trademark agency shall be deemed as service thereof on that party.</p> <p>The date on which the TRAB serves any document on a party concerned shall be the date indicated on the postmark that is affixed at the time of receipt of the mail by that party, in the case of service by mail. If the postmark date is illegible or there is no postmark date, or the mail has not been returned by the post office, the document shall be deemed to have been served on the party concerned upon expiry of a 15-day period commencing from the date of dispatch of the mail or, in the case of direct delivery, the date of delivery. If it is impossible to serve the document by mail or direct delivery, the document may be served on the party concerned by way of public announcement, in which case the document shall be deemed to have been served upon expiry of a 30-day period commencing from the date of public announcement.</p>	<p>第五十二条商标评审委员会的各种文件，可以通过邮寄、直接递交、互联网电子方式或者其他方式送达当事人。当事人委托商标代理机构的，文件送达商标代理机构视为送达当事人。商标评审委员会向当事人送达各种文件的日期，以互联网电子方式送达的，自文件发出之日起满十五日，推定为送达当事人；邮寄的，以当事人收到的邮戳日为准；邮戳日不清晰或者没有邮戳的，或者邮件没有被邮局退回的，自文件发出之日起满十五日，视为送达当事人；直接递交的，以递交日为准。文件通过上述方式无法送达的，可以通过公告方式送达当事人，自公告发布之日起满三十日，该文件视为已经送达。</p>	<p>Article 52 The various documents of the TRAB may be served on the parties concerned by mail, direct delivery, electron internet or other means. Where any party concerned entrusts a trademark agency, service of any document on the trademark agency shall be deemed as service thereof on that party.</p> <p>If document is delivered through electron internet, the document shall be deemed to have been served on the party concerned upon expiry of a 15-day period commencing from the sending date of the document; the date on which the TRAB serves any document on a party concerned shall be the date indicated on the postmark that is affixed at the time of receipt of the mail by that party, in the case of service by mail. If the postmark date is illegible or there is no postmark date, or the mail has not been returned by the post office, the document shall be deemed to have been served on the party concerned upon expiry of a 15-day period commencing from the date of dispatch of the mail; in the case of direct delivery, it shall be the date of delivery. If it is impossible to serve the document by the aforesaid means, the document may be served on the party concerned by way of public announcement, in which case the document shall be deemed to have been served upon expiry of a 30-day period commencing from the date of public announcement.</p>	<p>美国知识产权协会认同《征求意见稿》中允许通过电子方式送达文件的规定。美国知识产权协会建议商标评审委员会为文件的送达设立一个的官方电子备案系统，当事人和商标评审委员会可以通过该系统获得送达确认。未经验证的以电子方式进行的送达程序可能出现无法送达和无意中的权利丧失的情形。另外，美国知识产权协会建议起草人删除关于通过公告方式送达的规定，建议改为送达指定的代理人。由于当事人被要求保证该信息的实时性，因此应该采用有效的送达方法。美国知识产权协会建议起草人调整通知代理人的时限，使其与此条文的期限一致，确保在送达时限之内通知代理人，以保证通过电子方式进行的送达的有效性。</p>	<p>AIPLA supports the Draft for permitting electronic service. AIPLA encourages the TRAB to establish a formal electronic filing system through which service will be made because it provides confirmation to the parties and the TRAB of service. Electronic service without verification may result in failure of service and inadvertent loss of rights. AIPLA further encourages the drafters to delete provisions regarding public notice. Rather, AIPLA encourages service on the designated representative. As the parties are required to keep this information current, service should be effective. AIPLA further encourages the drafters to reconcile the deadline to update the representative within the time periods in this section, so that the representative must be updated well within the period for service, because this will ensure that electronic service is effective.</p>

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<p>第五十八条当事人是在中华人民共和国没有经常居所或者营业所的外国人或者外国企业的，由商标注册档案中载明的商标代理组织承担商标评审程序中该商标的有关法律文件的签收义务；商标评审委员会将有关法律文件送达该商标代理组织，视为送达当事人。</p> <p>商标代理组织在前款所述有关法律文件送达之前已经与有关外国当事人解除商标代理关系的，应当以书面形式向商标评审委员会说明有关情况，并自收到文件之日起 10 日内将有关法律文件交回商标评审委员会，由商标评审委员会另行送达。</p> <p>马德里国际注册商标涉及国际局转发相关书件的，应当提交相应的送达证据。未提交的，应书面说明原因，自国际局发文之日起满 15 日视为送达。</p> <p>上述方式无法送达的，公告送达。</p>	<p>Article 58 Where a party concerned is a foreigner or foreign enterprise having no habitual residence or place of business in the People's Republic of China, the trademark agency indicated in the trademark registration files shall be obligated to sign to acknowledge the receipt of any legal document pertaining to the relevant trademark during the process of review and adjudication of the trademark. Service of such document by the TRAB on the trademark agency shall be deemed as service thereof on the party concerned. Where the trademark agency has terminated its trademark agency relationship with the foreign party concerned before the relevant legal document mentioned in the preceding paragraph is served, the trademark agency shall in form the TRAB of the relevant status in writing, and shall return the relevant legal document to the TRAB within ten days of receiving it for another service of it by the TRAB. Where it is impossible to serve a document by the aforesaid means, the document shall be served by way of public announcement.</p>	<p>第五十三条 商标评审文件依据实施条例第五条的规定予以送达；无法依据实施条例第五条确定代理机构的，直接送达当事人。</p> <p>马德里国际注册商标涉及国际局转发相关书件的，应当提交相应的送达证据。未提交的，应书面说明原因，自国际局发文之日起满十五日视为送达。</p> <p>上述方式无法送达的，公告送达。</p>	<p>Article 53 The document of trademark review and adjudication shall be served pursuant to Article 5 of the Implementing Regulations; if it is impossible to determine any agency according to Article 5 of the Implementing Regulations, the document is served on the party concerned directly.</p> <p>If Madrid international registration of trademarks involves the transmission of relevant documents by the International Bureau, relevant evidence of service shall be submitted. If no evidence is submitted, reasons shall be explained in written form. The document shall be deemed to have been served upon expiry of a 15-day period commencing from the issue date of the International Bureau. Where it is impossible to deliver a document by the aforesaid means, the document shall be served by way of public announcement.</p>	<p>参见前文有关送达的意见。</p>	<p>AIPLA incorporates its comment to the previous provision regarding service.</p>
第六章 附则	Chapter VI: Supplementary Provisions	第六章附则	Chapter VI: Supplementary Provisions		

2005 年现行商标评审规则	Current Trademark Review and Adjudication Rules (2005)	2014 年商标评审规则（征求意见稿）	Trademark Review and Adjudication Rules (Draft for Comment)	AIPLA Comments on 2014 Draft (Chinese)	AIPLA Comments on 2014 Draft (English)
<p>第五十九条对商标法修改决定于 2001 年 12 月 1 日施行前发生，属于修改后商标法第四条、第五条、第八条、第九条第一款、第十条第一款第（一）、（三）、（四）项、第十条第二款、第十一条、第十二条、第十三条、第十五条、第十六条、第二十四条、第二十五条、第三十一条所列举的情形，商标评审委员会在商标法修改决定施行后进行评审的，依据修改后商标法的相应规定进行评审；属于其他情形的，商标评审委员会适用修改前商标法的相应规定进行评审。</p> <p>当事人就商标法修改决定施行时注册已满一年的商标产生争议，向商标评审委员会申请评审的，适用修改前商标法第二十七条第二款规定的提出申请的期限处理；当事人就商标法修改决定施行时注册不满一年的商标产生争议，向商标评审委员会申请评审的，适用修改后商标法第四十一条第三款规定的提出申请的期限处理。</p> <p>有关单位或者个人在商标法修改决定施行前依照修改前商标法第二十七条及其实施细则第二十五条的规定提出评审申请，属于修改后商标法第十三条、第十五条、第十六条和第三十一条规定情形的，不适用修改后商标法第四十一条第二款规定的提出评审申请的期限规定。</p>	<p>Article 59 With respect to any circumstance that occurs before the effectiveness of the <u>Trademark Law Amendment Decision</u> on 1 December 2001 and is one of the circumstances listed in Articles 4, 5, and 8, Paragraph 1 of Article 9, Items (1), (3), and (4) of Paragraph 1 of Article 10, Paragraph 2 of Article 10, and Articles 11, 12, 13, 15, 16, 24, 25, and 31 of the amended <u>Trademark Law</u>, if the TRAB conducts a review and adjudication after the effectiveness of the <u>Trademark Law Amendment Decision</u>, the review and adjudication shall accord with the corresponding provisions of the amended <u>Trademark Law</u>; with respect to other circumstances, the TRAB shall apply the corresponding provisions of the pre-amended <u>Trademark Law</u>.</p> <p>Where a party concerned applies to the TRAB for review and adjudication in connection with a dispute over a trademark of which the registration has been at least one year by the time when the <u>Trademark Law Amendment Decision</u> came into effect, the time limit for filing an application as set forth in Paragraph 2 of Article 27 of the pre-amended <u>Trademark Law</u> shall apply;</p> <p>...</p>	<p>第五十四条对于当事人不服商标局在商标法修改决定施行前作出的驳回商标注册申请的决定向商标评审委员会申请复审，商标评审委员会于商标法修改决定施行后作出复审决定的案件，适用修改后的商标法。</p> <p>对于当事人不服商标局在商标法修改决定施行前作出的异议裁定向商标评审委员会申请复审，商标评审委员会于商标法修改决定施行后审理的案件，当事人主体资格适用修改前的商标法，其他程序问题和实体问题适用修改后的商标法。</p> <p>对于在商标法修改决定施行前已经核准注册的商标，商标评审委员会在商标法修改决定施行后作出评审决定或者裁定的，相关程序问题适用修改后的商标法，实体问题适用修改前的商标法。</p> <p>对于在商标法修改决定施行前商标评审委员会受理的商标评审案件，应自 2014 年 5 月 1 日起开始计算审理期限。</p>	<p>Article 54 If a party concerned is dissatisfied with the decision of rejecting the application of trademark registration rendered by the Trademark Office before the implementation of the revision of the Trademark Law and applies to the TRAB for reexamination, and the case is approved for retrial by the TRAB after the implementation of the revision of the Trademark Law, the new Trademark Law shall apply.</p> <p>If a party concerned is dissatisfied with the decision on opposition rendered by the Trademark Office before the implementation of the revision of the Trademark Law and applies to the TRAB for reexamination, and the case is trialed by the TRAB after the implementation of the revision of the Trademark Law, the application entity of the party concerned shall refer to the old law, and other procedure and entity issues shall refer to the new law.</p> <p>...</p>	<p>美国知识产权协会认同这个修订因为可以将修改后商标法的相应规定应用于后期程序。</p>	<p>AIPLA supports the revision because it provides the benefit of these amendments to the follow-up proceedings.</p>

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	<p>... where a party concerned applies to the TRAB for review and adjudication in connection with a dispute over a trademark of which the registration has been less than one year by the time when the <u>Trademark Law</u> Amendment Decision came into effect, the time limit for filing an application as set forth in Paragraph 3 of Article 41 of the amended <u>Trademark Law</u> shall apply.</p> <p>Where any organization or individual files an application for review and adjudication pursuant to Article 27 of the pre-amended <u>Trademark Law</u> and Article 25 of its detailed implementing rules before the effectiveness of the <u>Trademark Law</u> Amendment Decision, and the application falls within the circumstances set forth in Articles 13, 15, 16, and 31 of the amended <u>Trademark Law</u>, the time limit for filing an application for review and adjudication as specified in Paragraph 2 of Article 41 of the amended <u>Trademark Law</u> shall not be applicable.</p>		<p>... If the registration of a trademark is approved before the implementation of the revision of the Trademark Law and the TRAB renders its decision or ruling after the revision of the Trademark Law, relevant procedure issues shall refer to the new law and entity issues shall refer to the old law. For trademark review and adjudication cases accepted before the implementation of the revision of the Trademark Law, the period of trial shall be calculated from May 1, 2014.</p>		
<p>第六十条 办理商标评审事宜的文书格式，由国家工商行政管理总局制定并公布。</p>	<p>Article 60 The document format for the handling of trademark review and adjudication matters shall be formulated and published by the State Administration for Industry and Commerce.</p>	<p>第五十五条 办理商标评审事宜的文书格式，由国家工商行政管理总局制定并公布。</p>	<p>Article 55 The document format for the handling of trademark review and adjudication matters shall be formulated and published by the State Administration for Industry and Commerce.</p>		

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第六十一条本规则由国家工商行政管理总局负责解释。	Article 61 The State Administration for Industry and Commerce shall be responsible for the interpretation of these Rules.	第五十六条本规则由国家工商行政管理总局负责解释。	Article 56 The State Administration for Industry and Commerce shall be responsible for the interpretation of the Rules.		
第六十二条 本规则自 2005 年 10 月 26 日起施行。	Article 62 These Rules shall take effect as of 26 October 2005.	第五十七条本规则自 2014 年 5 月 1 日起施行。	Article 57 The Rules shall take effect as of May 1, 2014.		