

First Time Ever! China Adopts Fast-Track Examination for Trademark Applications

Article By:

Paolo Beconcini

On January 14, 2022, the China National Intellectual Property Administration (CNIPA) issued the Measures for Fast-Track Examination of Trademark Registration Applications (for Trial Implementation), which took effect on the same day. The Measures aim at improving the trademark examination system by addressing the national interests and the needs of market players, while maintaining high-quality examination standards. Although China had already adopted a fast-track examination system in 2021, this was limited to trademarks used on the goods or services that are for prevention or treatment of COVID-19. The Measures is now expanding the fast-track examination path to a larger number of filings.

One of the concerns regarding these new provisions is that they may advantage domestic businesses and economic sectors, or national interests, over the overall rights and interests of foreign trademark holders. We examine the provisions to see whether this concern is well-founded, and how much foreign right holders may profit from this new fast-track system.

Trademark Applications Subject to the Measures

According to the Measures, a fast-track examination of an application will be granted if the latter meets the following requirements.

Substantive Requirement (Article 2)

In order to be granted fast-track examination, the trademark application must satisfy one of the following circumstances:

- involves the name of a major project, major program, major scientific and technological infrastructure, major event, major exhibition, etc., at the national or provincial level, and there is an urgent need to introduce trademark protection
- directly relates to responding to a particularly significant natural disaster, a particularly significant accident, a particularly significant public health event, a particularly significant social security event or any other public emergency during the period of that emergency

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- is necessary for promoting the implementation of the Outline for the Building of a Country Strong in Intellectual Property in order to serve the high-quality development of the economy and society
 - is of great practical significance for maintaining the national interest, social public interest or major regional development strategy

Formal Requirements (Article 3)

Aside from the above, an application for fast-track examination, must also meet the following requirements:

- Be agreed by all applicants (in case of co-owners)
- Use e-filing
- Pertain to a trademark of words only (therefore, device marks and word/picture marks are excluded from the fast-track examination)
- Pertain to a mark that is not a collective trademark or a certification trademark
- Pertain to designated goods or service that are closely related to the circumstances listed in Article 2, and which are the standard goods/services in the latest Classification of Similar Goods and Services in China
- Not claim priority

Timeframe

The fast-track examination must be completed within 20 working days from the **date of the CNIPA's approval** to treat the application as a fast-track case. This favorably compares to the 6-8 months required for a normal grant decision.

It is important to note that the measures do not cover trademark procedures such as opposition, non-use cancellation, and invalidation. We will need to see whether a corresponding fast-track will be extended to such procedures for one of the marks eligible for fast-track examination.

Document requirements for applying for fast-track examination (Article 4)

The Measures require the trademark applicant to submit paper copies of the following evidence and materials to support the e-filing of the application: 1) fast-track examination application form (where the applicant needs to explain why the subject mark is eligible for fast-track examination; 2) evidence/materials to prove the selected eligibility situation under Article 2 of the Measures; 3) recommendations of the relevant departments of the central and state organs, the provincial people's government or its general office on the request for fast-track examination; or the reasons for requesting fast-track examination issued by the provincial intellectual property management department and the authenticity of the relevant materials after being audited.

Remarks and Conclusions

The newly introduced expansion of the trademark application fast-track examination system has a number of serious limitations: a) it is only available for word-marks; b) it seems only available in cases where there is a national and public interest at stake, or in support of domestic companies involved in national or local development plans; c) the requirements clearly limit eligibility to domestic companies — for instance, in relation to the timeframe requirements above, it won't be easy for foreign right holders to collect those documents without assistance of a local subsidiary or without a domestic licensee that could liaise with relevant authorities in China.

Furthermore, there is no definition of key terms like “major” and “significant” in article 2, leaving room for discretionary interpretation by CNIPA as to the fulfillment of the requirements by each applicant. Proving such requirements could therefore be even harder for foreign applicants. Without more stringent interpretative criteria, the Measure could be subject to misuse and abuses by arbitrary decisions of examiners.

Although the Measures do not expressly discriminate between domestic and foreign right holders, the way the Measures have been designed, and the requirements that they impose, seem to practically favor domestic applicants. In addition, access for foreign businesses to major projects or government sponsored events are conditioned on their having a Chinese subsidiary or a joint venture with local businesses. This makes it very difficult for them to benefit from the fast-track examination system, unless they decide to license or assign their rights to their local subsidiary or Joint Venture. The Measures seem to be part of the new Chinese IP policies focused on strengthening domestic IP independence from foreign countries in key economic and industrial sectors.

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