

Issues with the Revision to the Trademark Law: Reconstruction of Trademark Opposition Procedure

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Trademark opposition procedure is an important integral part of the trademark registration and examination system. The reform of opposition procedure has always been regarded as a crucial issue for discussion throughout several revisions to the China's Trademark Law. The existing opposition procedure in China was established in 2013 through revising the China's Trademark Law. Although it has played a good role in the system, it also has given rise to such problems as low examination efficiency and impairment of the rights of opponents. In March 2018, the Trademark Office of the China National Intellectual Property Administration (CNIPA) issued the Announcement of Soliciting Opinions on Revision to Trademark Law, which initiated the revision to the Trademark Law and attracted attention from all sectors of society.¹ On 23 April, 2019, the fourth revision to the Trademark Law was completed and mainly involves amendments made for the purposes of prohibiting malicious registration and increasing infringement damages with no substantive amendments to the trademark opposition procedure. In consideration of China's actual needs, especially the requirement for reform to facilitate trademark registration, the opposition procedure reconstruction is still the vital part of the revision to the Trademark Law. How to adjust the opposition procedure in the revision to the Trademark Law for better balance of fairness and efficiency is the problem to be urgently solved.

I. Issues of trademark opposition procedure

The China's Trademark Law stipulates the opposition

procedure in Articles 33 and 35. An opposition may be filed with the Trademark Office by any party on the absolute grounds of non-registration of trademark or by a prior right owner or interested party on the relative grounds of non-registration of trademark. The Trademark Office decides, after examination, whether the trademark shall be approved of registration. Where the Trademark Office decides not to approve of a trademark registration, the applicant may file a request for review of the refused mark with the Trademark Review and Adjudication Board (TRAB); and where the Trademark Office decides to approve of a trademark registration, the opponent may file a request for invalidation with the TRAB. In comparison with the Trademark Law (2001), the current opposition procedure simplifies the lengthy procedures, shortens the examination period, reduces the number of opposition cases to some extent and curbs the oppositions filed in bad faith.² However, there still exist the following problems.

1. Unclear positioning of opposition procedure

The functions of the opposition procedure include, among other things, public supervision, right relief, and internal error correction in the examination authority. The function of public supervision means that any one is allowed to file an opposition to a trademark application with the Trademark Office, which is the supervision over an administrative organ by the public. However, the public can only supervise the actions of the administrative organ as long as the public interest is involved. In this sense, the opposition procedure as a public supervision procedure can only be initiated on the absolute grounds concerning public interest. Moreover, the trademark may impair the right of a prior

mark holder or other right holder, so the opposition procedure should be established to provide remedy for them.

In addition to public supervision and right relief, the opposition procedure may also function to correct errors within an administrative organ, which is related to internal supervision of trademark substantive examination by the Trademark Office. As the Trademark Office cannot file an opposition by itself, and the opposition procedure is initiated upon the request of a third party, the opposition procedure when serving as an internal error correction procedure is actually attached to the functions of public supervision and right relief.

The Trademark Law (2013) clarifies that anyone can file an opposition on absolute grounds, and the prior right holder may file an opposition on relative grounds, which seems to correctly divide the three functions of the opposition procedure. As a matter of fact, such clarification is only a patchwork to passively deal with domestic problems and does not explicitly clarify the primary-secondary relationship between the three functions of the opposition procedure, let alone discussing in depth whether these functions are effective in the opposition procedure. Thus, many provisions may not be that satisfactory and do not exert good effect.

In view of the private nature of the trademark right, the opposition procedure should bring its right relief function into full play. Although the modern intellectual property law, as restricted by its organizational mode, relies more on utilitarian evaluation and examination system,³ it does not mean that the modern intellectual property law has a misunderstanding of the source of intellectual property rights, and intellectual property rights including trademark rights shall still be considered as private rights. Thus, right relief surely becomes the most important aim pursued by the trademark opposition system. That is to say, in the design of the opposition procedure in the Trademark Law, account shall be taken of whether the opposition procedure is beneficial to the relief of rights and whether the opposition procedure can aid the vigilant, not the negligent, rather than how to make the actions of administrative organs more perfect and how to render the public interest safer.

In addition, although the trademark opposition procedure can realize the three functions, whether the realization of these functions depends on or must depend on the opposition procedure is an issue that has not been discussed yet. For example, for non-identifying prior rights such as copyright, the principle of judging whether a trademark con-

flicts with them is the same as the court's principle of determining whether infringement upon those rights occurs, the Trademark Office is not capable of making relevant judgment as it may only be specialised in trademark matters. Besides, those rights are not in a competitive relationship with a registered trademark, and even if the conflict is not resolved in the opposition procedure, it does not really matter.⁴ Therefore, it is doubtful whether it depends or must depend on the opposition procedure to remedy those rights.

2. Issues occurring in the operation of the opposition system

First, comprehensive examination and pre-registration opposition render the examination less effective. Under the current examination mode, absolute and relative grounds for non-registration of trademarks are examined twice during the examination phase, not to mention the review procedure and invalidation procedure at the trademark review and adjudication organ and the litigation proceedings at courts. This mode extends the trademark examination period, and does not necessarily have a good effect. In addition, according to the statistics released by the Trademark Office, the number of opposition cases in 2017 amounted to approximately 21,489, while the preliminarily approved and published trademarks reached 2.658 million. The opposed marks made up of less than 1% of those preliminarily approved trademarks⁵, which means 99% of trademarks have to wait for three months for registration. If makes no sense and is quite inefficient.

Second, it is very rare in practice to see the public to file an opposition on absolute grounds, such that the opposition system cannot really exert its function. There may be two reasons: most of the public are reluctant to pay attention to trademark publication because it is energy-consuming, and the opposition fees are borne by opponents, which makes things even worse. Theoretically speaking, it is also likely that someone files an opposition in bad faith on absolute grounds.

Third, the number of invalidation cases sharply rises and the opposition procedure exists in name. The Trademark Law (2013) stipulates that the opponent can still file a request for invalidating the trademark after the opposition is dismissed. But the opponent is afraid that the bases and results of the opposition procedure is taken into account in the invalidation case, so the opponent tends to abandon the opposition procedure and just file an invalidation request directly after the trademark registration. A huge in-

crease in invalidation cases has aggravated the work pressure of the TRAB which is responsible for answering the charges in court in administrative cases involving granting and affirming trademark rights, and would theoretically result in more these administrative cases to the judiciary.⁶ The increase in the number of invalidation cases may be a showing of the significant impact brought by adjustment of procedures. By the end of 30 October, 2015, the number of invalidation cases accepted by the trademark review and adjudication organ reached 8,586, and was 3,462, 4,213, 4,121 and 5,129⁷ respectively in 2011 to 2014.

Fourth, the administrative second-instance mode is not completely transformed. The revision to the opposition procedure of the Trademark Law in 2013 was originally aimed for simplifying the administrative second - instance mode and judicial second-instance mode. After the revision to the Trademark Law in 2013, where the trademark is refused for registration due to opposition, the applicant still can resort to the review on non-registration. Thus, the “administrative first-instance mode” for trademark opposition is not truly realized.

Fifth, it is unfair to take the Trademark Office as an opposition examination organ. Under the current examination mode, the Trademark Office first conducts a substantive examination of the absolute and relative grounds, and conducts a re - examination in the opposition proceeding. In fact, it is the process of self-supervision of the Trademark Office and is unfair.

Sixth, there is no system coordinating with the opposition procedure. The China’s Trademark Law does not have measures taken to punish those who file an opposition in bad faith. As early as the third revision to the China’s Trademark Law, there was a view that the losing party in the trademark opposition, cancellation and invalidation procedure shall bear the official fees and the reasonable expenses paid by the other party, which ended up being not adopted by the legislature.⁸

II. The general principle for reforming China’s opposition procedure: comprehensive examination + post-registration opposition

On a global scope, the trademark registration mode mainly comprises four modes: comprehensive examination

+ pre-registration opposition; comprehensive examination + post-registration opposition; absolute grounds examination + pre-registration opposition; and absolute grounds examination + post-registration opposition. The general principle for reforming China’s opposition procedure must be determined on the basis of comprehensive analysis of advantages and disadvantages of the four modes.

1. Advantages and disadvantages of the four modes

(1) Comprehensive examination + pre-registration opposition

The “comprehensive examination + pre-registration opposition” mode means that in the phase of substantive examination of trademark applications, the examination authority conducts a comprehensive examination *ex officio* on both absolute and relative grounds. The examination authority will publish the applications if no such grounds are established. An eligible opponent may file an opposition according to law within a certain period of time after the preliminary approval of application. Thus, the opposition procedure goes before trademark registration. Countries or regions adopting this mode are typically China and South Korea. According to the Korean Trademark Act⁹, any one may file a written opposition with the Korean Intellectual Property Office (KIPO) on the absolute and relative grounds for refusal of trademark registration within two months from the date of issuance of a notice for preliminary approval of the trademark.

This mode can improve the quality of trademark registration and protect the interests of prior rights holders and consumers in the case that the examination authority conducts a proper examination. The disadvantage of this mode is that the examination authority examines the absolute and relative grounds twice, and the pre-registration opposition may also cause most defect-free trademarks to wait for a certain period of time before registration, which leads to a lengthy and inefficient procedure. The comprehensive examination also has many shortcomings, for instance, it is very likely that the examination authority uses for comparison zombie trademarks that are not used for several years and should have been cancelled, or marks that would never be involved in conflict in reality, which is of no avail. Such a mode ignores the private right nature of trademarks and is a choice under the pure administrative examinationism.

(2) Comprehensive examination + post-registration opposition

The “comprehensive examination + post - registration

opposition” mode means that in the phase of substantive examination of trademark applications, the examination authority conducts a comprehensive examination *ex officio* on both absolute and relative grounds. The examination authority shall allow registration of trademarks if no grounds for dismissing trademark applications are established. An eligible opponent may file an opposition to a competent authority within a certain period of time after the publication of trademark applications, i.e., the opposition procedure goes after trademark registration. Countries or regions adopting this mode are typically Japan and Taiwan of China.

From the beginning, Japan has adopted the comprehensive examination system to examine trademark applications, that is, the competent trademark authority (Japan Patent Office) conducts an examination of trademark applications *ex officio* on absolute and relative grounds. However, the opposition system has changed from the pre-registration opposition to the post-registration opposition through revision in 1996. Currently, trademarks approved by the Japan Patent Office can be immediately registered and published. Within two months from the date of publication, anyone can file an opposition on the absolute and relative grounds.¹⁰ In Taiwan, China, where a trademark application does not comply with the absolute and relative grounds for registration, anyone can file an opposition with the “Intellectual Property Office of the Ministry of Economic Affairs” within three months from the date of publication of trademark application. Where the opposition is upheld, the “Intellectual Property Office of the Ministry of Economic Affairs” makes a decision to cancel the trademark; and where the opposition is rejected, the “Intellectual Property Office of the Ministry of Economic Affairs” makes a decision to maintain the trademark¹¹.

The “comprehensive examination + post-registration opposition” mode possesses the advantages of comprehensive examination, and the post-registration opposition can shorten the period required for registration, which, to some extent, curbs the filing of opposition in bad faith. However, since the examination authority still needs to conduct a comprehensive examination, the shortcomings of comprehensive examination still exist.¹² At the same time, there are also problems as to, e.g., how to keep the post-registration opposition coordinated with the invalidation procedure and whether it is necessary to combine them together. At present, neither Japan nor Taiwan, China merges the opposition procedure with the invalidation procedure. According to the

“Trademark Law” of Taiwan, China, no one shall apply for a review of a registered trademark based on the same facts, the same evidence and the same grounds once the trademark is affirmed after the opposition procedure.¹³

(3) Absolute grounds examination + pre-registration opposition

The “absolute grounds examination + pre-registration opposition” mode means that in the phase of substantive examination of trademark applications, the examination authority only conducts an examination on absolute grounds for refusal of trademark registration. The examination authority will publish new trademarks if no grounds for dismissing trademark applications are established. An eligible opponent may file an opposition to a competent authority within a certain period of time after the preliminary examination and publication of trademarks, i.e., the opposition procedure goes before trademark registration. Countries or regions adopting this mode are typically France and the European Union (EU). France¹⁴ and the EU¹⁵ not only adopt the “absolute grounds examination + pre-registration opposition” mode, but also require that the opposition can only be established on relative grounds, and filed by the prior rights holder.

The “absolute grounds examination + pre-registration opposition” mode has the advantage of high efficiency, as the examination authority only conducts substantive examination on absolute grounds and leaves the examination on relative grounds to the opposition procedure. Thus, the examination of absolute grounds and relative grounds is only conducted once, which saves resources. The prior rights holders decide whether to file an opposition on relative grounds, which shows respect to the private right nature of trademarks and helps the opposition procedure to really exert its right relief function. Meanwhile, it can prevent administrative organs from doing useless work. The disadvantage thereof lies in that some trademark owners may be reluctant to exercise their rights, so that the stability of registered trademarks is reduced and the new problem of trademark co-existence may occur.

(4) Absolute grounds examination + post-registration opposition

The “absolute grounds examination + post-registration opposition” mode means that the trademark examination authority only examines absolute grounds for refusal of trademark registration in the substantive examination phase, and a trademark is approved of registration and

published as long as the requirements are met. An eligible opponent may file an opposition on statutory grounds within a certain period of time after the publication of registered trademarks, i.e., the opposition procedure goes after trademark registration. German is one of the typical countries adopting this mode. According to the German's Act on the Protection of Trade Marks and Other Signs, within a three-month period after the date of the publication of the registered trademark, the proprietor of an earlier trademark or commercial designation may lodge an opposition against the registration of the trademark. The ground based on which the opponent lodges an opposition is only limited to the conflict with the rights of the earlier trade mark or commercial designation.¹⁶

The "absolute grounds examination + post-registration opposition" mode is mostly characterized by enabling a trademark to be registered at the fastest speed to maximize the efficiency. However, there is also a prickly problem that such a mode provides prior right holders with no opportunity for right relief prior to the trademark registration, and significantly degrades the stability of trademarks.

2. Selection of routes to reform China's opposition procedure

Which mode is suitable for China shall be judged according to the social environment and the existing state of the opposition procedure in China. At present, the "comprehensive examination + pre-registration opposition" mode not only imposes a heavy burden on the trademark examination organ, trademark review and adjudication organ and courts, but also fails to meet the current needs, especially the need to facilitate trademark registration. As a result, efforts shall be made to change the current mode to the other three modes.

Although the "absolute grounds examination + post-registration opposition" mode is an extremely efficient examination approach, it is also rather radical and deeply depends on trustworthiness in society. Due to the fact that branding is relatively new in China and has developed only for a short time, and in consideration of the impact of market environment, market atmosphere and economic development, it is not rare to see malicious registration and hoarding of trademarks, and there is still a long way to go for the fair competition mechanism and the infringement punishment mechanism. As far as the current situations in China are concerned, such a mode sacrifices fairness for high efficiency and should be adopted with caution.

The cancellation of relative grounds examination is a response to the private right nature of trademarks, improves the efficiency of trademark examination, and is the current prevailing tendency in the world. In China, however, there are a huge number of cases involving the relative grounds examination and its follow-up procedures, and cancelling the relative grounds examination hastily may give rise to unpredictable risks. Market entities in China are not accustomed to avoiding possible conflict with prior trademarks and business environment is not optimistic, so the cancellation of relative grounds examination may lead to chaos of the market order. Meanwhile, without relative grounds examination, enterprises need to rely on their own trademark examination work, which will impose a heavy burden on small- and medium-sized enterprises. In such a situation, the "absolute grounds examination + pre-registration opposition" mode may not be easy to achieve in the short run.

As a result, in view of the current situations in China, the "comprehensive examination + post-registration opposition" mode would be a good choice, which can not only improve the efficiency of trademark examination to some extent, but also avoid adverse impacts that radical reforms may have on the trademark system, the market order and the work of the examination authority.

III. Suggestions on reforms of China's trademark opposition procedure under "comprehensive examination + post-registration opposition" mode

Under the "comprehensive examination + post-registration opposition" mode, in the revision to the Trademark Law, China should also make great efforts to reform the opposition procedure in the following aspects.

1. Cancellation of opposition on absolute grounds

In the revision to the Trademark Law, the opposition lodged on absolute grounds shall be cancelled, i.e., the opponent can only file an opposition on the relative grounds for refusal of trademark registration. On the one hand, the cancellation of opposition on absolute grounds is conducive to resuming the opposition procedure from a public supervision procedure to a right relief procedure, thereby exerting its function to safeguard private rights; and on the other hand, from the perspective of the principle of proportionality in the administrative law, it is not reasonable to use the

opposition procedure to realize the social supervision function of trademark examination.

First of all, it is unnecessary to allow anybody to lodge an opposition on absolute grounds, which can be replaced by other procedures. One of the reasons is that the Trademark Law sets an invalidation procedure for the sake of correction of errors that may occur in the opposition procedure lodged on absolute grounds, and the invalidation procedure can also serve the public supervision function. The other reason is that a third party observation system can be established to replace the opposition procedure lodged on absolute grounds. The third party observation system means that when the Trademark Office conducts a preliminary examination, the public can make observations about the trademark under examination on the absolute and relative grounds for refusal of trademark registration. The Trademark Office does not need to respond to the observations made by the public. Nor do the third party's observations trigger any reexamination procedure and judicial procedures.¹⁷ At present, Japan¹⁸ and the EU¹⁹ both adopt the third party observation system.

Second, the opposition lodged on absolute grounds does not satisfy the requirement for proportionality. On the one hand, as stated above, it is very rare to see the public to lodge an opposition on absolute grounds in practice. Moreover, the Trademark Office has conducted examination on absolute grounds in the phase of substantive examination, and lodging an opposition on absolute grounds will not have a significant effect. On the other hand, theoretically speaking, it is likely that someone lodges oppositions on absolute grounds in bad faith. Thus, lodging oppositions on absolute grounds may not be beneficial, and instead may lead to losses, which does not meet the requirement for suitability.

In addition, according to international experiences, the EU and France do not set up the procedure for oppositions lodged on absolute grounds, which can be used as a reference by China.

2. Reasonable consideration of opposition based on other prior rights

There are three criteria to examine opposition based on other type of prior rights. The first criterion is that prior rights cannot be used as the basis of trademark oppositions, or only some types of prior rights can be used (which are generally prior rights having an identification function, including prior trade name rights, name rights, portrait rights, etc.).

France and the EU adopt the former mode, while Japan, South Korea and Germany adopt the latter mode. The second criterion is that all types of prior rights can be used as the basis of trademark oppositions. This is the mode adopted in China. The third criterion is that other prior rights can be used as grounds for trademark opposition, but opposition against some of other prior rights has to be judged by judicial authorities. In Taiwan, China, there is no restriction on opposition against prior name rights or trade name rights, but where opposition is filed against prior copyrights, patent rights or other rights, it must be determined through trial whether the registered trademark infringes prior non-identifying rights.

Generally speaking, a majority of countries put prior identifying rights such as name rights or trade name rights under examination in the opposition procedure. However, views are divided as to whether non-identifying rights such as copyrights and patent rights shall be examined in the opposition procedure. The reasons for examining copyrights and patent rights in the opposition procedure are that: first, the rights of prior right holders can be protected as early as possible, and the prior right holders can be provided with the opportunity to prevent others from infringing their rights in advance; second, as far as trademark owners are concerned, the trademark rights can be affirmed early so as to guarantee the stability of rights, and prevent the trademarks which have been put into use from being invalidated due to their conflicts with such prior rights; and third, rights such as copyrights and patent rights also belong to important private rights of prior right holders, and it may be suspected of discrimination if these rights cannot be used as the basis of opposition.

The reasons for not examining these rights in the opposition procedure are stated above. Non-identifying rights such as copyrights are not in a competitive relationship with registered trademarks, and it would not be harmful even though this conflict is not resolved by the opposition procedure. Moreover, the Trademark Office may not have the professional judging capability, thereby incurring huge costs.²⁰ If, however, the practice in Taiwan is adopted to determine copyrights and patent rights through trials, it may prolong the period of examination of trademarks in conflict with other types of prior rights and is likely to be utilized by malicious opponents to delay the business opportunities of trademark applicants.

At present, in the trademark practice in China, the num-

ber of oppositions based on other types of prior rights is relatively small, so whether oppositions are lodged by other prior right holders does not seem to have any impact on the shortening of the period of examination of trademarks. In the revision to the Trademark Law, it is not urgent to make reforms to the opposition based on other types of prior rights. In practice, the situations involving other types of prior rights are getting more and more complicated, and it is increasingly difficult to deal with those situations.²¹ In the long run, it is necessary to distinguish identifying prior rights from non-identifying prior rights in the opposition procedure.

3. Construction of administrative opposition procedure

In the early draft of the third revision to the Trademark Law, it was once proposed to transfer the power to hear trademark oppositions from the Trademark Office to the TRAB. It was not adopted in the Trademark Law (2013) on the grounds that opposition is a normal link in the trademark application and examination process, and is not a procedure for supervising the examination work of the Trademark Office and thus shall not be done by the TRAB.²² Account shall be taken of such a reform in the revision to the Trademark Law for the following reasons: (1) in the case of post-registration opposition, a trademark has been registered, so opposition is not a link in the trademark application and examination process, but to supervise the application and examination work, and shall be done by the trademark review and adjudication organ; (2) it may be suspected of “self-supervision” and “repetitive examination” if the Trademark Office is responsible for examining opposition cases, which is not helpful for realizing the relief and supervision functions of the opposition procedure, and also not conducive to saving limited examination resources;²³ and (3) under the reform to facilitate trademark registration, if the trademark opposition initiated after the registration is still examined by the Trademark Office and then supervised by the trademark review and adjudication organ, it will prolong the examination period of the opposition and reduces the stability of the registered trademark. Thus, the post-registration opposition shall be examined by the trademark review and adjudication organ. Anyone, who is not satisfied with the opposition, shall not file an invalidation request, but resort to judicial examination.

4. Adjustment of statutory period of opposition procedure and construction of simplified procedure of opposition cases

At present, the Trademark Law stipulates that an opponent has a statutory period of three months to file an opposition, and further three months to supplement opinions and materials after the preliminary approval and publication of applications, which is the longest period prescribed by the major countries in the world. The statutory period for lodging an opposition is two months in France, Japan, and South Korea, and 30 days in the United States. The statutory period for supplementing materials is 30 days in Japan and South Korea and 2 months in the EU. In the revision to the Trademark Law, account shall be taken of shortening the period for lodging an opposition by an opponent from 3 months to 2 months, and the period for supplementing materials from 3 months to 2 months.

Meanwhile, consideration may also be given to construct a simplified procedure for opposition cases. That is, if the department responsible for reviewing trademark oppositions finds the oppositions apparently untenable, it can reject such opposition without waiting for the response from the applicant of trademark; and if further review is necessary, the applicant of trademark may be required to submit a response according to the existing procedures. Such a system is adopted in the Japan's Trademark Act.

5. Coordination between invalidation and opposition procedures

A big problem facing the post-registration opposition is whether the opposition procedure has to be merged with the invalidation procedure, which occurs because of the cancellation of the opposition procedure from the China's Patent Law. When the trademark opposition is lodged after the registration, its value indeed overlaps with the invalidation system. However, even if the trademark opposition is lodged after the registration, the invalidation system should not be merged with the opposition procedure for the following reasons:

First, the opposition procedure can realize the right relief function in a faster, more efficient and more cost-effective manner. In comparison with the invalidation procedure, the opposition procedure has the advantages of shorter examination period and simpler procedure. In addition, the fee for the opposition procedure is lower than that for the invalidation procedure. Further, the opposition procedure is more conducive to right relief.

Second, the opposition system can ease the burden on the trademark review and adjudication organ on account of its high efficiency. In comparison with the settlement of dis-

putes in a complicated invalidation procedure, even if the jurisdiction over the opposition cases is transferred to the trademark review and adjudication organ, the opposition system if necessary can still ease the burden on the trademark review and adjudication organ.

Third, the practice of the patent law may be repetitive. The Japan's Patent Act once merged the invalidation system and the opposition system, and resumed the opposition system in 2014.²⁴ Therefore, when the opposition procedure and the invalidation procedure are coordinated in the Trademark Law, reference should not be made rigidly to the cancellation of the opposition procedure from the patent law.

6. Other supporting systems

In addition to the third-party observation system, account shall also be taken of the cooling-off period, the provision of evidence of trademark prior use by opponents, and the punitive measures for oppositions lodged in bad faith in the revision to the Trademark Law.

The cooling-off period refers to a standstill period in which both parties do not directly enter into the statutory opposition procedure after a prior holder lodges an opposition within the three-month period after the preliminary approval and publication of trademark applications, but resolve the dispute through negotiations. If the negotiation fails, the opposition procedure is initiated. One typical example adopting the cooling-off period is the EU. The cooling-off period gives full consideration to the private right nature of trademarks, minimizes the likelihood of continuous rivalry between both parties in the future, and saves administrative and judicial costs. The cooling-off period, however, may also prolong the time required for handling trademark oppositions.

The provision of providing evidence of trademark prior use by opponents means that an opponent shall provide the evidence in support of prior use of the trademark. On the one hand, it is aimed to curb oppositions lodged in bad faith and prevent people from making ill-gotten gains by utilizing the opposition procedure; and on the other hand, it is used in coordination with the cancellation of trademarks for non-use in three consecutive years so as to prevent trademark holders from lodging oppositions on the basis of zombie trademarks that are not used for several years and should have been cancelled. The provision of providing evidence of trademark prior use by opponents is embodied in the laws of Germany and the EU.

The punitive measures for oppositions lodged in bad faith mainly comprise: the bearing of the winning party's costs by the losing party; punitive damages; the criminal liabilities, and compulsory transfer of preemptively registered trademarks. The punitive measures can curb oppositions lodged in bad faith by increasing the costs. ■

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¹ The Announcement of Soliciting Opinions on Revision to Trademark Law. Retrieved from http://sbj.saic.gov.cn/gzdt/201804/t20180402_273481.html (Last visited 15 March, 2019).

² Feng Xiaoqing (2015). Reflections on the effect of the new Trademark Law on the anniversary. *Business Administration*, 12. Professor Feng indicated that judging from trademark applications in the first year of the implementation of the Trademark Law (2013), the long examination period is improved, and the violation of the principle of good faith in trademark application, registration and use has been curved.

³ Brad Sherman [AUS] and Lionel Bently [BR] (March, 2012). *The Making of Modern Intellectual Property Law: The British Experience 1760-1911* (2nd edition), translated by Jin Haijun. Peking University Press.

⁴ Wang Ze (2007). Reconstruction of trademark opposition system. *China Trademark*, 8.

⁵ The TRAB of the Trademark Office of the State Administration for Industry and Commerce (March, 2018). *Annual Development Report on China's Trademark Strategy 2017* (1st edition, p. 9). China Industry and Commerce Press.

⁶ Du Ying (2018). Issues and basic thoughts on the fourth revision to the Trademark Law. *China Invention & Patent*, 8.

⁷ Zang Baoqing. One and a half year since the implementation of the new Trademark Law (2013)—Retrospect and inspection on trademark review and adjudication work. *China Intellectual Property News* (27 November, 2015).

⁸ Zhang Yumin (April, 2016). Study on Reform of Trademark Registration and Affirmation Procedures—Unification of Efficiency and Fairness (1st edition, pp. 73-131). Intellectual Property Press.

⁹ Li Zongji (translator, July, 2013). *Korean Trademark Act* (1st edition). Intellectual Property Press. *Korean Trademark Act*. Retrieved from https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42777&lang=ENG (Last visited 25 March, 2019).

¹⁰ Yang Heyi (translator, November, 2014). Japanese Intellectual Property Law (1st edition, pp. 319-375). Peking University Press. Japanese Trademark Act. Retrieved from <http://www.japaneselawtranslation.go.jp/law/detail/?id=45&vm=04&re=01> (Last visited 25 March, 2019).

¹¹ Zhang Shuya (June 2016). Comments on Intellectual Property System in Taiwan (1st edition, p. 438). Law Press•China.

¹² Zhang Yumin (2016). Envision on reform of China's trademark registration review manners. *Theoretical Exploration*, 5.

¹³ Lai Wenping (compiler, February 2017). Trademark Application and Maintenance Procedure (3rd edition, p. 108). Intellectual Property Office, Ministry of Economic Affairs.

¹⁴ According to the French Intellectual Property Code, the National Institute of Industrial Property only needs to examine the absolute grounds for refusal of trademark registrations. Trademarks which are found to be eligible after examination will be published. Prior trademark owners of registered trademarks or trademark applications, or trademark owners entitled to a priority date or prior well-known trademark owners may file an opposition with the Director of the National Institute of Industrial Property within two-month publication period.

Huang Hui and Zhu Zhigang (June 2017). The French Intellectual Property Code (Legislative Part) (2nd edition, pp. 75-82). The Commercial Press.

¹⁵ European Union Trademark Regulation: within a period of three months following the publication of an EU trademark application, notice of opposition to registration of the trade mark may be filed by an earlier trademark owner to the opposition department under the EU Intellectual Property Office only on the grounds that it conflicts with earlier rights. Opposition cannot be lodged against trademarks that are refused for registration on absolute grounds, and only invalidation proceedings can. If the opposition department finds the opposition tenable after review, it shall directly revoke the trademark application; and if the opposition department finds the opposition untenable, it shall register the trademark. The action shall be open to any party to proceedings before the Board of Appeal adversely affected by its decision. The action shall be brought before the General Court within two months of the date of notification of the decision of the Board of Appeal. The action may be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the TFEU, infringement of this Regulation or of any rule of law relating to their application or misuse of power. The court has jurisdiction to annul or to alter the contested decision. Meanwhile, the party concerned shall not submit new facts with the General Court because it only examines the validity of the decision of the Board of Appeal based on the facts found by the Board of Appeal. The court may remand the case or alter the decision. European Union Trademark Regulation. Retrieved from

<https://euipo.europa.eu/ohimportal/eu-trade-mark-legal-texts> (Last visited 25 March, 2019).

¹⁶ Fan Changjun (translator, January, 2013). German Trademark Act (1st edition). Intellectual Property Press. Act on the Protection of Trade Marks and Other Signs. Retrieved from http://www.gesetze-im-internet.de/englisch_markeng/ (Last visited 25 March, 2019).

¹⁷ Li Lei and Liang Ping (2017). On optimization of China's trademark grant and affirmation procedures. *Intellectual Property*, 7.

¹⁸ In Japan, anyone can provide third party's observation with the Patent Office if a trademark does not satisfy the requirements for registration. It is also allowed to provide observation anonymously or in real name. No feedback can be given on the status of use of observation provided in cases where information is provided anonymously. Such observation can be provided before the trademark registration or refusal of trademark registration. The fact that observation was provided is notified to the applicant. Provision of Information on Application for Trademark Registration. Retrieved from <http://www.jpo.go.jp/> (Last visited 25 March, 2019).

¹⁹ Any natural or legal person and any group or body representing manufacturers, producers, suppliers of services, traders or consumers may submit to the Office written observations, explaining on which grounds, under Articles 5 and 7 (absolute grounds for refusal of registration of trademark), the trade mark should not be registered *ex officio*.

Chen Fei (2014). Observations by third parties of the EU trademarks. *China Trademark*, 2.

²⁰ See supra note 4.

²¹ Interpretation of reformed policies for facilitating trademark registration (11): Overview of trademark opposition review. Retrieved from http://sbj.saic.gov.cn/gzdt/201804/t20180423_273871.html (Last visited 25 March, 2019).

²² Jin Weiwu (2013). Retrospect and summary of the third revision to the Trademark Law. *Intellectual Property*, 10.

²³ Wang Ze and Xu Lin (2011). Comparative study of trademark opposition system. *China Trademark*, 2.

²⁴ Liu Dian and Xiao Dongmei (2018). Reasons for restoration of Japan's patent opposition system and enlightenment thereof. *Journal of Xiangtan University (Philosophy and social sciences)*, 5.