

# Rules for Trademark Review and Adjudication (2005)

## Chapter I General Provisions

**Article 1.** These Rules are hereby formulated in accordance with the Trademark Law of the People's Republic of China (hereinafter referred to as the Trademark Law) and the Regulations for the Implementation of the Trademark Law of the People's Republic of China (hereinafter referred to as the Implementing Regulations).

**Article 2.** Under the Trademark Law and the Implementing Regulations thereof, the Trademark Review and Adjudication Board of the State Administration for Industry and Commerce (hereinafter referred to as the Trademark Review and Adjudication Board) shall be responsible for handling the following cases of trademark dispute:

(1) Cases of application for reexamination filed according to the provision of Article 32 of the Trademark Law out of dissatisfaction with decisions made by the Trademark Office of the State Administration for Industry and Commerce (hereinafter referred to as the Trademark Office) on rejection of applications for trademark registration;

(2) Cases of application for reexamination filed according to the provision of Article 33 of the Trademark Law out of dissatisfaction with opposition adjudication made by the Trademark Office;

(3) Cases of request for adjudication on cancellation of registered trademarks filed according to the provision of Article 41 of the Trademark Law; and

(4) Cases of application for reexamination filed according to the provision of Article 49 of the Trademark Law out of dissatisfaction with cancellation decisions made by the Trademark Office according to the provisions of Articles 41, paragraph one, 44 and 45 of the Trademark Law.

**Article 3.** The review and adjudication activities in which an interested party participates in cases of trademark dispute shall proceed in writing.

**Article 4.** The Trademark Review and Adjudication Board shall hear cases of trademark dispute on the basis of facts and in accordance with law.

**Article 5.** The Trademark Review and Adjudication Board shall hear cases of trademark dispute in such a way that all interested parties are equal in application of law.

**Article 6.** The Trademark Review and Adjudication Board shall hear cases of trademark dispute in writing, except the circumstances where it decides to publicly review and adjudicate a case according to the provision of Article 33 of Implementing Regulations.

**Article 7.** The Trademark Review and Adjudication Board shall notify, in writing, the interested parties of, and explain the reason for, the decisions and adjudication made according to the Trademark Law, the Implementing Regulations and these Rules.

**Article 8.** Unless otherwise provided for in these Rules, the collegial system shall be adopted for the Trademark Review and Adjudication Board to hear cases of trademark dispute, and the staff members for the trademark review and adjudication shall make a collegial panel to conduct the hearing of a case.

When the collegial panel hears a case, the principle is adopted that the minority are subordinate to the majority.

**Article 9.** In any one of the following circumstances, any staff member of the Trademark Review and Adjudication Board shall withdraw, or an interested party may request him to withdraw:

(1) he is a party or a close relative to a party or agent of the case;

(2) he is related in such ways a party or agent insofar as the relation would affect impartiality; or

(3) he has his interests in the handling of the matter of trademark review and adjudication.

An interested party shall apply for the withdrawal of a staff member for trademark review and adjudication in writing and explain the reason therefor.

**Article 10.** During the review and adjudication, an interested party shall have the right to dispose of, according to law, his trademark right and the right relating to trademark review and adjudication.

**Article 11.** Where interested parties who are co-owners of a trademark participate in the review and adjudication, they shall designate a representative; where no representative is designated, the first person indicated in the trademark registration application or in the Trademark Register shall be the representative. The action of the representative to participate in the review and adjudication shall have effect on the interested parties he represents, but change of the representative, waiver of the review and adjudication request or acknowledgement of the other party's review and adjudication request must be authorized in writing by the interested parties represented.

**Article 12.** Where a foreign person or enterprise attending to matters of review and adjudication who has his or its habitual residence or place of business in China may entrust a trademark agency authorized by the State and having the qualifications with, or directly attend to, the matter. Where a foreign person or enterprise attending to the matter of review and adjudication who does not have his or its habitual residence or place of

business in China shall entrust a trademark agency authorized by the State and having the qualifications.

**Article 13.** An interested party entrusting a trademark agency with the participation in the trademark review and adjudication shall submit a Power of Attorney. The Power of Attorney shall indicate such content and competence as authorized; the Power of Attorney from a foreign person or foreign enterprise shall, in addition, indicate the nationality of the entruster.

Notarization and legalization of the Power of Attorney and other relevant certificates from a foreign person or foreign enterprise shall be done based on the principle of reciprocity.

The foreign person or foreign enterprise that applies for or participates in trademark review and adjudication shall use the Chinese language, and documents in a foreign language shall be attached with a Chinese translation thereof.

**Article 14.** Where there is a change in the competence as authorized or the agent relation dissolved, the interested party shall inform the Trademark Review and Adjudication Board in writing in a timely manner.

**Article 15.** Interested parties and agents may consult documents relating to a case, and apply for making copies of the documents and legal instruments relating to the case. The scope and way of the consulting and copying of the documents relating to the case shall be provided for by the Trademark Review and Adjudication Board.

## **Chapter II Application and Acceptance**

**Article 16.** Applications for trademark review and adjudication shall conform to the requirements as follows:

- (1) The applicants must be lawfully qualified subjects;
- (2) The applications are filed within the statutory time limit;
- (3) The applications fall within the scope of review and adjudication by the Trademark Review and Adjudication Board;
- (4) Applications and the relevant proofs that conform to the requirement are submitted according to law;
- (5) There are specific requests, factual bases and grounds for the review and adjudication; and
- (6) The review and adjudication fees are paid according to law.

**Article 17.** To apply for trademark review and adjudication, one shall file an Application with the Trademark Review and Adjudication Board. If there is (are) a respondent/respondents, the applicant shall file as many copies of the Application as there are respondents. To apply for reexamination in respect of a decision or adjudication made by the Trademark Office, one shall also submit the Decision or Adjudication made by the Trademark Office along with the Application.

**Article 18.** Following information shall be indicated in the Application:

- (1) The name, address and postal code of the applicant; if the applicant is a legal entity or other organisation, the name and position of its legal representative or leading person;
- (2) The title, application number or preliminary examination number, registration number of the trademark at issue and the issue number of the Trademark Gazette publishing the trademark;
- (3) Specific request for the review and adjudication, and the facts, grounds and legal bases for the request; and (5) The name and telephone number of the person to be contacted.

Where the respondent(s) is (are) indicated in the review and adjudication application, the name and address thereof shall be indicated. Where a trademark agency is appointed to attend to the matter of the trademark review and adjudication, the name, address, postal code and telephone number thereof shall also be indicated.

**Article 19.** The Trademark Review and Adjudication Board shall not accept trademark review and adjudication applications that do not conform to any one of the requirements of Rule 16 (1), (2) and (3) of these Rules, notify the applicants in writing and explain the reason.

**Article 20.** Where a trademark review and adjudication application that does not conform to any one of the requirements of Rule 16 (4), (5) and (6) of these Rules or where the relevant certificates or proofs are not submitted according to the Implementing Regulations and these Rules, the Trademark Review and Adjudication Board shall notify the applicant to make rectification and require him to comply within 30 days from the date of receipt of the notification on rectification. The Trademark Review and Adjudication Board shall not accept any application that remain contrary to the requirements upon rectification, notify the applicant in writing and explain the reason. Where the rectification is not made at the expiration of the time limit, the review and adjudication application shall be deemed to have been withdrawn by the applicant according to the provision of Article 30 of the Implementing Regulations, and the Trademark Review and Adjudication Board shall notify the applicant in writing.

**Article 21.** Where a trademark review and adjudication application conforms to the requirement of acceptance, the Trademark Review and Adjudication Board shall issue to the applicant the Acceptance Notification within thirty days.

**Article 22.** In any one of the following circumstances, trademark review and adjudication applications accepted by the Trademark Review and Adjudication Board are ones that fail to conform to the requirements of acceptance, and shall be rejected according to Article 30 of the Implementing Regulations:

(1) they are contrary to the provision of Article 42 of the Trademark Law in that applications for adjudication are filed on the basis of the same facts and grounds in respect of the trademarks to which opposition was raised and on which adjudication was made before they were approved for registration;

(2) they are contrary to the provision of Article 35 of the Implementing Regulations in that applications for review and adjudication are filed on the basis of the same facts and grounds in respect of trademarks to which opposition was raised and on which adjudication was made after the applicant withdrew the trademark review and adjudication applications;

(3) they are contrary to the provision of Article 35 of the Implementing Regulations in that applications for review and adjudication are filed on the basis of the same facts and grounds in respect to the adjudication or decision made by the Trademark Review and Adjudication Board; or

(4) any other circumstances under which the applications shall not be accepted.

The Trademark Review and Adjudication Board, when rejecting a trademark review and adjudication application, shall notify the applicant in writing, and explain the reason.

**Article 23.** The applicant who needs to supplement relevant proofs after filing the review and adjudication applications shall make a statement in the Application and submit the same number of copies of the proofs as that of the Application within three months from the date of filing. Where the applicant does not make the statement or fails to submit the relevant proofs at the expiration of the time limit, he is deemed to have abandoned the supplementation of the relevant proofs.

**Article 24.** Where there is/are a respondent/respondents indicated in the Review and Adjudication Application, the Trademark Review and Adjudication Board, upon acceptance, shall forward the copies of the Application and the relevant proofs thereto in a timely manner, and require him/them to submit the Reply to the Trademark Review and Adjudication Board within thirty days from the date of receipt of the copy of the Application, and submit the same number of copies thereof as that of the applicants. Failure to submit the Reply shall not affect the review and adjudication by the Trademark Review and Adjudication Board.

**Article 25.** The respondent who needs to supplement relevant proofs after he makes a Reply shall make a statement in the Reply and submit the same number of copies of the proofs as that of the Reply within three months from the date of submitting the Reply. Where the respondent does not make the statement or fails to submit the relevant proofs at the expiration of the time limit, he is deemed to have abandoned the supplementation of the relevant proofs.

**Article 26.** After receipt of the Reply and the relevant proofs from the respondent, the Trademark Review and Adjudication Board shall forward the copies of the Reply and the relevant proofs to the applicant in a timely manner.

The applicant who has evidence contrary to the Reply and the relevant proofs shall submit all the evidence to the Trademark Review and Adjudication Board within thirty days from the date of the receipt of the Reply and the relevant proofs.

**Article 27.** The applicant, when filing an Application or respondent, when filing a Reply, shall, meanwhile, submit valid certificates capable of proving his identification. The name of the applicant or the respondent shall be consistent with that indicated in the certificates submitted. Where there is a change in the name or address of an interested party, relevant proofs to this effect shall be submitted.

**Article 28.** The interested party shall categorize, number and list each proof he submits, briefly explain the source thereof and specific facts of the evidence, and sign and seal them. The Trademark Review and Adjudication Board, after receiving the proofs submitted by an interested party, shall check the proofs according to the list thereof, and

the staff member receiving the proofs shall sign his name thereon and indicate the date of submission.

**Article 29.** The Trademark Review and Adjudication Application and relevant proofs shall be filled out and submitted in the prescribed form and in conformity with the requirements. Where the Trademark Review and Adjudication Application and relevant proofs are not filled out and submitted in the prescribed form and in conformity with the requirements, the Trademark Review and Adjudication Board shall notify the applicant to make rectification, requiring him to do so within thirty dates from the date of receipt of the rectification notification. Failure for the amended Application and relevant proofs to conform to the prescription or failure to make the rectification at the expiration of the time limit shall be governed by Rule 20, paragraph two, of these Rules.

The Trademark Review and Adjudication Reply and relevant proofs shall be filled out and submitted in the prescribed form and in conformity with the requirements. Where the Trademark Review and Adjudication Application and relevant proofs are not filled out and submitted in the prescribed form and in conformity with the requirements, the Trademark Review and Adjudication Board shall notify the respondent to make rectification, requiring him to do so within thirty dates from the date of receipt of the rectification notification. Failure for the amended Reply and relevant proofs to conform to the prescription or failure to make the rectification at the expiration of the time limit shall not affect the review and adjudication by the Trademark Review and Adjudication Board.

## Chapter III Hearing

**Article 30.** The Trademark Review and Adjudication Board shall set up a collegial panel to hear a case of trademark review and adjudication. The collegial panel shall be composed of an odd number of three or more trademark review and adjudication staff members. However, cases with clear facts and simple circumstances to be heard by the Trademark Review and Adjudication Board may be reviewed and adjudicated solely by an individual trademark review and adjudication staff member.

**Article 31.** In any one of the following circumstances, an individual trademark review and adjudication staff member may solely review and adjudicate a case:

(1) where a trademark which has cited by the Trademark Office in its rejection decision or opposition adjudication has lost the exclusive right or the right of priority therein;

(2) where a trademark of which a request for cancellation has been filed has lost the exclusive right therein;

(3) where a trademark which has cited by the Trademark Office in its rejection decision is actually owned by an applicant, but rejected by the Trademark Office because the applicant fails to go through the formalities for a change in time, and the applicant applies, during the review and adjudication, to the Trademark Office to complete the formalities for the change;

(4) where a trademark, cited by the Trademark Office in its rejection decision, in respect of which another person has filed a prior application or which he has been granted the registration has been, during the review and adjudication, approved to be assigned to the applicant; or

(5) any other cases which the Trademark Review and Adjudication Board decides that they may be under the sole review and adjudication by an individual trademark review and adjudication staff member.

**Article 32.** After the trademark review and adjudication staff members are decided on, the Trademark Review and Adjudication Board shall notify the interested parties in writing in a timely manner.

**Article 33.** Where an interested party applies for the withdrawal of a trademark review and adjudication staff member according to the provision of Article 9 of the Implementing Regulations and Rule 9 of these Rules, he shall file the application within fifteen days from the date of being informed of the trademark review and adjudication staff members. Where a party finds out the circumstance in which some relevant trademark review and adjudication staff member should withdraw at the expiration of the time limit, he may do so before a review and adjudication decision or adjudication is made, but he shall furnish relevant evidence.

Any trademark review and adjudication staff member whose withdrawal has been applied for shall suspend his participation in the hearing of the case before the Trademark Review and Adjudication Board decides whether or not he should withdraw.

The Trademark Review and Adjudication Board's receipt of a party application for withdrawal after it makes decision or adjudication shall not affect the validity of the review and adjudication decision or adjudication.

**Article 34.** In respect of a party's application for withdrawal, the Trademark Review and Adjudication Board shall make its decision within seven days after the date of the receipt of the application, and notify the applicant in writing. An applicant who is not satisfied with the decision on withdrawal made by the Trademark Review and Adjudication Board, may apply for reconsideration once within three days after the date of the receipt of the decision. During the reconsideration, the trademark review and adjudication staff member whose withdrawal has been applied for shall not suspend his participation in the hearing of the case. The Trademark Review and Adjudication Board shall make its reconsideration decision within three days, and notify the reconsideration applicant in writing.

**Article 35.** In hearing a case of reexamination applied for out of dissatisfaction with a decision by the Trademark Office on the rejection of trademark registration, the Trademark Review and Adjudication Board shall review and adjudicate the rejection decision made by the Trademark Office, the facts of, grounds on and requests for the reexamination application by the applicant and the factual situation in the course of review and adjudication.

**Article 36.** In hearing a case of reexamination applied for out of dissatisfaction with a decision by the Trademark Office on the opposition adjudication, the Trademark Review and Adjudication Board shall review and adjudicate the case in connection with the facts of, grounds on and requests for, the reexamination application and reply made by the interested parties.

**Article 37.** In hearing a case of reexamination applied for out of dissatisfaction with a decision by the Trademark Office on cancellation of a registered trademark according to the provision of Article 41, paragraph one, of the Trademark Law, the Trademark Review and Adjudication Board shall review and adjudicate the case in connection with the decision made by the Trademark Office and the facts of, grounds on and requests for, the reexamination application by the interested parties.

In hearing a case of reexamination applied for out of dissatisfaction with a decision on cancellation of a registered trademark made by the Trademark Office according to the provision of Articles 44 and 45 of the Trademark Law, the Trademark Review and Adjudication Board shall review and adjudicate the case in connection with the facts,

grounds and application of law on the basis of which the Trademark Office has made the decision on cancellation of a registered trademark.

**Article 38.** In hearing a case of adjudication requested according to the provision of Article 41 of the Trademark Law on the cancellation of a registered trademark, the Trademark Review and Adjudication Board shall review and adjudicate the case in connection with the facts of, grounds on and requests for, the reexamination application and reply by the interested parties.

**Article 39.** In any one of the following circumstances, the review and adjudication shall terminate:

- (1) the applicant dies, there is not an heir in title, or the heir in title abandons his right for review and adjudication;
- (2) the applicant withdraws his application for review and adjudication;
- (3) the interested parties eliminate a dispute via agreement; or
- (4) any other circumstance requiring the termination of the review and adjudication.

Where the review and adjudication terminates, the Trademark Review and Adjudication Board shall close the case, notify the interested parties in writing, and explain the reason.

**Article 40.** Where he requests for withdrawal of his application before the Trademark Review and Adjudication Board makes a decision or adjudication, the applicant may withdraw his application upon explanation in writing to the Trademark Review and Adjudication Board of the reasons therefor. However, receipt of the request from the applicant for withdrawal of his application for review and adjudication shall not affect the validity of the review and adjudication decision or adjudication.

**Article 41.** The collegial panel shall put down in writing the case it hears, and the written record shall be signed by the members thereof. Where the members of a collegial panel are divided in their opinions, the divided opinions shall be indicated in the collegial record.

The Trademark Review and Adjudication Board shall make decision or adjudication on a case the review and adjudication of which has been closed.

**Article 42.** The followings shall be indicated in the decision or adjudication by the Trademark Review and Adjudication Board:

- (1) request for review and adjudication and facts at issue and grounds;
- (2) facts ascertained, reasons and grounds for the application of law in the decision or adjudication;

(3) conclusion made in the decision or adjudication;

(4) the follow-up procedure and time limit available to interested parties; and

(5) date of the decision or adjudication.

The decision or adjudication shall be signed by the members of the collegial panel and sealed by the Trademark Review and Adjudication Board.

**Article 43.** In respect of cases transferred from the people's court for reexamination where an interested party institutes proceedings in the people's court out of dissatisfaction with a decision or adjudication made by the Trademark Review and Adjudication Board, the Trademark Review and Adjudication Board shall set up another collegial panel to conduct the review and adjudication again.

**Article 44.** Where an interested party does not institute proceedings in the people's court in respect of a decision or adjudication made by the Trademark Review and Adjudication Board within the statutory time limit, the decision or adjudication shall become legally effective.

## **Chapter IV Public Review and Adjudication**

**Article 45.** The Trademark Review and Adjudication Board may, at the request of an interested party or according to practical needs, decide to conduct a public review and adjudication of the application therefor.

**Article 46.** If an interested party requests for public review and adjudication, he shall give specific reasons that the public review and adjudication is necessary.

**Article 47.** In respect of the following cases involving both parties, the Trademark Review and Adjudication Board may decide to hold the public review and adjudication at the request of an interested party:

(1) One interested party requests for the face-to-face cross-examination or debate on important evidence with the other party; or

(2) It is necessary to ask for the presence of the witness who has furnished important oral evidence for testimony or cross-examination.

**Article 48.** An applicant requesting for the public review and adjudication shall file the request in writing with the Trademark Review and Adjudication Board within fifteen days from the date of receipt of the copy of the Reply made by the respondent; and a respondent requesting for the public review and adjudication shall file the request together with the submission to the Trademark Review and Adjudication Board of the Reply or additional relevant proofs.

**Article 49.** In any one of the following circumstances, the Trademark Review and Adjudication Board may decide at its own discretion to hold the public review and adjudication:

(1) It is necessary for both parties to hold the face-to-face cross-examination or debate to determine important evidence;

(2) It is necessary to cross-examine and question the witness furnishing important oral evidence to determine important evidence; or

(3) Any other circumstances in which the public review and adjudication is necessary.

**Article 50.** If it holds necessary, the Trademark Review and Adjudication Board may decide to hold the public review and adjudication again of a case in respect of which the public review and adjudication has been held.

**Article 51.** The public review and adjudication shall be conducted in respect to the proofs that the interested parties have submitted to the Trademark Review and Adjudication Board and that have been exchanged between both parties.

**Article 52.** Where a decision is made to hold the public review and adjudication, the collegial panel shall notify, in writing, the interested parties and other review and adjudication staff members fifteen days before the public review and adjudication is held, of the date and place of the public review and adjudication, and the persons making the collegial panel.

**Article 53.** The interested parties shall submit the Receipt of the Public Review and Adjudication Notification to the Trademark Review and Adjudication Board three days before the public review and adjudication is held. Where the review and adjudication applicant fails to do so to reply whether he is going to attend the public review and adjudication at the expiration of the time limit, or does not attend the public review and adjudication, his application for review and adjudication shall be deemed to have been withdrawn, and the review and adjudication proceeding terminates. The Trademark Review and Adjudication Board shall close the case and notify the applicant in writing. Where the review and adjudication applicant replies before the time limit expires, saying not to attend the public review and adjudication, or the respondent does not return the Receipt at the expiration of the time limit, nor attends the public review and adjudication, the Trademark Review and Adjudication Board may hold the review and adjudication by default.

**Article 54.** The receipt of the Public Review and Adjudication Notification shall be signed or sealed by the interested parties. If they express their intention to attend the public review and adjudication, the interested parties shall indicate, in the Receipt of the Public Review and Adjudication Notification, the name and identification of the attendants the interested parties send to the public review and adjudication. If an interested party appoints a trademark agency to attend the public review and adjudication, he shall indicate, in the Receipt of the Public Review and Adjudication Notification, the name of the trademark agent who is going to attend the public review and adjudication.

Where a witness is requested to attend the public review and adjudication to present his testimony regarding the oral evidence he has presented during the hearing, the name of the witness, the relevant information ascertaining his identification and the facts to be testified shall be indicated in the Receipt of the Public Review and Adjudication Notification. A witness who is not indicated therein shall not attend the public review and adjudication to present testimony.

**Article 55.** Those sent by each party to the public review and adjudication shall not be more than four persons, including the agent from an appointed trademark agency. If one party sends several persons to attend the public review and adjudication, he shall appoint one of them as first speaker to make the main presentation.

**Article 56.** Before the public review and adjudication begins, the Trademark Review and Adjudication Board may hold a pre-hearing preparatory meeting attended by both parties to solicit their opinions regarding the relevant facts and proofs and to determine the main issues to be investigated in the public review and adjudication.

The collegial panel shall prepare a record of the opinions raised by the interested parties at the preparatory meeting held before the public review and adjudication, and the record shall be verified and signed by both parties.

**Article 57.** When the public review and adjudication begins, the collegial panel shall check the identification certificates of the participants of the public review and adjudication and confirm whether or not they are qualified to attend the public review and adjudication and find out whether or not the interested parties and other participants are present at the public review and adjudication.

**Article 58.** Before the investigation at the public review and adjudication, the collegial panel shall brief on the case, clarify the main issue in dispute between the two parties, and then proceed to commence the investigation of the public review and adjudication.

**Article 59.** The investigation of the public review and adjudication proceeds in the order as follows:

(1) the applicant presents his review and adjudication requests and briefs on the relevant facts and evidence;

(2) the respondent makes a defense;

(3) the collegial panel makes verifications as to the review and adjudication requests, grounds, and the evidence furnished by the parties to the case;

(4) the applicant adduces evidence regarding the grounds of the review and adjudication request, the facts and proofs based on which the request is filed; and

(5) the respondent cross-examines the applicant's evidence and raises counter evidence, and the applicant cross-examines the respondent's counter evidence.

**Article 60.** In cases of public review and adjudication, evidence shall be presented at the public review and adjudication and cross-examined by the parties. Evidence which has not been cross-examined should not be used as the basis to ascertain the facts in a case. Evidence which the parties accepted at the pre-hearing preparatory meeting and which is recorded on files may do so after the collegial panel makes it clear at the public review and adjudication.

When cross-examining documentary evidence, material evidence or audiovisual reference material, an interested party has the right to request for producing the original of

the evidence, except that the original has lost or that there exists evidence showing that the copy or reproduction is consistent with the original.

**Article 61.** During the cross-examination, interested parties shall challenge, clarify and argue about the authenticity, relevance, legitimacy and the evidential force of the evidence.

**Article 62.** The cross-examination shall proceed in the order as follows:

(1) The applicant produces evidence, and the respondent cross-examines it with the applicant; and

(2) The respondent produces evidence, and the applicant cross-examines it with the respondent.

**Article 63.** The members of the collegial panel may question an interested party or witness on relevant facts and evidence and require an interested party or witness to make explanation.

An interested party may question a witness with the consent of the collegial panel.

The interested party shall not question a witness in intimidating or insulting language or manner.

**Article 64.** Any witness shall not audit on the public review and adjudication. When a witness is questioned, other witnesses shall not be present.

The Trademark Review and Adjudication Board may ask a witness to cross-examine evidence when necessary.

**Article 65.** After the public review and adjudication investigation is over, oral debate may be held. The interested parties make their observations concerning the facts demonstrated by the evidence, the issues in dispute and the matter of application of law.

Where they have no dispute over the evidence and facts of the case, both parties may directly enter into the oral debate on the basis of verification of the evidence and facts.

**Article 66.** The oral debate proceeds in the order as follows:

(1) the applicant makes a presentation;

(2) the respondent makes a defence; then

(3) they debate with each other.

During the oral debate, the members of the collegial panel may ask questions.

**Article 67.** Where an interested party presents evidence which he has furnished before, but which has not been investigated in the public review and adjudication in the course of the oral debate, the collegial panel may adjourn the debate, and restart the public review and adjudication investigation. The oral debate shall resume after the investigation is over.

**Article 68.** After both parties make their observations at the debate, the collegial panel shall first ask the applicant and then the respondent to make their final comments.

**Article 69.** After the final comments are made, the public review and adjudication is over. The Trademark Review and Adjudication Board shall make adjudication according to law within a certain period afterward, and send the Adjudication to the interested parties.

**Article 70.** The collegial panel shall put the public review and adjudication down in writing, recording the important matters involved in the public review and adjudication. When the public review and adjudication terminates, the collegial panel shall give the record to the interested parties for verification. The interested parties have the right to request for correction of defects or errors in the record. Record that proves to be correct upon verification shall be signed by the interested parties and put on file. Where an interested party refuses to sign the record, the collegial panel shall indicate it in the public review and adjudication record.

The important matters mentioned in the preceding paragraph contain, among other things, following information:

- (1) the review and adjudication request, grounds and evidence of the parties;
- (2) important facts accepted by both parties; and
- (3) any other important matters that need to be put down in writing.

**Article 71.** During the public review and adjudication, auditing, photograph-taking, sound-recording and video-recording shall not be allowed without the permission of the Trademark Review and Adjudication Board.

## Chapter V Rules on Evidence

**Article 72.** If an applicant files an application with the Trademark Review and Adjudication Board or a respondent raises a rebuttal, he shall furnish relevant proofs.

The proofs include, among other things, documentary evidence, material evidence, audiovisual reference material, oral evidence of witnesses, statements made by the parties and appraisal conclusion.

**Article 73.** An interested party shall be under the burden of proof to testify the facts on the basis of which he requests for the review and adjudication or on the basis of which one rebut the other party's review and adjudication request.

Where there is no evidence or there is not sufficient evidence to attest to the factual claims by an interested party, the interested party under the burden of proof shall bear the adverse consequences.

**Article 74.** Where one interested party expressly acknowledges the facts in a case as stated by the other party, the latter is not under the burden of proof.

The other party's neither acknowledging nor denying the facts claimed by an interested party shall be deemed acknowledgement thereof.

Where an interested party appoints an agent to attend the review and adjudication, the agent's acknowledgement shall be deemed the interested party's acknowledgement, except that the acknowledgement by an agent not specially authorized directly results in the acknowledgement of the review and adjudication request of the other party. Lack of denial, on the part of the interested party present, of the acknowledgement by the agent shall be deemed acknowledgement thereof.

Where an interested party withdraws his acknowledgement before the debate at the public review and adjudication is over and the other party gives his consent thereto, or where there is sufficient evidence to show that his acknowledgement is made under coercion or in the presence of major misunderstanding, the other party shall not be exempt from the burden of proof.

**Article 75.** An interested party does not need to adduce evidence to prove the following facts:

- (1) facts known to all;
- (2) facts deducted from the law;
- (3) facts proven according to the law;

(4) facts deduced on the basis of experience and laws of the daily life; and

(5) other facts in respect of which adduction of evidence is not required under the law. Except that an interested party has evidence to the contrary which is sufficient enough to upset the facts.

**Article 76.** An interested party who furnishes the Trademark Review and Adjudication Board with documentary evidence shall furnish the original, including the original text, the authentic text and the copy. The interested party who has difficulty furnishing the original may furnish the Xerox copies, photographs or extracts certified to be consistent with the original. Where the Xerox copies, photographs or extracts, which are certified to be consistent with the original, of the original documentary evidence kept by a relevant department, the sources shall be indicated and sealed thereby upon verification.

**Article 77.** An interested party who furnishes the Trademark Review and Adjudication Board with material evidence shall furnish the original material. The interested party who has difficulty furnishing the original may furnish the reproduction certified to be consistent with the original material or other evidence such as photographs or video-recordings of said material evidence. Where the original is of relatively many varieties, a part thereof shall be furnished.

**Article 78.** Where an interested party furnishes the Trademark Review and Adjudication Board with computer data or audiovisual reference material, such as sound-recordings or video-recordings, the following requirements shall be complied with:

(1) the original carrier of the relevant reference material be furnished; where it is indeed difficult to furnish the original carrier, the reproduction thereof may be furnished;

(2) the way, time, reproducer and facts to be proved of the reproduction be indicated; and

(3) the sound-recording reference material be attached with the transcripts thereof.

**Article 79.** An interested party furnishes the Trademark Review and Adjudication Board with a witness's oral evidence, the following requirements shall be complied with:

(1) the name, age, gender, residence, employer or profession and other information of the witness be indicated;

(2) the witness signs the oral evidence; where he cannot sign it, he put his seal on it or give proof in some other way;

(3) the date on which it is produced be indicated; and

(4) documents showing the identification of the witness, such as a copy of identification card shall be attached.

**Article 80.** Where an interested party furnishes the Trademark Review and Adjudication Board with an appraisal conclusion, he shall indicate the entruster, subject matters of appraisal entrusted, relevant material submitted to the appraisal department, basis of appraisal and statements of the qualification of the appraisal department and appraisers and the appraisal conclusion shall be signed by the appraisers and sealed by the appraisal department. For an appraisal conclusion obtained through analysis, the process of analysis shall be explained.

**Article 81.** Where evidence an interested party furnishes to the Trademark Review and Adjudication Board is formed outside the territory of the People's Republic of China, the evidence shall be notarized by a notary office of the country and legalized by the embassy or consulate of the People's Republic of China in that country, or undergo the certification procedure provided for in the relevant treaty concluded between the People's Republic of China and the country.

Where evidence an interested party furnishes to the Trademark Review and Adjudication Board is formed in Hong Kong, Macao and Taiwan, he shall go through the relevant certification procedure.

**Article 82.** Where an interested party furnishes to the Trademark Review and Adjudication Board instruments or explanatory material in a foreign language, he shall attach the Chinese translation thereof. Where an interested party who has furnished evidence in a foreign language fails to submit the Chinese translation thereof, the evidence in the foreign language shall be deemed not to have been submitted.

Where the other party has objection to the specific content of the translation, he shall submit the Chinese translation of the part to which the objection is raised. If necessary, an entity accepted by both parties may be entrusted with the translation of the text, in whole or in part, used or objected to.

Where both parties fail to reach an agreement on the translation entrustment, the Trademark Review and Adjudication Board may entrust a professional translation entity with the translation of the text, in whole or in part, used or objected to. Each party shall bear 50 percent of the fees necessary for the entrusted translation. A party's refusal to pay the translation fee shall be deemed its acceptance of the translation submitted by the other party.

**Article 83.** In the following circumstances, the Trademark Review and Adjudication Board may investigate and collect evidence:

- (1) facts involved that are likely to prejudice the interests of the country and public; and
- (2) matters of procedure that are irrelevant to substantive disputes, such as termination of the review and adjudication or withdrawal.

**Article 84.** A single piece of evidence may be verified and confirmed as to the presence and strength of evidential force in relation to the following aspects:

(1) whether the evidence is the original text, original material, copy or reproduction; whether it is consistent with the original;

(2) whether the evidence is relevant to the facts of a case;

(3) whether the evidence conforms to the law in terms of form or source;

(4) whether the evidence is true in content; and

(5) whether the witness or the person furnishing the evidence has interest in an interested party.

**Article 85.** The review and adjudication staff members shall comprehensively examine and evaluate all the evidence as to the degree of the relevance of all the evidence to the facts of a case and the relationship of the evidence.

**Article 86.** Evidence obtained in ways prejudicing the lawful rights and interests of another person or contrary to provision on prohibition of the law shall not serve as the basis for ascertaining the facts in a case.

**Article 87.** The following evidence shall not alone serve as the basis for ascertaining facts in a case:

(1) Oral evidence from a minor which does not match his age or intelligence;

(2) Oral evidence from a witness who is a relative, affiliate or otherwise closely related to an interested party in his favour or oral evidence not in his favour from a witness who is adversely-related thereto;

(3) Oral evidence from a witness who should attend the public review and adjudication but fails to without justification;

(4) Audiovisual reference material difficult to be detected as to whether it is modified or not;

(5) Copy or reproduction impossible to be verified with the original;

(6) Proofs which one party or another person has modified and which the other party does not accept; and

(7) Any other proofs that cannot serve as the basis for ascertaining the facts in a case.

**Article 88.** A witness presenting evidence shall objectively state the truth of his personal experience, and shall not do so in conjectural, inferential or commentary language.

A person who is not able to correctly express his will shall not act as a witness.

**Article 89.** The following evidence which one party furnishes and to which the other party raises his objection without evidence to the contrary sufficient enough to deny the truth thereof shall be established by the Trademark Review and Adjudication Board as having its evidential force:

(1) The original documentary evidence or the Xerox copies, photographs, copies or extracts thereof which are verified to be consistent with the original documentary evidence;

(2) The original material evidence or the copies, photographs or video-recording materials thereof which are verified to be consistent with the original material evidence;

(3) The audiovisual reference material which is supported by other evidence and obtained by legal means and free of any doubt or the reproduction thereof verified without any inconsistency found.

**Article 90.** Where the other party does not have evidence and reasons sufficient enough to rebut an appraisal conclusion which an interested party has entrusted an appraisal department with making, the evidential force of the appraisal conclusion may be established.

**Article 91.** In respect of the evidence one party has furnished, the other party accepts or the evidence to the contrary furnished thereby is not sufficient enough to rebut it, the Trademark Review and Adjudication Board may determine its evidential force.

Where in respect of the evidence one party has furnished, the other party has objection thereto and presents evidence to rebut it, and the other party accepts the rebutting evidence, the evidential force of the rebutting evidence may be determined.

**Article 92.** Where both parties furnish evidence to the contrary in respect of the same fact, neither has sufficient ground for the denial of the evidence of the other party, the Trademark Review and Adjudication Board shall evaluate, considering the circumstances of a case, whether or not the evidence furnished by one party is obviously more valid in evidential force than that by the other party, and confirm the evidence carrying more valid evidential force.

Where it is impossible to evaluate the evidential force of the evidence, and, as a result, it is difficult to ascertain the facts in dispute, the Trademark Review and Adjudication Board shall make determination according to the doctrine for distribution of burden of proof.

**Article 93.** The Trademark Review and Adjudication Board shall confirm the facts and accepted evidence acknowledged adverse to an interested party in his Application, Reply, Written Statement, and the statements made by the agent he has entrusted in the course of review and adjudication, except that the party goes back on his words and has evidence to the contrary which is sufficient enough to upset the evidence.

**Article 94.** Where an interested party has made his own statement of, but cannot furnish other relevant evidence to back up, his claim, the claim shall not be supported, except that the other party otherwise accepts the claim.

**Article 95.** The Trademark Review and Adjudication Board may determine the evidential force of several pieces of evidence as to the same fact according to the following principles:

(1) Documents and instruments prepared by a State agency and any other competent department according to the functions and authority thereof prevail over other documentary evidence;

(2) Appraisal conclusions, materials kept on file and notarized or registered documentary evidence prevail over other documentary evidence, audiovisual reference evidence and oral evidence from a witness;

(3) Original documents or materials prevail over copies or reproductions;

(4) Appraisal conclusions made by statutory appraisal departments prevail over those by other appraisal departments;

(5) Original evidence prevails over to derivative evidence;

(6) Other oral evidence of witnesses prevails to oral evidence from a witness who is a relative or otherwise closely related to an interested party in his favour;

(7) Oral evidence from a participant of the public review and adjudication prevails over that from a non-participant; and

(8) Several pieces of evidence variant in category and consistent in content prevail over a single isolated piece of evidence.

## **Chapter VI Time Limit and Service**

**Article 96.** The time limit includes the statutory time limit and that fixed by the Trademark Review and Adjudication Board.

The time limit is counted in days, months and years. The beginning day of a time limit is not counted.

Where the last day on which a time limit expires is a public holiday, the first workday following the public holiday is the date on which the time limit expires.

**Article 97.** Where any document or material is sent to the Trademark Review and Adjudication Board, the date of receipt shall be the date of delivery where it is delivered personally, or the date of posting indicated by the postmark if it is sent by post; where the date of posting indicated by the postmark is illegible, or there is no postmark, the date of receipt shall be the date on which the Trademark Review and Adjudication Board actually receives the document or material, except that the interested party is able to present evidence as to the actual date of posting indicated by the postmark.

**Article 98.** Any document of the Trademark Review and Adjudication Board may be served by post, by personal delivery or by other means. Where an interested party entrusts a trademark agency, delivery of the document to the trademark agency shall be deemed delivery thereof to the interested party.

Where any document is sent to an interested party by the Trademark Review and Adjudication Board, the date of receipt shall be the date of receipt indicated by the postmark on which the interested party receives it if it is sent by post; where the date of posting indicated by the postmark is illegible, or where there is no postmark, or it is not returned to the addressor by the Post Office the document shall be deemed to have been delivered to the interested party on the fifteenth day from the date of posting the document; the date of receipt shall be the date of delivery if it is delivered personally. Where any document cannot be sent by post or by personal delivery, the document may be served by making an announcement. At the expiration of the thirtieth day from the date of the announcement, the document shall be deemed to have been served.

## Chapter VII Supplementary Provisions

**Article 99.** The circumstances having arisen before entry into force of the Decision on the Amendment of the Trademark Law on 1 December 2001 that are listed in Articles 4, 5, 8, 9, paragraph one, 10, paragraph one (2), (3) and (4), 10, paragraph two, 11, 12, 13, 15, 16, 24, 25 and 31 of the revised Trademark Law and that the Trademark Review and Adjudication Board reviewed and adjudicated after entry into force of the Decision on the Amendment of the Trademark Law shall be reviewed and adjudicated pursuant to the relevant provisions of the revised Trademark Law. In respect of other circumstances, the Trademark Review and Adjudication Board shall apply the relevant provisions of the former Trademark Law to the review and adjudication thereof.

**Article 100.** Where an interested party applies to the Trademark Review and Adjudication Board for review and adjudication in respect of a dispute over a trademark that had been registered for a year when the Decision on the Amendment of the Trademark Law entered into force, the time limit for filing the application provided for in Article 27, paragraph two, of the former Trademark Law shall apply in handling the application to the Trademark Review and Adjudication Board for review and adjudication. Where an interested party applies to the Trademark Review and Adjudication Board for review and adjudication in respect of a dispute over a trademark that had been registered for less than a year when the Decision on the Amendment of the Trademark Law entered into force, the time limit for filing the application provided for in Article 41, paragraph three, of the revised Trademark Law shall apply in handling the application to the Trademark Review and Adjudication Board for review and adjudication.

Where an relevant entity or person files an application for review and adjudication according to the provisions of Article 27 of the former Trademark Law and Rule 25 of Implementing Regulations thereof before entry into force of the Decision on the Amendment of the Trademark Law, and the application falls into the provisions of Articles 13, 15, 16 or 31 of the revised Trademark Law, the provision for the time limit for filing application for review and adjudication of Article 41, paragraph two, of the revised Trademark Law does not apply.

**Article 101.** Where cases had been accepted before entry into force of the Decision on the Amendment of the Trademark Law, but fall outside the scope of review and adjudication by the Trademark Review and Adjudication Board provided for in Article 28 of the Implementing Regulations and the review and adjudication of which have not been closed, the Trademark Review and Adjudication Board shall return them, notify the applicants in writing and explain the reason.

**Article 102.** Where cases of re-review and re-adjudication that have been accepted according to the provisions of Rules 34 and 35 of the Rules for Trademark Review and Adjudication promulgated by the State Administration for Industry and Commerce on 2 November 1995 before entry into force of the Decision on the Amendment of the Trademark Law fall into the scope of review and adjudication by the Trademark Review

and Adjudication Board as provided for in Article 28 of the Implementing Regulations, the Trademark Review and Adjudication Board shall conduct review and adjudication thereof again and make decision or adjudication thereon pursuant to the revised Trademark Law and the Implementing Regulations thereof, except that it is otherwise provided for in Rules 99 and 100 of these Rules for the application of the relevant provisions of the former Trademark Law.

**Article 103.** The documents or forms for handling review and adjudication matters shall be formulated and published by the State Administration for Industry and Commerce.

**Article 104.** The Trademark Review and Adjudication Board shall establish an experts consultation group for consultation or comments on relevant points at issue in the trademark review and adjudication.

The experts consultation group shall be composed of legal experts, and the Trademark Review and Adjudication Board shall appoint experts to make the experts consultation group.

**Article 105.** Before these Rules enter into force, the Trademark Review and Adjudication Board shall hear cases of trademark review and adjudication according to the procedure under the Rules for Trademark Review and Adjudication promulgated by the State Administration for Industry and Commerce on 2 November 1995. However, where the Rules run into conflict with the Decision on the Amendments of the Trademark Law, the Decision on the Amendment of the Trademark Law shall govern. Where the Rules run into conflict with the Implementing Regulations after the Implementing Regulations enter into force, the Implementing Regulations shall govern. Where the State Administration for Industry and Commerce issues notification to provide otherwise in connection with the Rules, the provisions of the relevant notification shall be complied.

**Article 106.** The State Administration for Industry and Commerce shall be responsible for the interpretation of these Rules.

**Article 107.** These Rules shall enter into force on 17 October 2002, and the Rules for Trademark Review and Adjudication promulgated by the State Administration for Industry and Commerce on 2 November 1995 shall be simultaneously abrogated.