

## Rules for Trademark Review and Adjudication

Promulgated on 2 November 1995 in the Order No. 37 of the State Administration for Industry and Commerce; revised for the first time on 17 September 2002 in the Order No. 3 of the State Administration for Industry and Commerce; revised for the second time on 26 September 2005 in the Order No. 20 of the State Administration for Industry and Commerce

### Chapter I General Provisions

**Rule 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 People's Republic of China (hereinafter referred to as the Implementing Regulations).

**Rule 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 a decision to cancel or uphold a registered trademark made by the Trademark Office according to the provisions of Articles 41, paragraph one, 44 and 45 of the Trademark Law.

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

**Rule 4** 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.

**Rule 5** 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.

**Rule 6** 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 examiners 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.

**Rule 7** An interested party who applies for withdrawal of an examiner for trademark review and adjudication according to the provision of Article 9 of the Implementing Regulations shall file the application in writing, and explain the reason therefor.

**Rule 8** 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. Provided that public interests and a third party's rights are taken into consideration, interested parties may reach an amicable settlement agreement in writing by themselves. The Trademark Review and Adjudication Board may conduct mediation.

**Rule 9** 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.

**Rule 10** Where a foreign person or enterprise attending to matter of review and adjudication has habitual residence or place of business in China, he or it may entrust a qualified trademark agency authorised by the State with, or directly attend to, the matter. Where a foreign person or enterprise attending to the matter of review and adjudication does not have habitual residence or place of business in China, he or it shall entrust a qualified trademark agency authorised by the State.

Where there is a change in the scope of power of agency, the agent relations terminate, or there is a change of agent, the interested party or its agent shall inform the Trademark Review and Adjudication Board in writing in a timely manner.

**Rule 11** Interested parties and agents may apply for consulting documents relevant to a case.

## **Chapter II Application and Acceptance**

**Rule 12** 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.

**Rule 13** 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. Where a trademark has been assigned or transferred and an application for the assignment has been filed with the Trademark Office, and not approved and published, the applicant shall submit relevant documents as proof. 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.

**Rule 14** Following information shall be indicated in the Application:

- (1) the applicant's name, address of residence, mailing address, the name of the person to be contacted, and telephone number. 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, mailing address, the name of the person to be contacted, and telephone number of the agency shall also be indicated.
- (2) the trademark in dispute and its application number or preliminary approval number, registration number and the issue number of the Trademark Gazette;
- (3) specific request for the review and adjudication, and the facts, grounds and legal bases for the request;

**Rule 15** Where a trademark review and adjudication application does not conform to any one of the requirements set forth in Rule 12 (1), (2) and (3) of these Rules, the Trademark

Review and Adjudication Board shall not accept the application and shall notify the applicant in writing of the non-acceptance, and explain the reason.

**Rule 16** Where a trademark review and adjudication application does not conform to any one of the requirements set forth in Rule 12 (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.

Where an application remains contrary to the requirements upon rectification, the Trademark Review and Adjudication Board shall not accept the application and shall notify the applicant in writing of the non-acceptance and explain the reason. Where no rectification is made at the expiration of the time limit, the review and adjudication application shall be deemed to have been withdrawn by the applicant and the Trademark Review and Adjudication Board shall notify the applicant in writing according to the provision of Article 30 of the Implementing Regulations.

**Rule 17** Where a trademark review and adjudication application conforms to the requirement for acceptance, the Trademark Review and Adjudication Board shall issue to the applicant the Acceptance Notification within thirty days.

**Rule 18** In any one of the following circumstances, any trademark review and adjudication application that has been accepted by the Trademark Review and Adjudication Board is deemed not to conform to the requirements for acceptance, and shall be refused according to Article 30 of the Implementing Regulations:

- (1) contrary to the provision of Article 42 of the Trademark Law in that against a trademark to which an opposition was raised and on which adjudication (on reexamination of the opposition) was made before it was approved of registration, an application for adjudication is filed on the basis of the same facts and grounds;
- (2) contrary to the provision of Article 35 of the Implementing Regulations in that an application for review and adjudication has been voluntarily withdrawn and the applicant files another application on the basis of the same facts and grounds thereafter;
- (3) contrary to the provision of Article 35 of the Implementing Regulations in that the Trademark Review and Adjudication Board has made adjudication or decision on an application for review and adjudication and the applicant files another application on the basis of the same facts and grounds; or
- (4) any other circumstance under which an application does not conform to the requirements for acceptance;

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

**Rule 19** Where there is/are a respondent/respondents indicated in a 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. Where a respondent does not submit a Reply or fails to submit the Reply before the expiration of the time limit, he shall be deemed to have given up making the Reply.

**Rule 20** Any interested party who needs to supplement relevant proofs after filing a Review and Adjudication Application or a Reply shall make a statement in the Application/Reply and submit altogether the same number of copies of the proofs as that of the Application/Reply within three months from the date of filing. Where the applicant/respondent does not make the statement or fails to submit the relevant proofs at the expiration of the time limit, he shall be deemed to have given up supplementing the relevant proofs, with the exception that the evidence is based on the new facts that occur after the expiration of the time limit or there is any other justifiable reason.

Where there is an opposite party involved, the Trademark Review and Adjudication Board shall communicate the proofs submitted by an interested party within the statutory time limit to the opposite party, and request him/it for cross-examination within a specified period of time.

**Rule 21** 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.

**Rule 22** The interested party shall categorise 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 on the receipt and indicate the date of submission.

**Rule 23** 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 16, 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 Reply 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**

**Rule 24** 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 more than three trademark review and adjudication examiners. In any one of the following circumstances, an individual trademark review and adjudication examiner may solely review and adjudicate a case:

- (1) where a trademark 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 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 third party's trademark of prior filing or registration, cited by the Trademark Office in its rejection decision, has been approved to be assigned to the applicant during the review and adjudication; or
- (5) any other cases that may be under the sole review and adjudication by an individual trademark review and adjudication examiner.

**Rule 25** Where an interested party applies for the withdrawal of a trademark review and adjudication examiner according to the provision of Article 9 of the Implementing Regulations and Rule 7 of these Rules, the trademark review and adjudication examiner shall suspend his participation in the hearing of the case before the Trademark Review

and Adjudication Board decides whether or not he should withdraw.

Where the Trademark Review and Adjudication Board receives an application for withdrawal from an interested party after it makes decision or adjudication, the validity of the review and adjudication decision or adjudication shall not be affected. However, where the review and adjudication examiner indeed needs to withdraw, the Trademark Review and Adjudication Board shall treat the matter according to law.

**Rule 26** 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. Where an applicant is not satisfied with the decision on non-withdrawal made by the Trademark Review and Adjudication Board, it or he 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 examiner whose withdrawal is requested 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.

**Rule 27** 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, besides applying Articles 10, 11, 12 and 16, paragraph one, of the Trademark Law, review and adjudicate the case in connection with 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. The Trademark Review and Adjudication Board shall listen to what the applicant has to say before making a decision according to the proceeding provision of this Rule.

**Rule 28** In hearing a case of reexamination applied for out of dissatisfaction with an adjudication made by the Trademark Office on opposition, 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.

**Rule 29** In hearing a case of adjudication requested according to the provision of Article 41 of the Trademark Law on 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 application and reply by the interested parties.

**Rule 30** 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 applicant.

In hearing a case of reexamination applied for out of dissatisfaction with a decision on canceling or upholding of a registered trademark made by the Trademark Office according to the provisions 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 made the decision to cancel or uphold the registered trademark, except that an interested party to a case in which the reexamination has been applied for under Article 44 (4) of the Trademark Law needs to submit additional evidence with justification.

**Rule 31** Where an interested party's trademark right has been assigned or transferred during the trademark review and adjudication, the assignee or the transferee shall make a statement in writing on its or his assignee or transferee status in a timely manner, participate in the follow-up reexamination proceedings, and take the corresponding consequences.

**Rule 32** In any one of the following circumstances, the review and adjudication shall terminate:

- (1) where the applicant dies or terminates and there is no inheritor, or the inheritor abandons its or his right for review and adjudication;
- (2) where the applicant withdraws its or his application for review and adjudication;
- (3) where the interested parties reach an amicable agreement by themselves or through mediation by the Trademark Review and Adjudication Board; 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.

**Rule 33** 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 according to law on a case the examination of which has been closed.

**Rule 34** The following 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.

**Rule 35** Where an interested party institutes proceedings in a people's court out of dissatisfaction with a decision or adjudication made by the Trademark Review and Adjudication Board, the interested party shall, at the time of submitting a complaint to the people's court or within fifteen days from the date of the submission at the latest, send a copy of the complaint, or separately notify the Trademark Review and Adjudication Board in writing.

Where the Trademark Review and Adjudication Board, within sixty days from the date of issuing its decision or adjudication, is not informed by the people's court or any interested party of a lawsuit directed to the decision or adjudication, it shall be deemed that the interested party has not instituted legal proceedings in the court, and the decision or adjudication will be transferred to Trademark Office for enforcement.

**Rule 36** 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.

**Rule 37** If an interested party requests for public review and adjudication, he shall give specific reasons that the public review and adjudication is necessary.

**Rule 38** 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.

**Rule 39** Specific procedures for public review and adjudication will be separately set forth by the Trademark Review and Adjudication Board.

#### **Chapter IV Rules on Evidence**

**Rule 40** 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 rebuts 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.

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 attorney to attend the review and adjudication, the attorney's admission shall be deemed the interested party's admission, except that the attorney's unauthorized admission of any facts directly results in the admission of the other party's review and adjudication request. The interested party's failure to express objection to its or his attorney's admission on site shall be deemed to be the interested party's admission.

**Rule 41** 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 deducted 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 to upset the facts.

**Rule 42** 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 corresponding Xerox copies, photographs or extracts. Where the furnished documents are Xerox copies, photographs or extracts of the original documentary evidence kept by a relevant department, the sources shall be indicated, and the documents be sealed by the department upon verification.

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 corresponding reproduction 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.

Where an interested party has doubt about the Xerox copies or photographs of the documentary evidence and material evidence furnished by the other party, and has relevant proofs in support of the doubt, or where the Trademark Review and Adjudication Board deems necessary, the doubted interested party shall furnish or show the original or the notarised copy of the relevant evidence.

**Rule 43** Where the evidence furnished by an interested party to the Trademark Review and Adjudication Board is evolved outside the territory of the People's Republic of China, or in the region of Hong Kong, Macau or Taiwan and where the other party has doubt for its authenticity and has relevant proofs in support of the doubt, or where the Trademark Review and Adjudication Board deems necessary, the evidence shall be notarized and or legalized according to the relevant regulations.

**Rule 44** 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 entire text or the part of the text which has been used or to which objection has been raised.

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 entire text or the part of the text which has been used or to which objection has been raised.

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.

**Rule 45** 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; whether the copy or reproduction of the evidence 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.

**Rule 46** The review and adjudication examiners shall comprehensively examine and evaluate all the evidence as to the degree of relevance of the various pieces of the evidence to the facts of a case and the relationship of these pieces of evidence.

**Rule 47** The following evidence alone shall not 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 in favour of one interested party from a witness who is a relative, affiliate or otherwise closely related to the interested party or oral evidence against one interested party 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, alone, cannot serve as the basis for ascertaining the facts in a case.

**Rule 48** The following evidence furnished by an interested party, to which the other party objects but fails to rebut with sufficient evidence to the contrary, 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.

**Rule 49** Where a appraisal conclusion made by an appraisal organisation with

entrustment by an interested party is not rebutted by the other party with sufficient evidence and reason to the contrary, the evidential force of the appraisal conclusion may be confirmed.

**Rule 50** In respect of the evidence one interested party has furnished and the other party accepts or fails to rebut with sufficient evidence to the contrary, the Trademark Review and Adjudication Board may confirm its evidential force.

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

**Rule 51** 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.

**Rule 52** The Trademark Review and Adjudication Board shall confirm the facts and evidence which are unfavorable to an interested party, but have been accepted by the interested party in its or his Application, Reply, Written Statement, or statements made by his appointed attorney in the course of review and adjudication, except that the party goes back on his words and has sufficient evidence to the contrary to rebut them.

**Rule 53** 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.

**Rule 54** 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, ex officio, by a State agency and any other competent department 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 derivative evidence;

(6) Oral evidence of other witnesses prevails over oral evidence, in favor of an interested party, from a witness who is a relative or otherwise closely related to the party;

(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 V Time Limit and Service**

**Rule 55** 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.

**Rule 56** 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.

**Rule 57** 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 through publication on the Trademark Gazette. At the expiration of the thirtieth day from the date of the publication, the document shall be deemed to have been served.

**Rule 58** Where an interested party is a foreign person or enterprise having no habitual residence or place of business in China, the trademark agency acting on its or his behalf as indicated in the relevant official record of trademark registration shall receive, with acknowledgement, the delivered legal documents in relation to the trademark in the proceedings of trademark review and adjudication; delivery of the documents to the trademark agency shall be deemed delivery thereof to the interested party.

Where a trademark agency has terminated its agent relation with the relevant foreign interested party before the delivery of the legal documents mentioned in the preceding paragraph, it shall inform in writing the Trademark Review and Adjudication Board about it, and return the legal documents, within ten days from the receipt thereof, to the Trademark Review and Adjudication Board for another service to the proper addressee.

Where a trademark of international registration under the Madrid system involves communication of the relevant forms and documents by the International Bureau, proof of service of the documents shall be submitted. If no such proof is furnished, the reason shall be explained in writing, and the forms and documents shall be deemed to have been served at the expiration of the fifteenth day from the date of issuance thereof by the International Bureau.

If a document can not be delivered by any of the above means, it will be served through publication on the Trademark Gazette.

## **Chapter VI Supplementary Provisions**

**Rule 59** 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.

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. 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 the 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.

**Rule 60** The documents or forms for handling review and adjudication matters shall be formulated and published by the State Administration for Industry and Commerce.

**Rule 61** The State Administration for Industry and Commerce shall be responsible for the interpretation of these Rules.

**Rule 62** These Rules shall enter into force on 26 October 2005.