

Trademark Review and Adjudication Rules Draft Comments

March 11, 2014

The International Trademark Associations (INTA) congratulates the People's Republic of China on the passage of the third Trademark Law Revision. INTA is pleased to submit comments to the State Administration of Industry and Commerce (SAIC) on the draft Trademark Review and Adjudication (TRAB) Rules.

INTA is a global association of trademark owners and professionals dedicated to supporting trademarks and related intellectual property in order to protect consumers and to promote fair and effective commerce. On behalf of the 6,500 member organizations of INTA, including 207 members in China, we are pleased to submit comments to SAIC.

Most of the amendments proposed in the Draft are welcome by INTA and made necessary by the promulgation of the New Trademark Law. However, INTA's priority concerns regard the short deadlines in the Draft, which present substantial burden on the parties, in particular those outside the jurisdiction who may have to deal with time zone differences and language translation.

Our detailed comments follow:

- **Article 23.** INTA recommends that the original three month time limit for adding relevant evidentiary materials after filing an opposition or presenting a defense to an opposition be preserved, instead of 30 days as found in the current draft. INTA also recommends that the TRAB "shall" admit evidence—rather than "may," as stated in the Draft—which comes after the deadline for submission but for good cause and is relevant new evidence.
- **Article 33.** INTA recommends a deadline extension from 4 months to 6 months to file a notice of appeal of TRAB decisions to the courts.
- **Article 42.** INTA welcomes this article, which requires that evidence that is not cross examined shall not be admitted. Such revision is beneficial to applicants and is reasonable. In the past, our members have experienced that examinations were made without giving the two parties equal right to exchange evidence and file counter arguments. Additionally, in light of the time requirements imposed by the new Trademark Law and some existing backlog, this article will stress the importance of considering evidence properly.
- **Bad Faith Registrations.** Although the draft TRAB Rules do not address the question of bad faith registrations, we recommend consideration be given to adding provisions that would help facilitate action against them. For example, new provisions could provide as follows:
 - The burden of proof should be shifted to bad faith pirates under appropriate circumstances;
 - Cases before the TRAB that involve bad faith registrations that are being

used should be handled in an accelerated manner, if so requested by the petitioner.

- **Other additions.** INTA recommends that TRAB be allowed to suspend review pending the outcome of related actions.

These comments were drafted with input from INTA's Legislation and Regulations Committee, and the Trademark Office Practices Committee. Should you have any questions, please contact Seth Hays, External Relations Manager for Asia Pacific at shays@inta.org.