



A step in the right direction: China's TRAB launches new trademark review hearing system

**Hogan
Lovells**

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1. Summary

Under the Chinese Trademark Law, the Trademark Review and Adjudication Board ("**TRAB**") decides on review procedures filed against decisions by the Trademark Office. Up to date, these TRAB review procedures were strictly written procedures. Even though the possibility of holding a hearing was written into the existing legislation, hearings were in practice never held.

This has finally changed. The China State Administration for Industry & Commerce ("**SAIC**") has recently issued its *Rules on TRAB Hearings in Trademark Review Cases* (the "**Rules**"), which came into effect on the date of their publication, **4 May 2017**.

We are hopeful that this new possibility to request a hearing will be beneficial for the Chinese trademark practice. Indeed the industry has been lobbying for this for quite some time. It is hoped that by hearing and cross-examining the evidence and witnesses of the parties, the TRAB should be able to improve the quality of its decisions. For the parties, hearings may also help to resolve more complex trademark cases quicker and out of court, through administrative proceedings. However, the question remains how the TRAB will apply these Rules in practice, given its already large case backlog. We will keep you posted.

2. Highlights of the Rules:

2.1. The TRAB's discretion to allow and initiate hearings

Under the Rules, parties can apply for a hearing if cross-examination of the evidence seems necessary. However, the TRAB can either allow or reject such request at its own discretion. Moreover, the TRAB can also plan in a hearing when it deems it necessary, even at its own initiative.

Practically, hearings are meant to enable the parties to clarify their arguments and to summarize their evidence. TRAB examiners,

with their large case workload, could want to do the same for complicated cases, to get a summary of the evidence and for the parties to highlight the key evidence of the case.

2.2. Cross-examination of evidence

During a hearing, the parties will have the opportunity to present their own evidence and to cross-examine the other party's evidence.

Cross-examination of evidence during the hearing is meant to help the TRAB and the parties to verify the authenticity of evidence. Since it is often impossible for parties to submit original versions of their evidence, a hearing could be used to prove the authenticity of evidence by bringing the original documents to the hearing. This, if done properly, may help to reduce the disputes about authenticity of evidence in TRAB procedures.

2.3. Witness(es)

It is said that with the permission of the TRAB, witness(es) can be invited to hearings, and cross-examined by the parties.

However, we will need to wait and see how this works out in practice, as expert and witness evidence is generally not considered in China, not even in regular trademark court proceedings. We hope that this new measure could at least give an opportunity to present certain types of bad faith evidence.

2.4. Settlement

The Rules finally also provide that settlements can be reached during hearings before the TRAB. This is probably the most likely practice for these hearings. Should the parties reach a settlement during the hearing, then the hearing shall be terminated.

2.5. Time limit for applying for a hearing

Under the Rules, claimants in TRAB procedures can request a hearing by filing an application within 30 days after receiving the response of the respondent. Respondents on the other hand can request a hearing when submitting either their response or any supplementary materials. We will identify cases where a hearing may be beneficial, and will propose requests for hearings as appropriate for our ongoing cases.

2.6. Panel for hearings

Similar to the panel of a trial court, TRAB hearings will be presided by a TRAB panel of 3 examiners or more, always in odd numbers. The panel members can request the parties or witnesses to answer their questions concerning facts or evidence, and can request explanations.

3. Conclusion

The Rules were issued very recently, on 4 May 2017. The Rules will take some time to fall into practice. We will keep you posted regarding the practicalities of their implementation.

It is expected that hearings will, at least for the time being, only be rarely allowed or planned in by the TRAB, and only for those cases where a hearing can clearly result in a quicker case resolution.

This client alert is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

Contacts

Deanna Wong

Partner, Beijing

deanna.wong@hoganlovells.com

T +86 10 6582 9419

Zhen Feng

Partner, Shanghai

zhen.feng@hoganlovells.com

T +86 21 6122 3826

Eugene Low

Partner, Hong Kong

eugene.low@hoganlovells.com

T +852 2840 5907

Alicante
Amsterdam
Baltimore
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