

## **INTA OPPOSITIONS SURVEY SUMMARY**

### **INTA Enforcement Committee, Opposition and Cancellation Subcommittee**

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## **Background:**

The opposition system is one of the cornerstones of trademark law, being an invaluable legal tool for brand owners to prevent misappropriation of their brands and trademarks. A robust opposition system significantly increases the protection of trademarks, reduces the risk of trademark squatting, and helps maintain the integrity of the trademark registry of every country that has adopted this system.

Given the pivotal role that opposition systems play in allowing brand owners to nip misappropriation of their trademarks in the bud, the International Trademark Association [INTA] has strongly advocated for the availability of opposition systems across all jurisdictions.

On September 22, 2008, with its Board Resolution titled “[Benefits of Opposition Proceedings](#)”, INTA affirmed the importance of oppositions, which was followed up with several other Resolutions on details of the proceedings, including the Board Resolution of November 7, 2012, titled “[Requirements for Pre- and Post-Registration Opposition System Jurisdictions](#)”, in which INTA emphasized that both types of opposition systems have advantages.

In 2013, the INTA Opposition and Cancellation Standards and Procedures Subcommittee surveyed almost 100 jurisdictions to identify the type of opposition system being followed. The 2013 survey is available as an internal resource called the “[INTA Opposition Guide](#)”.

Further, in its Board Resolution titled “[Default Judgments in Inter Partes Opposition and Cancellation- Proceedings](#)” dated 13 November 2013, INTA resolved to urge all jurisdictions to allow for default judgments to be issued in inter partes opposition and cancellation proceedings when the applicant or registrant of the challenged mark has not timely answered or otherwise officially responded to the same.

Subsequently, on 9 March 2015, a further Resolution titled [Repeat Filings of Trademark Applications After Successful Opposition/Cancellation Against the Same Mark Based on Prior Rights](#) was passed whereby INTA resolved that jurisdictions should deter nuisance repeat filings and to this end adopt one or both of the following:

- An official procedure allowing the prior-rights owner to file a Letter of Objection (or Protest) related to the alleged nuisance repeat filing and requiring examiners to consider such letter during examination; and/or
- Some form of summary procedure in opposition proceedings involving nuisance repeat filings to allow the matter to be brought to an expedited hearing (if needed or applicable) and decision.

## **Objective of the Survey:**

In the eleven years since the Opposition Guide was created, trademark law and practice across the globe have evolved. Fueled by the advent of the Internet, strict territorial boundaries have dissolved and brands are more vulnerable to squatting/misappropriation. Consequently, a robust opposition system provides a proactive tool for right holders to take steps across jurisdictions to safeguard their rights.

Considering the constantly changing landscape, a need was felt to relook at opposition systems and evaluate their role and efficacy in maintaining the integrity of the trademark register and protecting interests of right holders, and establish the status of harmonization of opposition procedures across the globe. Accordingly, in 2018, INTA's Enforcement Committee, through the Opposition and Cancellation Subcommittee, began crafting an extensive questionnaire that would capture a high-level overview of the opposition proceedings in a country. Such a survey would further assist in identifying those countries where opposition systems are efficient, holistic and apply best practices, which can form learnings for other jurisdictions and identify opportunities for advocacy programs to be undertaken by INTA.

The survey would also form the basis of an authenticated ready resource that would assist practitioners to gain reliable information about the opposition procedure in a country and take informed decisions.

Accordingly, the Opposition & Cancellation Subcommittee took a conscious decision to seek three contributors for each jurisdiction to obtain reliable responses. Further, in case of any discrepancy, the survey was revalidated by another practitioner. The survey is currently being spearheaded by the Oppositions Harmonization Working Group of the Opposition and Cancellation Subcommittee.

Starting from 2019, the survey has been conducted in 72 jurisdictions. In line with the survey, these jurisdictions will be referred to as 'countries', including the EUIPO. Furthermore, the Benelux covering Belgium, The Netherlands and Luxemburg is considered one country.

To simplify the responses and analyze the survey objectively, the surveyed countries were divided into 5 regions – Americas, Europe, Africa, Middle East and Asia Pacific. These regions were further analyzed on the following fundamental criteria:

1. Availability of Opposition - *(pre/post registration or both)*
2. Standing to Oppose - *whether Liberal/Restricted*
3. Grounds of Opposition - *whether Expansive/Restricted*
4. Standard of Practice - *Availability inter-Partes Proceeding & Standard of Evidence*
5. Efficiency of Opposition Systems – *based on period of opposition, timelines for filing pleadings, opportunity of hearing, timeline of decision, filing appeal etc.*

As to the accuracy of the replies reported in this survey, INTA Enforcement Committee has put forth its best efforts in verifying the correctness of the replies. Therefore, if at any point in time, a particular reply looks outdated, INTA members are encouraged to report this to the Enforcement Committee.

## Highlights:

In total **72 countries** have been surveyed, distributed per continent as follows:

<b>EUROPE</b>	Austria, Benelux, Czech Republic, EUIPO, Finland, France, Georgia, Germany, Ireland, Italy, Norway, Portugal, Romania, Russia, Serbia, Slovak Republic, Spain, Sweden, Switzerland, Türkiye, Ukraine and United Kingdom.
<b>AMERICA</b>	Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Guatemala, the United States and Uruguay.
<b>AFRICA</b>	Kenya, Morocco, South Africa, Tanzania and Zambia.
<b>MIDDLE EAST</b>	Bahrain, Egypt, Israel, Jordan, Lebanon, Oman, Qatar, Saudi Arabia, Syria and UAE.
<b>ASIA PACIFIC</b>	Australia, China, Hong Kong, India, Indonesia, Japan, Malaysia, Nepal, New Zealand, Pakistan, Philippines, Singapore, South Korea, Mongolia and Thailand.

The **key findings** are set out below. A more detailed overview of our findings in each region is set out in **Appendix 1**.

### **I. Availability of Opposition - (pre/post registration or both)**

1. All surveyed countries provide an opposition system, excepting Lebanon.
2. All surveyed countries require the filing of the opposition before the Trademark Office, excepting Panama, which requires filing before a judicial body. In addition to filing before the Trademark Office, Australia, Georgia and New Zealand also allow for filing before a judicial body.
3. Most countries provide for opposition prior to the registration of the opposed trademark, excepting Austria, Finland, Germany, Japan, Romania, Sweden and Switzerland, which provide for opposition after the grant of registration. Further, in Georgia, trademarks registered via accelerated procedure may be opposed after

registration. Meanwhile, New Zealand and Norway allow for the filing of an opposition at any time (that is, prior to, or post registration, of the trademark opposed).

4. In most countries the starting date of the opposition period is counted from the date of publication of the application for registration; except for those countries providing for oppositions post registration (namely, Austria, Finland, Germany, Japan, Romania, Sweden and Switzerland).
5. Most of the countries surveyed provide for a 2 or 3-month period for filing an opposition and in some countries the term may be further extended. 9 American countries, the Philippines and the UAE provide a 30 day/one-month filing period while the Dominican Republic grants a 45-day period. The maximum time granted for filing an opposition is 120 days (inclusive of extended term).

## **II. Standing to Oppose - *whether Liberal/Restricted***

1. As to legal interest, 33 countries allow any person to file an opposition, while most of the countries allow the filing of the opposition by a person with legal interest, which seems to be the most accepted rule.
2. Furthermore, 20 countries specifically allow for competent authorities to file an opposition as well.

## **III. Grounds of Opposition - *whether Expansive/Restricted***

1. Trademark confusion as a potential ground for opposition is recognized by ALL countries.
2. Lack of distinctiveness and terms considered generic or descriptive can be invoked as a ground for opposition in most of the countries, excepting Austria, Benelux, Czech Republic, EUIPO, France, Germany, Ireland, Italy, Morocco, Romania, Serbia, Slovak Republic, Switzerland and Türkiye where absolute grounds may not be the basis of an opposition.
3. A term that is contrary to Article 6ter of the Paris Convention, can be subject to opposition for most countries (54 countries) which mainly include all Asian, Middle Eastern and American countries surveyed. Most European countries (11) and Morocco do not accept this as a ground for opposition.
4. 55 countries consider that if a term is contrary to morality or public order, this may be the basis of an opposition. However, most European countries, the United States and Morocco do not accept this as a ground for opposition.
5. Deception of the public as a ground for opposition is recognized by most countries, excepting Austria, Benelux, Czech Republic, France, Germany, Ireland, Italy, Morocco, Romania, Serbia, Slovak Republic, Switzerland and the EUIPO as in these countries opposition may not be based on absolute grounds for refusal.

6. Symbols protected by international conventions or national laws are sufficient grounds to oppose the registration of a trademark in most countries, but for the EUIPO, Austria, Benelux, Czech Republic, France, Germany, Italy, Morocco, Romania, Serbia, Slovak Republic and Switzerland where they are considered as absolute grounds.
7. A business name can be the basis of an opposition in most of the countries except in Australia, Austria, Benelux, Brazil, Chile, France, Georgia, Ireland, Italy, Morocco, New Zealand, Switzerland, UAE and Uruguay.
8. A well-known non-registered mark or registered marks enjoying reputation can be an obstacle for the registration of a trademark in ALL countries.
9. Appellations of origin and geographical indications as grounds for oppositions are recognized by ALL countries, except South Africa and Switzerland.
10. A famous person can file an opposition based on the distinctiveness of his/her name in most countries, except Austria, Benelux, Costa Rica, Cuba, France, Germany, Honduras, Morocco, Nicaragua, Switzerland, Tanzania and United Kingdom.
11. 46 countries recognize personal names as a ground for opposition.
12. 41 countries recognize industrial designs as grounds for opposition.
13. 41 countries recognize copyright as grounds for opposition.
14. Most of the surveyed countries recognize prior collective or certification marks as grounds for opposition, excepting Egypt and South Korea. Japan only provides protection for collective marks but not for certification marks.
15. In 46 of the countries surveyed, unregistered trademarks can be used as a ground for opposition against the registration of trademarks. Countries such as Georgia, Serbia, Spain, Sweden, Switzerland and the EUIPO also foresee this possibility under certain conditions, i.e., cases of well-known trademarks under Article 6bis of the Paris Convention.
16. 34 countries contemplate bad faith as an independent ground for opposition.
17. 24 countries out of 71 and the EUIPO contemplate other opposition grounds. Among them, an Opponent may refer to trademarks filed by an agent without the TM owner's consent (Benelux, EUIPO), portraits of famous people without authorization (Finland, Paraguay) or false suggestion of a connection or "fraud" (United States).
18. European countries and Morocco seem to have more limited grounds for bringing an opposition. Indeed, in most of the European Union and before the EUIPO, absolute grounds cannot be invoked in opposition proceedings but only as a ground for refusal of an application and as the basis for an invalidity action.

**IV. Standard of Practice - Availability of inter-partes Proceeding & Standard of Evidence**

1. A fee to commence opposition proceedings is necessary in most countries, excepting Chile, Nicaragua, Norway, Panama, Russia and Sweden.
2. All the surveyed countries except Mongolia allow the applicant to file a counter/defense statement.
3. The time and deadline to file a counter statement is different in most of the countries. However, the accepted trend seems to be between 1 to 2 months. Argentina, Georgia and Paraguay appear to have the shortest time to file a counter statement.
4. Most of the surveyed countries accept any type of evidence (most documentary evidence) to be submitted in support of the counterstatement.
5. Only 7 of the surveyed countries (namely, Brazil, Costa Rica, Hong Kong, Nepal, Panama, Paraguay and Syria) have restrictions on use of the mark that is the subject of the application during pendency of opposition proceeding.
6. Oral hearings in opposition proceedings are possible only in 25 surveyed countries, that is, Australia, Canada, Egypt, Georgia, Hong Kong, India, Ireland, Israel, Jordan, Kenya, Nepal, New Zealand, Oman, Pakistan, Panama, Qatar, Saudi Arabia, Singapore, South Africa, Sweden, UAE, United Kingdom, the United States, Tanzania and Zambia.
7. Most of the surveyed countries allow the parties to reach a settlement agreement in opposition proceedings, except for South Korea and Uruguay.
8. In most of the countries surveyed, the losing party is not required to bear the entire cost of the opposition proceeding. The general presumption is that each party bears its own costs unless awarded certain costs.

**V. Efficiency of Opposition Systems – based on period of opposition, timelines for filing pleadings, opportunity of hearing, timeline of decision, filing appeal etc.**

1. The average time for authorities to issue a decision is of 6 months, however, there are 16 countries in which it takes more than a year for this effect, and in Zambia it can take between 2 to 3 years.

2. Appeals against the decision in an opposition are allowed in ALL surveyed countries, excepting South Korea, and in most cases, the appeal is filed before a Court (except for the Americas where majority of the appeals are filed before administrative bodies). 19 countries also allow the filing of the appeal before an administrative body, and 31 plus the EUIPO before the registry/ IP office.
3. The general period to appeal is 1 to 2 months after receipt of the notification of the decision except in certain countries where a long time for filing an appeal is allowed. The surveyed countries with a longer period to file an appeal include France (3 months), Georgia (3 months) India (3 months from the receipt of the notification of the decision), Indonesia (90 working days from the mailing date of the notice of the decision), Japan (120 days from the date of receipt of the decision for foreign applicants), Russia (4 months from the decision) South Africa and Zambia (3 months). Australia, Hong Kong, New Zealand, Morocco (15 days) and the Philippines provide for a shorter time to file an appeal. However, in the Americas, the time frame is different in each country, with the shortest time frame of 3 days after the notification of the decision in Honduras.
4. In most of the surveyed countries, the appeal period is not extendable as of right except for Australia, Honduras Hong Kong, India, Israel, Kenya, Malaysia, Philippines, Russia, Singapore, Sweden, Tanzania, United Kingdom and Zambia (at the court's discretion).
5. The applicant and the opponent are allowed to file an appeal in most countries. There are special cases, like Portugal and Syria, where a third party with legitimate interest is entitled to file an appeal against the decision.
6. Most of the surveyed countries allow additional evidence during an appeal in certain circumstances, subject to certain conditions. Notably, the United States do not allow for it.
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8. The standard of review in an appeal is mostly based on correct procedure followed, correctness of facts and correctness of law.
9. Except for Costa Rica, El Salvador, Honduras, Panama, South Korea and Switzerland, all surveyed countries providing for an opposition system allow for a second appeal.
10. A second appeal filed before a Court is recognized and permitted in most surveyed countries, while Bolivia only permits a second appeal before an IP Office or administrative body.

We trust that the results of this survey, grouped in the user-friendliest available version in [this Master Chart](#) will prove to be a useful resource for all INTA membership.





## APPENDIX 1

### Europe:

Most of the surveyed European countries are Member States of the European Union (13 of 21 countries). At the time of the beginning of the survey, the United Kingdom was still a member of the European Union.

As the trademark legislation of the EU Member States is harmonized thanks to the EU Trademark Directive 2015/2436, the opposition procedures in the surveyed EU Member States largely follow the same fundamental criteria. The procedures in non-EU European countries differ in some criteria from those in the EU Member States, while the differences between the latter are not significant.

All the surveyed European countries provide for an opposition system. Most European countries have a pre-registration opposition system, with the exception of Austria, Finland, Germany, Romania, Sweden and Switzerland, all of which provide for a post-registration opposition system.

In all the European countries surveyed, the Standing to Oppose is moderately liberal as any party with a legitimate interest may oppose. At the same time, the survey has identified some variations as to what is considered “legitimate interest” in European countries.

The “standard” earlier IP rights (trade marks, trade names, well-known trade marks, appellations of origin / geographical indications, certification / collective marks) are allowed as a basis for opposition in almost all the surveyed European countries.

Austria, Benelux, Czech Republic, EUIPO, France, Germany, Italy, Romania, Serbia, Slovak Republic and Switzerland do not provide for opposition based on symbols protected by international conventions (Red Cross, Olympic symbols, etc.), or symbols protected by National Laws (such as flags, royal crests and emblems, etc.). Additionally, Austria, Benelux, Czech Republic, EUIPO, France, Germany, Ireland, Italy, Romania, Serbia, Slovak Republic, Switzerland and Türkiye do not provide, as grounds of opposition, that the trade mark is devoid of distinctive character or is generic or descriptive as absolute grounds cannot be the basis of an opposition.

With respect to other IP rights, such as trade names, as a basis in opposition proceedings, some European countries allow these, while others do not.

Interestingly, appellations of origin or protected geographic indications do not serve as a basis for opposition in Switzerland. Furthermore, Austria, Benelux, France, Georgia, Ireland, Italy and Switzerland do not provide for opposition based on business names (trade names).

Regarding unregistered trademarks, a large number of countries allow to file oppositions on this basis although some of them only allow it in the case of well-known trademarks under Article 6bis of the Paris Convention.

Bad faith cannot be invoked as an opposition ground in a number of countries where it can be only the basis for an invalidity action.

The availability of absolute grounds for refusal in opposition proceedings (either via oppositions or observations) is not harmonized among the European countries: some countries allow absolute grounds to be invoked while others do not. For instance, 9 of the 21 countries reviewed allow an opposition based on the descriptiveness, deceptiveness or generic nature of the applied-for mark.

In the absolute majority of the surveyed European countries there are Inter-partes proceedings apart from Russia where the system does not foresee inter-partes proceedings. Except for Norway, Russia and Sweden, a fee is raised to commence opposition proceedings. A statement of defense can be filed in all the countries surveyed.

The opposition period varies between 2 and 3 months, except for Russia, where there is no fixed deadline for filing observations/opposition. The “standard” timeframe for a statement of defense to be filed is 2 months. Germany, Norway, Romania, Spain, and Türkiye allow 1 month. Ireland is the outlier as applicants have 3 months within which to file their counterstatement. The 10-day timeframe allowed by Georgia seems rather tight compared to the other countries in the region.

Ireland requires statutory declaration evidence and Portugal requires documentary evidence. The rest of the European countries surveyed are flexible and allow all types of evidence.

In all the countries surveyed, there is no restriction on the use of the mark that is the subject of the application during pendency of opposition proceeding.

Further, out of the surveyed countries in Europe, only Georgia, Ireland and the United Kingdom provide for the right to an oral hearing while in Sweden, an oral hearing will be held if requested by one of the parties.

A settlement between the parties can be reached in all the countries surveyed.

The average length of decision delivery varies greatly from country to country. The shortest timelines are in practice in the following countries: Czech Republic, Finland, Georgia, Ireland, Italy, Norway, Portugal, Romania, Russia and Türkiye (1-4 months). Benelux, EUIPO, Germany and Spain have rather lengthy proceedings (more than 12 months).

Appeal is available in all the European countries surveyed. Further appeal is available in all of them except for Switzerland. The time period to file an appeal is either 1 or 2 months except for the United Kingdom (which provides for 21 days to file an appeal to the High Court and 28 to file an appeal to an Appointed Person); and France (provided that the Appellant resides abroad), Georgia and Ireland (which provide for a 3-month period).

Most European countries do not allow for an extension of the appeal period except for Russia, Sweden and United Kingdom. Appeal can be filed by the applicant or the opponent and only Portugal permits an appeal by any third party with legitimate interest.

All surveyed European countries allow for the filing of additional evidence, however, subject to certain conditions which vary from country to country.

The standard of review in an appeal is similar in all surveyed European countries and is based on correct procedure followed, correctness of facts and correctness of law.

A further appeal before a Court, is available in all the surveyed European countries except for Switzerland.

### **The Americas:**

Of the 20 countries surveyed in America, all of them provide for a pre-registration opposition system, which is prosecuted before the IP Office of each country.

In most of the surveyed countries in America, the Standing to Oppose is mostly liberal as any person may file an opposition in 11 of the 20 countries, while a party with a legitimate interest may oppose in countries like Argentina, Uruguay, Brazil, Bolivia, Colombia, Honduras, Guatemala, the United States and Ecuador.

The “standard” earlier IP rights (trade marks, trade names, well-known trade marks, appellations of origin / geographical indications, certification / collective marks) are allowed as a basis for opposition in almost all the surveyed countries in America. Business names (trade names), do not serve as a basis for opposition in Brazil, Chile and Uruguay. As it concerns other IP rights as a basis in opposition proceedings, some American countries allow the same while some do not.

Even though the availability of absolute grounds for refusal in opposition proceedings (either via oppositions or observations) is not harmonized among the countries in America, 19 out of the reviewed 20 countries do allow some absolute grounds such as the lack of distinctiveness or the descriptiveness, deceptiveness and generic nature of the applied-for mark to be invoked.

Cuba, however, appears to be the country with most limited grounds of opposition, lacking the following absolute grounds: that a trademark is devoid of distinctive character; that it is not a mark capable of being graphically represented; descriptiveness; genericness; that is contrary to Article 6Ter of the Paris Convention; that it is contrary to morality or public order; that it causes deception of the public; that it is protected by international conventions, or that it is protected by national laws like flags, royal crests and emblems.

Bolivia, Dominican Republic, Ecuador, Mexico and Peru provide for all the key grounds of opposition that were surveyed, while the rest of the countries in America miss one or more grounds such as descriptive foreign words or expressions, copyrights, industrial designs and names of famous people.

Brazil, Chile, Paraguay and Uruguay do not provide, as a ground of opposition, that a mark is not capable of being represented graphically.

In all the surveyed American countries there are Inter-partes proceedings, and a statement of defense can be filed.

Except for Chile, Nicaragua and Panama, a fee is raised to commence opposition proceedings. A settlement between the parties can be reached in all the surveyed countries, apart from Uruguay.

The opposition period varies between 1 to 2 months. In various countries the term is counted on working days and it varies from 30 to 60 working days.

Out of the countries surveyed, only Brazil, Costa Rica, Panama and Paraguay restrict the use of the mark that is the subject of the application during pendency of opposition proceeding.

Further, only Canada, the United States and Panama provide for the possibility of having an oral hearing.

The “standard” timeframe for a statement of defense to be filed varies from 1 to 2 months in most of the surveyed American countries, with some remarkable exceptions, such as in Argentina which grants a 15-day period, and Paraguay which provides a period of 18 working days from the notice of opposition to file a defense. Mexico allows 4 months within which to file a defense.

In Argentina, Brazil and Paraguay only documentary evidence is allowed, while the rest of the American surveyed countries are flexible and allow for various types of evidence.

In American surveyed countries the average length of decision delivery varies between 6 and 12 months. The shortest timelines are in practice in the following countries: Chile (1-2 months); Costa Rica, Honduras (1-4 months), the United States (3-4 months) and Guatemala (6 months). Other countries like Canada, Bolivia, Brazil, Dominican Republic, Panama and Paraguay have rather lengthy proceedings (around 12 months), and Cuba reports the longest period in the region to obtain a decision (3 to 4 years), which is burdensome.

Appeal is available in all the surveyed American countries. Further, appeal is available in most of the surveyed countries excepting Costa Rica, El Salvador, Honduras and Panama. The period for filing an appeal varies significantly among all surveyed countries in America, the shortest one being 3 days after the notification of the decision in Honduras, and the longest being 60 days from the publication of the decision in Brazil, 60 days from the decision of the Trademark Trial and Appeal Board (TTAB) in the United States and 3 months in Guatemala.

No surveyed American countries allow for the filing of an appeal after registration is granted. Further, the surveyed countries in America do not allow for an extension of the time for filing an appeal, excepting Honduras.

In all surveyed American countries only the applicant and the opponent may file the appeal. Appeal is not open for third parties or IP Officials.

Most of the surveyed American countries (12 countries) allow the filing of new evidence, subject to certain conditions that vary from country to country, while 8 countries do not allow the introduction of new evidence.

The standard of review in the appeal stage varies from country to country in America.

16 of the surveyed American countries allow for a further appeal apart from Costa Rica, El Salvador, Honduras and Panama. 15 countries allow the filing of the further appeal before a Court, while Colombia and Paraguay also allow the second appeal before the registry/IP Office. Bolivia allows such further appeal before the registry/IP Office and/or an administrative body.

Our survey indicates that all the countries surveyed in America count on an opposition system in place, with many variants as to the grounds to be used.

#### **Africa:**

In Africa so far 5 countries have been surveyed, namely, Kenya, Morocco, South Africa, Tanzania and Zambia. All of them provide for a pre-registration opposition system, which is prosecuted before the IP Office of each country.

In Kenya, Tanzania and Zambia any person may file an opposition, while a party with a legitimate interest may oppose in Morocco and South Africa.

Earlier IP rights are allowed as a basis for opposition in the 5 surveyed African countries, but the range is rather limited in Morocco and Tanzania, for instance excluding personal names, industrial designs or copyrights.

The availability of absolute grounds for refusal in opposition proceedings (either via oppositions or observations) is not harmonized among the countries surveyed in Africa. Kenya, South Africa, Tanzania and Zambia do allow absolute grounds as well as bad faith to be invoked while Morocco in most instances does not accept oppositions based on absolute grounds or bad faith.

In the 5 surveyed African countries there are inter-partes proceedings, and a statement of defense can be filed. Fees are raised to commence proceedings in all countries surveyed. A settlement between the parties can be reached in all the countries surveyed.

The opposition period is of 2 months in Morocco, Kenya, Tanzania and Zambia while in South Africa it is of 3 months. There is no “standard” timeframe for a statement of defense to be filed. In Kenya, an applicant has 42 days to file a defense. South Africa allows a period of 1 month while Morocco, Tanzania and Zambia allow 2 months (Tanzania: 60 days) to file the statement of defense.

In all the countries surveyed, there is no restriction on the use of the mark that is the subject of the application during pendency of opposition proceeding.

In Kenya documentary and oral evidence is allowed. South Africa accepts only documentary evidence, while Morocco accepts any pertinent argument. Further, Kenya, South Africa, Tanzania and Zambia all provide for the right to an oral hearing.

In African surveyed countries the average length of decision delivery varies from 6 months up to 3 years (Zambia).

Both appeal and further appeal are available in the five surveyed African countries. All five surveyed countries allow such appeal before a court while Morocco also allows such appeal before the registry/IP Office.

Kenya and Tanzania grant 2 months, South Africa and Zambia grant 3 months for filing the appeal, while Morocco grants only 15 days after receipt of the notification of the decision.

No surveyed African countries allow for the filing of an appeal after registration is granted.

Morocco and South Africa do not allow for extensions of time for filing the appeal, while in Kenya, Tanzania, and Zambia the Registry or the Court (as the case may be) has the discretion to allow a longer time.

In all surveyed African countries, appeal is not open to third parties or IP officials and only the applicant and the opponent may file the appeal.

Kenya, Morocco and Zambia allow for the filing of new evidence, subject to the fulfilling of conditions, while South Africa and Zambia do not allow any additional evidence.

The standard of review in the appeal stage seems to be the same in the five surveyed African countries, that is, correct procedure followed, correctness of facts and correctness of law.

The five surveyed African countries allow the filing of a further appeal before a Court.

Based on our survey, it results that the five surveyed African countries provide a robust opposition system, which disposes of proceedings in an expedited manner. Since only 5 countries have been surveyed in Africa, this cannot be claimed for the region as a whole.

### **Middle East:**

In Middle East, 10 countries have been surveyed: Bahrain, Egypt, Jordan, Lebanon, Oman, Qatar, Saudi Arabia, Syria, Israel and the UAE. All of them provide for a pre-registration opposition system prosecuted before the IP Office of each country, excepting Lebanon, which has no opposition system in place, appointing it as a jurisdiction of concern.

Standing to oppose is divided in the surveyed countries of Middle East, being the case that in 5 of them (Egypt, Israel, Jordan, Oman and Saudi Arabia) any person may file an opposition, while in the other 4 with an opposition system in place (Bahrain, Qatar, Syria and the UAE), only a party with a legitimate interest may oppose.

The “standard” earlier IP rights (trademarks, trade names, well-known trademarks, appellations of origin / geographical indications, certification / collective marks) are allowed as a basis for opposition in all the surveyed countries in Middle East, excepting Lebanon.

The availability of absolute grounds for refusal in opposition proceedings (either via oppositions or observations) is mostly harmonized among the countries in Middle East.

Remarkably, Jordan provides for all the key grounds for opposition that were surveyed, while the rest of the surveyed countries in Middle East miss one or more of said key grounds such as foreign words or expressions, copyrights, industrial designs and names of famous people.

In all the surveyed countries in the Middle East (excepting Lebanon), there are inter-partes proceedings, and a statement of defense can be filed. Fees are raised to commence opposition proceedings in all countries surveyed. A settlement between the parties can be reached in all the countries surveyed.

The opposition period varies between 1 to 4 months. The shortest opposition period is of 1 month in the UAE, and the longest is of 4 months in Qatar. The “standard” timeframe for a statement of defense to be filed varies from 30 to 60 days in the countries surveyed.

In most of the countries surveyed in the Middle East only documentary evidence is allowed.

Out of the countries surveyed, only Syria restricts the use of the mark that is the subject of the application during pendency of opposition proceeding.

All surveyed countries in the Middle East which provide for an opposition system allow for an oral hearing apart from Bahrain and Syria.

The average length of decision delivery in this region of the world seems to be efficient since the timeframe varies from 30 days, which is the shortest (UAE), to 18 months in Egypt.

Both, appeal and further appeals are available in all the countries surveyed in the Middle East, excepting Lebanon. While Lebanon does not provide for an opposition system, if a mark is approved and registered, then a third party can institute proceedings in court to remove the mark, within 3 years of the trademark having been registered.

All surveyed Middle East countries allow the filing of an appeal before a Court. 3 surveyed countries also allow the filing of such appeal with an administrative body and 3 countries also allow the filing of such appeal with the Registry/IP Office.

The period for filing an appeal varies among the countries surveyed in the Middle East ranging from 15 days to 2 months from the receipt of the notification of the decision. The UAE grants a 15-day period to file an appeal to the Appeal Committee at the IP office, and 30 days to appeal the committee determination at Court.

No surveyed Middle East country allow for an extension of time for filing an appeal, apart from Israel which allows for an extension, but only for “special reasons”.



In all surveyed Middle East countries, only the applicant and the opponent may file an appeal. The appeal process is not open to third parties or IP Officials.

All surveyed Middle East countries, except Lebanon, allow for the filing of new evidence in a flexible manner.

The standard of review in the appeal stage is the same in all surveyed Middle East countries, that is, a correct procedure followed, correctness of facts and correctness of law.

All the surveyed Middle East countries allow for a further appeal before a Court, while Egypt also allows a further appeal to be filed before the Registry/IP Office.

Based on our survey, it appears that 9 out of the 10 surveyed countries in the Middle East provide not only a robust and holistic opposition system, but also one that is efficient and expeditiously disposes of proceedings. However, the absence of an opposition system in Lebanon creates great concern and should present advocacy opportunities in that jurisdiction.

## **Asia Pacific:**

Of the 16 countries surveyed in the APAC region, all of them provide for an opposition system. Except for Japan, which provides a post-registration opposition system, all the rest of the countries provide a pre-registration opposition procedure. In Mongolia, pre-registration opposition was introduced in 2021 and the system is still in process of development requiring further legislative action.

All countries publish the applications/trademark journals online, providing easy access to third parties.

In terms of standing, Nepal and Philippines allow only a party with legitimate interest to oppose an application. In contrast, “any person” may oppose an application in other countries.

Most countries provide expansive grounds for opposition, including both absolute and relative grounds. In terms of outliers, Indonesia and South Korea do not appear to provide a few key grounds such as foreign words or expressions, personal names, industrial designs. Australia and New Zealand do not allow for opposition based on business names.

Fees are raised to commence opposition proceedings in all countries surveyed. All countries provide for inter-partes proceedings and mandate a statement of defense to be filed. Australia, China, Pakistan and the Philippines have short periods of 30 days/one month to file a response, which may be onerous for trademark owners based in other countries. Pakistan and the Philippines allow seeking extensions of time.

In New Zealand, Malaysia and Singapore, the standard of evidence is “statutory declaration”. Australia requires declarations but no longer requires statutory declarations. India requires documentary evidence. The rest of the countries are flexible and allow all types of evidence. However, Pakistan and the Philippines require such evidence to be given by way of affidavit.

The opposition deadline varies between 2 months to 4 months.

Out of the countries surveyed, only Hong Kong and Nepal restrict the use of the mark that is the subject of the application during pendency of opposition proceeding.

Opportunity of oral hearing is not available in China, Indonesia, Japan, Malaysia, Philippines, South Korea and Thailand. While such right to an oral hearing is available in Australia, Hong Kong, India, Nepal, New Zealand, Pakistan and Singapore. In Mongolia, an oral hearing should be available, but the law has not been implemented yet.

A settlement between the parties can be reached in all the surveyed countries except for South Korea.

In terms of timeline for a decision, in Australia, Malaysia, New Zealand Singapore and Indonesia the opposition proceeding is concluded within 30 to 90 days. In China, Indonesia, Japan, Philippines, South Korea Thailand and Mongolia, a decision is issued between 6

months to 2 years. However, in India, Nepal and Pakistan, opposition proceedings appear to be delayed for over 2 years. This delay clearly impacts the efficacy of opposition proceedings.

Except for South Korea, all other countries provide for appeals. The shortest time to file an appeal is 20 days in New Zealand (While Philippines provides for a shorter period of 15 days, such period is extendable) and the longest being 90 working days in Indonesia. All other countries provide for 28 days to 90 days for filing appeal.

3 surveyed countries in Asia allow the filing of an appeal with an administrative body; 5 allow it within the IP Office; and 9 before a Court.

The countries surveyed in Asia do not allow for the filing of an appeal after registration is granted.

Further, 6 of the countries surveyed allow for a time extension for the filing of an appeal, subject to compliance with requirements that vary from jurisdiction to jurisdiction, although 7 of the countries do not allow for any extension in the appeal period.

In all surveyed countries in Asia (excepting South Korea where there is no appeal process) the applicant or opponent may file the appeal. However, in Indonesia and Japan, only the opponent is permitted to file the appeal. The appeal process is not open to third parties or IP Officials in the surveyed Asian countries except for Nepal, where any unsatisfied party may file an appeal.

All the surveyed countries in Asia, except for Philippines, allow for the filing of new evidence, subject to certain conditions.

The standard of review in the appeal stage is the same in all surveyed Asian countries – that is, correct procedure followed, correctness of facts and correctness of law.

All the surveyed countries in Asia allow for a further appeal (except for South Korea where there is no appeal process). All such countries allow for such further appeal before a Court, while the Philippines also allows the appeal to be filed before the registry/IP Office.

Based on our survey, it appears that Australia, Malaysia, New Zealand and Singapore provide not only a robust and holistic opposition system, but also one that is efficient and expeditiously disposes of proceedings.