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Research Theme:

Quality Management on trademark examination in Japan

Submitted By
Thinet Saktrakun
Trademark Examiner
Department of Intellectual Property

Supervisor:
Dr. Yorimasa Suwa
Senior Researcher, APIC-JIPII

Advisor:
Ms. Hiroko Hirayama
Senior Partner, Patent attorney
Asamura Patent Office

The views and findings in this report are those of the author and do not necessarily reflect the views and policy of the organization or sponsor of this study.

Abstract

Trademark is the necessary tool for business process to distinguish the one's goods and services for any other. Moreover, it also indicate the quality of goods and services by implication, it likes the advertisement for goods and services. However, trademark will grant the protection by registered through the trademark examination process, then the examination should conduct according to the laws, regulations, guidelines and manuals related to trademark examination. Therefore, various IP offices have paid attention to the quality on trademark examination for review and verify the examination that has been conducted along with the laws, regulations guidelines and manuals. There are some IP offices, which have been, performed the quality management on trademark examination, such as USPTO and JPO.

This study use the qualitative research method on theme “ Quality management on trademark examination in Japan” to determine the practice of JPO's staffs in quality management on trademark examination. This study consist of the JPO's quality management related information and practices through the lectures, the interviews, and the JPO website. Then the result of this study was presented to describe how quality management perform, what are the benefits for the DIP if decide to perform the quality management, and what are the efforts and preparations that DIP need to aware if decide to perform the quality management.

The result of this study indicated that the JPO's quality management is the adaptation of PDCA cycle which all of the staffs know their roles and responsibilities according to the quality policy, quality manual, the examination guidelines and the manuals. Moreover, the JPO has the close connection with the external parties, such as JIPA and JPAA, to ask for the opinion, comment and recommendation about the examination. In addition, the JPO provide the trademark examination related information into their website to the public for the understanding and transparency. Beside the quality management, the Check Table and Similar Group Code, which help the examiners for goods and services examination and similarity determination, are the other reason that JPO can maintain and improve the quality on trademark examination. However, before establishment of quality management, this study recommended the first step and next step plan as the preparation and roadmap of implementing the quality management into Thailand system.

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Chapter 1 Introduction

1.1 Introduction

Nowadays, trademark is one of business tool for conduct the business process. then the Trademark's right will be provided after the trademark examination, then the trademark examination is an important process for determining the registrability of trademark. So many IP offices have paid attention on the quality management of trademark examination, in order to guarantee the quality of the examination that proceed along with the laws, regulations, guidelines, and manuals.

For Thailand, we cannot conduct the quality management then we have faced with two issues on quality of trademark examination, the first is the lack of quality of office action and the other one is the efficiency of trademark examination. There are many reasons that caused these two problems; because of many backlogs, Lacks of staffs, Unclear Guidelines, the opinion is not uniform, the many of indications of goods and services.

Now, we would like to know how to conduct the quality management. What is the criteria for formulating the quality management and what things need to be concerned. Then we have learned some information about the JPO's quality management through the training course for many years, and we think their practice may be possible to adapt to Thailand.

Therefore, this study will focus on the quality management on Trademark examination of JPO to find out how they conduct the quality management and how to maintain and improve the examination's quality and then find out how to adapt it into Thailand Trademark Registration system.

1.2 The Objectives of the study

1.2.1 To find out and learn about the strength, weakness, opportunities and threats of the quality management on trademark examination in Japan

1.2.2 To find out and learn about strengths weakness opportunities and threats of the Trademark Examination IT system

1.2.3 To find out and learn about the possibility of establish the quality management on Trademark Examination in Thailand.

1.2.4 To find out and learn about the IT adaptation for Thailand.

1.3 Scope of the Study

This study focus on the JPO practice in quality management on trademark examination. Moreover, this study has implications for find out the requirement, policies, efforts and possibility to establish the quality management on trademark examination in Thailand.

1.4 Study Design

This study use the qualitative research method on theme “Quality management on trademark examination in Japan”. There are three sources of information that use in this study as following:

- Review the documents, training materials and related information that provide through the JPO's website
- Attend the training course provided by JPO
- Users interviews

1.5 Significance of this study

1.5.1 This study will help to establish the quality management on trademark examination in Thailand system.

1.5.2 This study will help to adjust and modify the requirement for the IT system.

1.5.3 This study will help to understand the important of maintain and update of examination guidelines

1.5.4 This study will help to understand the important of the communicating with users.

1.5.5 This study will help to understand the important of the predictability of examinations

2. Basic information and previous studies

Quality Management of trademark examinations in Japan

Nowadays many IP offices have concerned and paid attention to the quality management on examination, in order to maintain and improve the quality of examination, increase the satisfaction of the users, and for the transparency. In this chapter will describe and focus the basic information about the JPO's quality management on trademark examination.

2.1 The goal that JPO should achieves

In 2004, the JPO created the goal for speed-up of the examination that define three objectives that should be achieved. The first, the average period for first action must issue within 7 – 9 months; the second, the average period for application with accelerated request must issue office action within 3 months since the request has applied; the last, the period of pendency until establishment of right must be within 8 – 10 months.

Then, in 2014, the JPO created another goal that for improving quality of examination with two objectives. The first, the 60% of the users have and satisfaction for regarding the communication. The last one, the examiner contacts with the application, for trademark of sole proprietors, small- and medium- sized and regional organization, up to 1000 contacts.

2.2. The Quality Policy

For achieving the goal for improving quality of examination, The JPO published the Quality policy on Trademark Examination in August 2014 to use as the Fundamental Principles of Quality management for improving the quality of its examination on patents, designs and trademarks.

The Quality Policy outlines the key features of the JPO's Quality management. This policy based on two important factors, the common recognition that conducting globally reliable examination of high quality and properly granting rights. Those two factors support the companies to expand their business worldwide smoothly, which leads to promoting innovation, and maintaining the healthy order of business

transactions, the JPO is dedicated to achieve examination of the faster and utmost quality in the world by maintaining and improving the quality of its examination with this quality policy.

For trademark examination, the JPO's Quality Policy said that the Trademark is a mark to distinguish one's goods and services for any other persons' goods and services. It also guarantees a certain level of quality of goods and services and serves as an advertisement for the goods and services. Then it is necessary for the JPO to conduct the trademark examination to determine the existence or not of distinctive features, similarity of filed trademarks and so on, with consistency in accordance with laws, regulation and the Trademark Examination. The JPO also do the research for the actual status of the commercial transactions that related to such trademark for conducting the trademark examination. Consequently, the trademark will be able to fulfil their roles based on business operators utilizing their trademark rights, and doing so makes smooth consumption by consumers possible based on trust in the trademarks. The quality policy outlines the fundamental of the JPO's Quality management in terms of maintaining and upgrading the quality of trademark examination and contributing to the protection and enhancement of brands and the smooth consumption of goods and services. Then the top management and every staff member that involved with trademark examination in the JPO have to perform work in compliance with the fundamental principles for proving of a strong sense of responsibility and motivation. The JPO contribute to the protection and enhancement of brands and the smooth consumption of goods and services. Then the JPO performs the trademark examination and grant trademark rights appropriately, and enabling trademarks to fulfil their duty based on the adequate utilization of trademark rights by their rights holders and contributing to the protection and enhancement of brands and the smooth consumption goods and services by consumers. The JPO Quality policy on Trademark examination key principles are as follow

- The JPO Conduct consistent and objective trademark examination : in determining the existence or not of distinctive features, similarities and so on, must perform with consistency and objectivity in conformity to treaties, laws, regulations and the Trademark Examination Guidelines and do researching the actual status of commercial transaction sufficiently.

- The JPO promote the utilization of the trademark system by closely communicating with applicants: For proving the transparency and predictability of trademark examination, the JPO constantly review the guiding principle of the Trademark Examination Guidelines. Then each of trademark examiner can formulate logical and persuasive issue an office action or a notifications that anyone can easily understand, supporting the acquisition of rights. Inspired by these points, the JPO enhances close community with applicants, etc. and promotes the utilization of trademark system.
- The JPO actively share information with relevant persons inside and outside Japan in order to improve the quality of trademark examination: the JPO will share all of necessary information with people connected with trademark system and work to implement initiatives for improving the quality of trademark examination by putting such information to practical use.
- The JPO consistently improve operations: All staff of JPO that involved with trademark examination continually consults and evaluates the operations of trademark examination and examination management to improve the JPO's operations, and never satisfy with the current situation.
- The JPO raise the knowledge and capabilities of the JPO's staff: in term of human resourcing, that involved in trademark examinations, the JPO's staff that involved in trademark examination do their daily work and attend training programs. Then every staff will raise the level of knowledge on and capabilities in trademark examination at the same time by initiating their own voluntary efforts.

Moreover, the JPO periodically reviews this quality policy to maintain and even further improve its rationale and effectiveness.

2.3. The Quality Management Manual

For implementing the standardized quality management according to the key principles that prescribed in the quality policy, the JPO formulates the quality management manual for Trademark Examination to describe the quality management and the implementation of quality management system. In addition, this manual applied to all sectors that are involved in trademark examination. Then if there are any

change on the quality management or the implementation of quality management system, the JPO will revise the quality manual.

According to the quality manual, the JPO's quality management system based on the quality policy and the PDCA cycle method, the management method for continuous improvement of business process by repeating the four steps of plan-do-check-act, and this quality management system use for measuring trademark examination with the perspective of maintaining and improving the quality of trademark examination

In order to maintaining and improving Trademark Examination, the JPO established two levels of PDCA cycle; one is for the Trademark Examination sector (the Larger PDCA), and the other is for the each examination office (the Smaller PDCA) .

2.3.1 The Larger PDCA cycle

The functions of the larger PDCA cycle in the Trademark examination sector as below

[PLAN] formulate the yearly policy for trademark examinations, [DO] conduct the trademark examination and the related operation that necessary, [CHECK] evaluate the trademark examination by various measurements including the Quality Audit, and [ACT] amend the practices or policy of trademark examinations if it necessary then it will reflect to the next fiscal year's policies [PLAN]. This cycle assist the JPO to maintain and improve the quality of trademark examination

2.3.2 The smaller PDCA cycle

The function [DO] from the larger PDCA cycle is conducted by each examination office and each office makes efforts to maintain and improve their quality of examination according to the PDCA cycle. Each of examination office formulates the policies based on the policies of the Trademark Examination Sector [plan]. Then each examiner perform their examination and other action that need for trademark examination [do]. All of the work that perform by each examiner will be approved by the director of each examination office [check]. And each trademark examiner have been instructed about made decisions and drafting in order to make each disposition more appropriate to ensure the quality, utilizing various Quality management related

information and each examination office and examiner improve their practices, share information among examiners, and acquires knowledge and enhance capabilities through self- education and training programs [act] . Then the knowledge and information, which obtained through the mentioned measures, will effect to the subsequent measures for trademark examination [plan]. In addition, each examination office made the improvement of examination, where necessary, through their everyday operation.

2.4. Outline of initiatives on Quality Management

For The JPO's Quality management of trademark examination, there are three key measures as follow

2.4.1 Initiative to enhance the examination quality: Quality assurance, there are five activities:

- Quality Check and approval by directors: the Director of each examination office will check the substantive and formality check on examinations through all of notices that prepared by each examiner.

- Consultation: Trademark Examiners have consultations with other trademark examiner or directors, where necessary, in order to reduce disparities in term of trademark examination decision and conduct appropriate examinations. The consultation will be performed for the following cases that prescribed by the Trademark Examiner Sector or each examination office.

- (1) Application for defensive mark registration or for registration of renewal of the duration of a right based on defensive mark registration

- (2) Application that need extra attention because of the examiner should make the decision carefully such as application that could draw public's attention.

- (3) There are more than one application applied for and identical trademarks or very similar trademarks and they are on examination process now.

- (4) Application that need to consider on Acquired Distinctiveness through use.

- Utilization of Check Sheet for Trademark Examiners: The Check Sheet was made by consolidating typical issues that be found through various measures of the Quality Management, and arranging them as points that examiners should check in the examination process. Then the trademark examiners always do the examination according to the Check Sheet of trademark Examiners and submit this sheet with the drafted document to the director for approving. According to the check sheet for examiners, the examiners are able to avoid some typical mistakes that could be found on examination process and the directors can easily check for approving that the examination have been done through or not through the proper process. In addition, the Check Sheet will be revised by the decision of the Internal Committee of Quality Management of Trademark Examination on the revising proposal that the Quality management section made.

- Providing quality management related information: the Quality management section collects and provides the information on the examination including the flow of examination procedure, Examination guidelines for trademark, Manual for drafting notification of trademark examination, guidelines for approvals by directors in trademark examination, and also including the ratio of registration without notification of reason for refusal, the ratio of issuing a notification of reasons for refusal by law provision. With the quality management –related information providing, the examiners will make efforts to maintain and improve the quality of trademark examination such as evaluating their own practices objectively by comparing with other examiners in their examination office as well as with those in the Trademark Examination Sector.

- Developing Human Resources: Formulate the plan for developing human resources and reviewing the plan, in order to develop human resources who have not only expertise of trademark examiners but also who are highly capable of responding to issues involving intellectual property.

In Addition, the examiners will get the guidance to take the necessary training programs for the perspective of enhancing the quality of trademark examination and not only make efforts to acquire knowledge and enhance the capabilities, but also learn to perform better in their assignments

2.4.2 Initiatives to verify the examination quality: Quality Verification, perform by the Quality Management Office, there are three activities;

- Quality Audit: review the quality of examination based on sample check for verifying the quality of the entire examination process. The Quality Audit perform after the approval by directors and then the quality management office will audit the quality of randomly selected notices to judge whether examinations were appropriate before these notices are sent to applicants. The quality audit will check about the office action or notices comply with laws and regulations, guidelines, etc. Then the quality management office may provide the feedback of the results to the examination office to which the examiner who drafted the office action or notices belongs. Then the director of examination office will give the instruction to their examiners based on the feedbacks where necessary. The quality audit check for two kinds as following:

(1) Checking by re-examination: audit through re-examination

(2) Checking based on the results of examination conducted by the examiners (Fundamental Quality Audit): not only check for the decision is appropriate but also check the content of the drafted documents are appropriate in details such as logical structure, way to disclosure evidences, etc.

The quality audit aims to understand the situation of how variable decisions are among the examination offices, to support each examination office for their quality management through giving feedbacks about amending drafted document to the examiner in charge, and to understand the situation of final decisions in each examination office.

- Users Satisfaction Surveys: To understanding the need of users, the JPO conducts the user satisfaction surveys on the quality of trademark examination, and analyzes their evaluation on the quality both in general and for individual applications and the ground for their evaluation. The quality management office not only provide the results of analysis to each examination office for facilitating the improvements of practices and considering for future policies, but also publish the results to public. Moreover, the quality management office provided the results of analysis on individual applications in the survey as feedbacks to the examiners in charge.

- Opinion exchange between Examination Division and the Appeal Department: The trial and appeal department will give the feedback to the examination department on appeals against the examiner's decision on refusal. Then the examiner in charge will utilize the feedback for future examination and sometimes it is possible

to submit an opposing opinion about the feedback. Example of feedback from Trial and appeal Department: Applicable Article is incorrect; Inappropriate acknowledgement; Error in judgement; Thorough search not done; Beside the feedback, the examination sector and the trial and appeal department exchange views several times a years. Example of the agendas: Appropriateness of supporting evidence for acknowledgement; Acceptance of elements consulting trademarks; Lack of comprehensive consideration; Description of examiner' s decision of refusal are insufficient.

2. 4. 3 External evaluation of the quality management: Evaluations and recommendations for improving quality management from external experts, the subcommittee on examination quality management. This committee was established in August 2014 for implementing quality management and checking the status of implementation at the JPO. This committee consist of wide- range of external exerts fro, the private sector, legal sector, and academic fields.

2.5. The quality management section, Trademark division

This section only conduct how the quality management should be, planning quality management related initiatives, collect the quality management- related information, analysis, providing the feedback, and utilizing the quality management- related information in order to maintain and improve the quality of trademark examination

2.6. IT System

In term of IT system, the IT system only involve with examination process but in quality management process perform with paper through the check sheet. However, through the IT system, there is a tool, which helps the examiner made decision easily

2.6.1 The Check Table

The list of goods and services that store in database for compare with the indication goods and services in the application. Beside the indication, this table also included the similar-group code for each goods and service then the system can assign the similar-group code for each of indication goods and services in application that the indication is the same as in the list.

2.6.2 The similar-group code

The concept for similarity determination that consider on the relationship of the goods and services, this code is very useful and narrow down the result of trademark search and uniform the office action based on similarity. Because when the codes that is assigned for each application, are the same as the registrations, then the examiners will determine the goods and services are similar and make decision on the similarity of mark only.

2.7. The communication

In practice, JPO has many ways for communicating with users by direct, meetings, committee and website. Then the users can express their opinion and comment to JPO and JPO can analyze and adapt it for maintain and improvement of quality on trademark examination.

Chapter 3 Methodology of study

This chapter describes how the researcher will gather the necessary data and information that will be used in the entire study. It describes who will be the respondents and focus of the research. This also shows the procedure of data collection and instrument used, and the research design.

3.1 Research design

The purpose of this study is exploring, understanding, and gathering the information about the JPO's quality management system on trademark examination. Then all of data and information of this study are the unstructured data which including lectures, interview and the related documents. Then the researcher decided to use the qualitative research for this study since the qualitative research is the best practice for analyzing any unstructured data.

3.2 Research Method

This study performs by attending two short-term lecture courses; interview the users for their opinion about the JPO's trademark examination and Thailand's trademark examination; and review the related document to gather the data and information about the quality management on trademark examination

3.3 Data Collection

This study contains two types of data:

3.3.1 Primary Data: the fresh data collected from the interview the users for their opinion about JPO's trademark examination by asking the question as following:

(1) How is the satisfaction of the JPO's Trademark examination?

- Goods and services indication and similar group code
- Quality management (Office Action, Notifications, Ground for refusal)
- Others (please specify)

(2) According to JPO's trademark examination; are there any problem or issue that should be resolved? If yes, please specify.

- Goods and services indication and similar group code
- Quality management (Office Action, Notification, Ground for refusal)
- Others (please specify)

(3) The IT tools, and information relate to Trademark Examination, that provide through JPO's website, how is the satisfaction of them? (J-platpat , Guidelines, Other related document)

(4) Have you ever filed the trademark applications in Thailand? (Filing application by National route, Madrid Protocol or both) If yes, what is your opinion on Thailand's trademark examination? (Distinctiveness, Similarity prior marks, Indication of goods and services, required document, etc.)

(5) Do you have any suggestion about Thailand's trademark examination? If yes, please specify.

Then the researcher transcribed and extracted the required information for analyzing and use with this study.

3.3.2 Secondary Data: the data and information, which gather from attending the lecture courses and review the related documents through JPO's website.

3.4 Data Collection Instrument

As mention above, this study use interview, attend training course and find out the related documents and information through the internet.

3.5 The respondents of the study

The respondents of this study will separate in 2 part. First part is the training courses that provide by JPO, then the respondents of this part is JPO's staffs. The other part is interview, in this part the researcher focus on the user side then the member of JIPA's trademark committee and the attorneys from JPAA were chosen as the respondents.

3.6 Data analysis

After gather the information from training courses and transcribed the interviews, the researcher will analyze these information to find out the pros and weak of JPO's quality management on trademark examination. Then analyze this information to answer the question, how to adapt this system to Thailand; which things need to do and prepare before implement the quality management in Thailand; and how many efforts that need to do for implement the quality management.

Chapter 4 Result and analysis

4.1 Introduction

In this chapter will discuss about the result of the study on JPO's quality management on trademark examination and analyze the result to find out that how to establish the quality management on trademark examination in Thailand, what efforts that need to do, how to organize the organization, and how to maintain and improve it.

4.2 Result of the lectures and documentation

Through the data and information that gather via attend the training courses, interview and the related documents, the JPO's quality management on trademark examination has perform on the theory of system working by using PDCA cycle. There are several points, which need to discuss as following:

4.2.1 The Direction and Concept

4.2.1.1 Goals

JPO has two goals that related to Quality management, the first goal is the goal for speed-up, formulated in 2004 and another goal is goal for quality improvement on examination, formulated in 2014. These two goals were the outcome that the JPO need from their examiners and related staff. Then everyone in JPO acknowledge this and perform their work to achieve these goals.

4.2.1.2 The Quality Policy

When JPO decided to establish the quality management on examination, JPO defines the quality policy to outline the overview of the quality management and define the key measures that need for quality management on examination in each IP fields. From this point, the Quality Policy is the blueprint of the quality management on examination and made each division conduct the quality management in the same manners and attitudes.

For the quality policy on trademark examination, the six key features describe about the objectives of the quality management on trademark examination and the activities that should happen in the quality management on trademark examination.

By formulating the quality policy, this is a cooperation plan between the top management and each of staffs for conducting the trademark examination and also maintain and improve their quality to meet the features that written in the quality policy.

4.2.1.3 The quality manual

The quality manual is the instruction for performing the quality management on trademark examination. This manual does not contain only how quality management work, but also include the roles of each part in trademark examination process; the workflow; the persons who in charge for each roles; and the required knowledge and reference documents for each roles.

4.2.1.4 The PDCA Cycle

The PDCA cycle is the main concept of the quality management on trademark examination. With this cycle, JPO can maintain and improve the quality of examination efficiently. Like the figure as below:

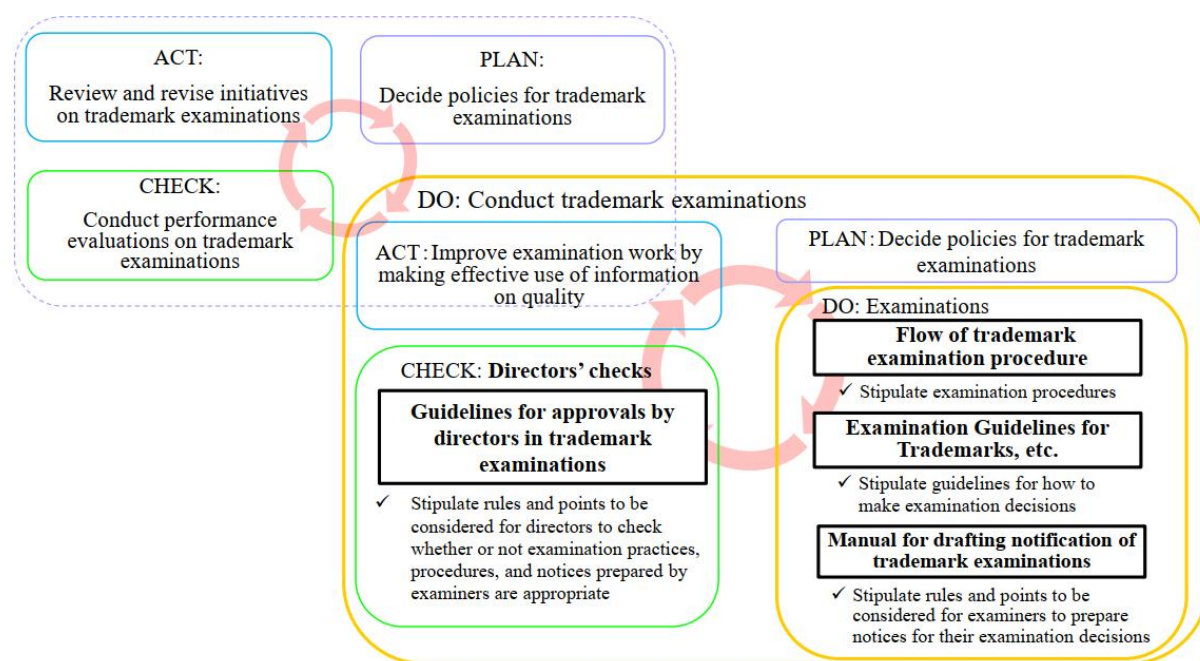


Figure 1: PDCA cycle, which applied in Examination office

From the figure, there are two cycles, the upper cycle for trademark examination sector and the lower cycle in [DO] of upper cycle for the trademark examination office. Each function of these two cycles have been defined the roles by the

quality manual. Then everybody that in charge with trademark examination will know and understand their roles, understand the next step after their roles, and improve their works quality through the feedback that they received. Beside the works, these cycles will reflect to the Quality Policy, the guidelines, and related documents for quality management, if there are any issues that need to review and amend.

The PDCA cycle is the no-end loop, and any issue from the DO and CHECK will be improved at the ACT and will apply by the PLAN and then DO and CHECK it again. Then the same issue will not happen again.

4.2.2 Conducting and management

4.2.2.1 The examination office

The role of the examination office is conducting the trademark examination, which define by the quality manual. Each examination office has the policy for performing the trademark examination, then the policies of each examination office may be different in detail but all of them must compliance with the JPO's Quality Policy on trademark examination.

In the examination offices, there are two roles: the trademark examiners and the Director of trademark examination offices. Their roles in the quality management on trademark examination as the figure below:

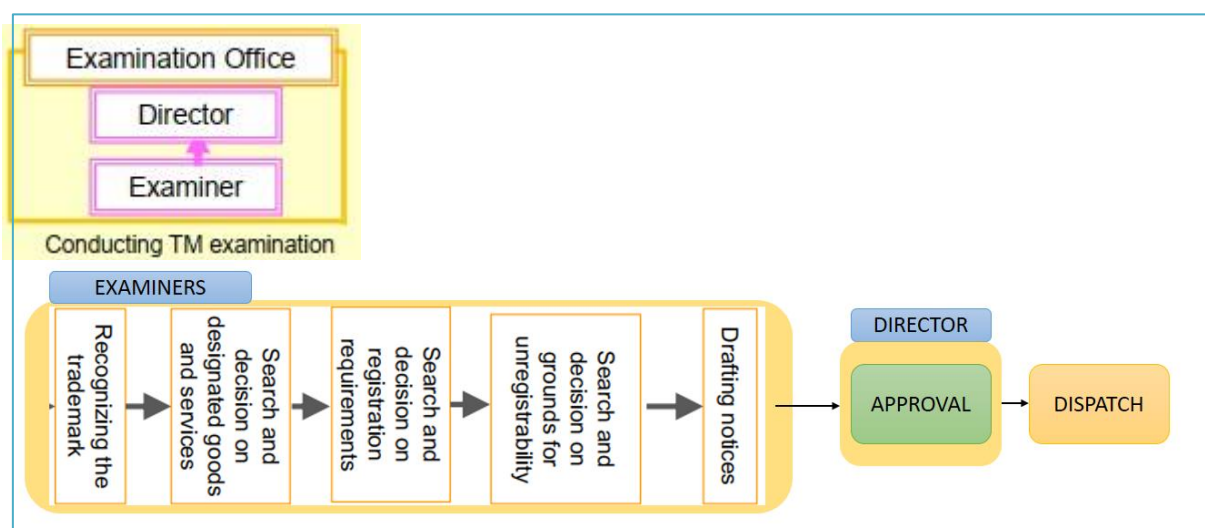


Figure 2: Roles in Examination office

4.2.2.2 The Human Resources

JPO by the quality management office formulate the training programs for human resources development to stipulate the requirement for promoting the assistant examiners to be the examiners and appeal examiners. They also review the programs when necessary. Beside the programs, the assistant examiners will get the guidance on Practical skill by the supervisor examiner and attend the training for improving skill like legal training, language Training, and public administration training.

4.2.2.3 The trademark Examiners

The role is do the examination along with the laws, regulations, guidelines and manuals by utilizing the check sheet and submit the check sheet along with the notification to the Director of examination office.

The check sheet contain the issue that the examiner need to examine for each application. The examiner need to check the check sheet to confirm that the examination has been conducted and every issues have been examined.

Other than the Check Sheet, JPO put together the knowledge of various examiners through the consultations, which there are four conditions as follow:

(1) Applications for defensive mark registration or for registration of renewal of the duration of a right based on defensive mark registration.

(2) Applications that need extra attention since a decision should made carefully.

(3) In case where more than one applications that filed for an identical trademark or very similar trademarks, and they are now examining by the examiners.

(4) Applications that require consideration of applying Paragraph 2 of Article 3 of Trademark Act (Distinctiveness Acquired Through use)

By the consultation, the appropriate decisions will be made by examiners, which have more objective manner and reduce the discrepancy of searches or decisions among the examiners. Then the trademark examination will be consistency, objectivity and enhanced the predictability of the result of examinations.

4.2.2.4 The director of examination office

The role is to check every notification of the examiners in each examination office according to the check sheet. Then give the advisory or the consultation with the examiners.

Other than the approval and consultation, the director will follow-up for the feedback, which got from the quality management office, is reflected into the examination practices in the future, based on the approvals or an equivalent process.

4.2.2.5 The quality management office

Provide the required information related to the examination to the examiners and conduct the quality audit by random notification that passes the approval of the director of examination office. Besides the quality audit, this office also collects information from user satisfaction surveys, discrepancy analysis between examination decisions and Trial/Appeal decisions, user's opinion, and the information on the implementation status of quality management-related measures, which is conducted in each examination office, in order to understand the status concerning the activities for maintaining and improvement on quality of trademark examination in each office.

After collecting the data, this office will analyze the results and identify the issues on trademark examination practices. Then reports them to the internal committee and reports to the subcommittee to evaluate the overall of implementation on quality management of examination at the JPO.

4.2.2.6 The examination guidelines and related information for trademark examinations

This is the important information that every examiner needs to know and understand. Other than the examiners, JPO also provides this information to users for

clarify the trademark examination and transparency. JPO also maintain and update the guidelines and related information when it necessary.

JPO provide this information to users through the JPO website for the understanding and transparency. With this information users or representatives can predict the result of the examination and then they can adjust the application into the way that meet the examiner's expectation and then the examination will be conducted easily.

4.2.3 The evaluations

4.2.3.1 Quality audit

The quality audit is conducted by the quality management office. They randomly choose the dispositions, which made by examiners after the approval of director of examination office, to check whether the dispositions comply with the laws, regulations, guidelines and manuals. Moreover, they will provide the feedback to the examination office.

The quality audit aims to understand the situations of how variable decisions are among the examination office, support each examination office by giving the feedbacks, and understand the situation of final decisions in each examination office.

4.2.3.2 Users

JPO try to understand users need from various way; the first is based on the satisfaction surveys, which issues to users along with the notifications, and another one is based on users' opinion, which solicits through the JPO website and other way, such as meeting. In addition, the quality management office will analyze this information in order to understand the existence of the issues on the trademark examination process. Then provide the result of analysis to the director who in charge of each examination offices, but only in cases for which the providers give the consents.

4.2.3.3 The internal committee

In charge of general evaluation to confirm that the quality management system of the trademark examination has been continuously appropriate and effective

based on reports or information, which made by quality management section. This committee makes a yearly evaluation of the status of trademark examination's quality management and the results of the various measures. The results of this evaluation will share within the trademark examination section in order to contribute to planning and making proposals for various initiatives and improvement of trademark examination practices

4.2.3.4 The subcommittee

In charge of objective evaluation and suggestion on the implementation of examination quality management, this committee are from the external experts. This committee also check the status of the implementation at the JPO.

4.2.4 IT system (Check Table)

The database that contain the list of goods and services and the similar-group code. This table will check the indication of goods and services in application with the list in database. If it is exactly match with the database, the system will assign the similar-group code automatically for domestic application. However, if there is a term that is not exactly match, the system will notify the examiner to examine and assign similar-group code manually for that term.

This table also help the examiner in term of examination because it can reduce the time for considering the indication of goods and services and need not to examine all of goods and service in term of clarifying indications

Other than indication issues, the check table will help the examiner in similarity issue because the check table include the similar group code then the examiner will determine the similarity of goods and services easily and uniform the decision.

4.3 The result of the Interview

4.3.1 The interview of JIPA members

The JIPA's members quite satisfy with the JPO practice on quality management. Even there are some issues like the notification issues different from the guidelines; they can point out the issues to JPO for clarifying and consulting. In the other hand, if

JPO has some changes in practices, JPO also ask the JIPA's members for the comment and opinions. Then the communication between JPO and JIPA is conducted quite closely.

Other point is the predictability of the examination, because of JPO provide many kind of information that related to trademark examination, such as guidelines, manuals, similar-group code, etc., then the users can file the application in the way that make the examiners work easier and increase the possibility of registrability.

4.3.2 The interview of JPAA members

For the JPAA's members also similar with the JIPA's members, they quite satisfy with the JPO's practice on quality management, especially the communicating with JPO. They can point out an issue to JPO and sometimes JPO provide some information in advance for the opinion and comment. Then the JPO and JPAA also have the close communication like JIPA.

They also said that JPO provide many kind of information related to trademark examination then they can predict the result of the examination, especially the similar-group code, it help the JPAA's members in term of conducting the trademark search easily and the results come out with more accuracy. Then they can predict and filing the application with the good quality.

4.4 The analysis of possibility to establish the quality management in Thailand

After analyzing the JPO's practice, the researcher think that their concept of quality management can be adopt into Thailand system, because their practices are not complicated it like the coordination works, understanding each other, and communicating with users. However, for Thailand, there are many preparations to do before establishing the quality management as following:

4.4.1 Goals for quality management

At the first place, we need to make a commitment on the Goals related to quality management, which there are two points; first is the time period of examination and another point is the quality of examination. These two points are necessary for the quality management because in term of quality, the pendency and the quality are the main issues that the users concern. Then we need to commit this issue first. And these

issues need to clarify with the DIP's staffs and the users for the same understanding. In addition, the goals must commit based on the fact, human resources, and reasonable.

4.4.2 Quality Policy

The quality policy is the main point of quality management. We need to define how the quality should be and what criteria need to be concerned for archiving the Goals that we formulated. And the quality policy may like the oath that DIP give to the users for confirming our practices will conduct along with this policy and transparency.

The criteria should be included the testing parameters, cycle time, effectiveness, resources, and expected results. In addition, these criteria should reflect to the quality manual and examination guidelines for confirming that all of them are conforming.

4.4.3 Quality manual

This manual is important for performing the quality management in Thailand, because we need clarify and define how to conduct the quality management on trademark examination and give instruction to each section in trademark office that what is their roles and what is the next step. And this manual will share within trademark offices and publish to users for the understanding and transparency.

4.4.4 Examination Guidelines and manuals

We need to clarify the examination guidelines and manuals up to date and easy understand for the examiners and the externals who do not familiar with Trademark Examination. And also made it publication. By clarifying the guidelines and manuals will help the examiners uniform the office action and for the users may understand the examiners and improve the predictability of examination then the users or representative may submit the application with the good quality and the examiner can examine it easier. And the guidelines should be included the conditions that need to have the consultation with other examiners.

4.4.5 Human resources

We must formulate the training system for providing the required knowledge, information, and necessary skills that need for being the trademark examiners.

In addition, the trademark examiners need to attend this training before promoting as trademark examiners officially.

Moreover, DIP should provide other training that may be helpful for trademark examiners to improve their knowledge and skill such as the language skill, public administration skill, and legal skill.

4.4.5 Check Table

Now we are developing the new IT system, we have an idea about the system that similar to check table. Then we can adjust and clarify the requirement in terms of adaptation of check table. In addition, we will design the IT system to support the similar-group code for the future because the similar-group code concept is also helpful in examination process.

4.4.6 Check Sheet

As I mention earlier, we are now on the development process of IT system, and the new IT system we also keep the idea about the quality management into it. Then we can adapt the concept of check sheet and implement it into our new IT system for confirming our examination that along with the laws, regulations, guidelines and manuals.

4.4.7 Quality management Group

If we want to establish the quality management, we need someone to conduct the quality management. This group is in charge for overall of quality management process also review, collect, analyze and report the information related to quality management on trademark examination for understanding the situation of examination and how to maintain and improve.

4.4.8 Communication with users

The trademark examination inevitably communicate with users, and the office action and notifications effect to users and their trademark rights. Then for maintain and improve the quality management on trademark examination, we should have some communication with users in various way maybe the surveys, meetings, and websites

By communicating with users, we can gather some information that may be helpful in term of maintain and improve the examination quality and we can clarify the misunderstanding easily.

4.4.9 PDCA cycles

The PDCA cycle is one of many theories on quality management in the world. This theory work like endless loop and the process will keep in check all the time with this cycle. Then the quality will maintain and improve afterward.

In order to establish the PDCA cycle, we need to clarify the role of each task, who is in charge, and what kind of information that need for each task. When everything is prompted, this cycle can work perfectly, and we can find out an issue on trademark examination quality and can maintain and improve the quality on trademark examination.

4.4.10 Publication the Information

Beside our staffs have the same understanding on trademark examination and related information; we also share this kind of information to public for the understanding and transparency. Then we need to clarify any information and make it easy understand before publication.

The information that need to share is the laws, regulations, guidelines, manuals and other related information. By sharing information, will confirm that everyone has the same idea and same understanding on trademark examination.

4.4.11 Coordination

The quality management is the organization processing, then the coordination of all section in organization and the externals' coordination are needed, in order to improve and maintain the quality of the examination. The externals' coordination is necessary, because they are directly effected by the examination's decision, then they will have the comment, opinion, and recommendation related to this matter. Then we can analyze this information and use them as the materials for improvement the quality of trademark examination.

4.5 Summary

In order to establish the Quality Management on trademark examination, it inevitably need more efforts, coordination, and understanding. It may take more times to finish but the result of this will be a good benefit and made the examination have more steady and transparency. Then the quality management is very importance process that need to perform inevitably.

The quality management is the oath that the IP office give to the users for guarantee and confirm that the examination has been conducted with in reasonable

If DIP chose to establish the quality management that will give us the uniform of decision and our practice will be verified and confirmed that comply with the laws, regulation, guidelines and manuals for transparency issue. Then the users will satisfy with our practice and have more trustworthy on the examination.

Chapter 5 Implications and the recommendations to IP Offices

5.1 Implications

The trademark examination is the important process for determining to grant the right to the trademark holders and this process conducted by the examiners. Then the decision of trademark examiners will effect to the trademark rights directly. Therefore, the office actions or the notices that issued by them should be cleared and reasonable. In order to keep it clear and reasonable, the quality management will use as the instrument for maintain and improve that issue, then the quality management will review and verify the examination to confirm that examination has been conducted along with the laws, regulations, guidelines and manuals.

The quality management cannot done by individual section but it need the coordination of all section in the organization to work together, from the top level to the practitioner level. Beside the coordination, the direction and strategy are very important because this is the root of the quality management, then the top management and each of staffs need to have the same vision, direction and goal for the quality management. In addition, DIP need to clarify the examination guidelines, manuals and related information to confirm that the examination practice along with the laws, regulations, guidelines and manuals.

Moreover, the IT tools are the one that is helpful in the quality management, because IT has involved with trademark examination and everything that happen in the IT system. They can trace, check, verify, and audit in every stage of work, then DIP can adapt the concept of check sheet into IT system for check and review the examination process. Beside the check sheet, other IT tool is, useful for the examination process, the Check Table. This table can reduce time for considering on indication and similarity issues.

5.2 Recommendations to Thai IP offices

From this study, there are many points that the DIP Thailand should prepare before establishing the quality managements within 1 – 2 years as follow:

5.2.1 First phase

There are three things that DIP should be prepared before establishing the quality management

- Define the goals, policies, and measurements that related to quality management on trademark examinations to use as the fundamental principles of quality management on trademark examination. Then clarify and revise the examinations guidelines, and confirm that the examination along with the guidelines, laws, regulation, and manual

- Implement the concept of Check Table and Check Sheet into Trademark IT system. Then testing and asking registrars for their comments.

- The Check Table: Contain the list of goods and services and support the similar-group code, but at the first time will be implemented for compare the indication of goods and services
- The Check Sheet: apply from the paper check sheet of JPO to confirm that the examiner has done the examination accordance with the guidelines or not. This will check their activity through their work by the IT system and has the program that can review and check this data for evaluation.

- Have a meeting with the users once per year to ask for their comments, recommendation and opinions. May separate into 2 groups; the applicant and the attorney

5.2.2 Next Step

The preparation in this may take time more than 2 year and after the first phase is finished already. There are several issues as following:

- Publication of the guidelines and manuals related to trademark examination to users for confirm their understanding has the same as DIP.

- Formulate the required training that need for being the trademark examiners and provide the other training that could improve and enhance the trademark examinations.

- Create the quality management group : to conduct the quality management and analyze the quality management related information for improvement of the quality on trademark examination

- Formulate the quality manual to describe how to conduct the quality management, who is in charge, and when; and describe the specific procedures that necessary for improvement of quality management

- Define how to evaluate the examination and define the level of satisfaction that what fact or information will take in consideration. In addition, clarify the testing parameters, cycle time, effectiveness, resources, and expected results that comply with the quality-related goals, policies and the measurements.

- Define the roles of each in trademark examinations according to the quality policies, manuals and the examination guidelines.

- Have the communication with the users by surveys, telephones and websites to understand the users and analyze their opinions to improve the trademark examination quality.

- Implementation of PDCA cycle to continue the quality management as the routine to check, find out and solve the problem that found in working process.

- Beside quality management group, DIP should be created the group or committee that in charge of the classification and similar-group code to conduct, maintain, amend and update the indication of goods and services and the similar-group code

- Launch the Check Table and Check sheet officially with necessary functions.

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Appendixes

Minute of the interviews

Interviewee name, title, organization:

- | | |
|-----------------------------|--|
| 1. Shinya Fuji | Manager of intellectual property team, legal & IP department,
BANDAI CO.,LTD. |
| 2. Shin Hinohara | Intellectual property section, intellectual property and legal
Department, KADOKAWA CORPORATION |
| 3. Megumi Oumi
TELEGRAPH | Patent attorney manager, licensing group, NIPPON
AND TELEPHONE CORPORATION |
| 4. Toru Sugisaki
COMPANY | Manager, trademark, TAKEDA PHARMACEUTICAL
LIMITED |
| 5. Mitsuru Saito | Intellectual property department, SUBARU CORPORATION |
| 6. Takuya Tokuwaka | Assistant manager, intellectual property, patent attorney,
YONEX CO.,LTD |
| 7. Takashi Tsurumi | Patent attorney, assistant manager, processed foods division,
NISSHIN FOODS INC. |

All of interviewees are member companies of Trademark Committee in Japan Intellectual Property Association(JIPA).

Interview date, time and place:

November 7, 2019 at 10.00-11.15 am, Japan Intellectual Property Association.

Question and responses:

1. How is the satisfaction of the JPO's Trademark examination?

1.1 Indicate designated goods and/or services and Similar Group Code

Summary of answers: Regarding to JPO designated goods and services. In case of JPO, they have Similar Group Code system. It is very easy to understanding.

1.2 Quality management

Summary of answers: In term of distinctiveness, Japanese trademark examiner, sometime office action, the trademark indicate quality itself. And some issuing some office action, in terms of reference document, sometimes they cited academic paper but sometime they also use Wikipedia or the kind of stuff that anybody can added to the writing.

According to Takashi Tsurumi from NISSHIN FOODS INC, he said that his company is a food company, not only Wikipedia, sometime JPO examiner office action based on the ground something that written in restaurants menu or tweeting by the shop owner or the internet which examiner think that it widely uses and lack of distinctiveness. Not only in term of JPO examination, but court also focus on the tweets.

1.3 Others (please specify)

Summary of answers: We have some issues that very unique to Japan, there are three different types character in Japanese. In addition, we have own Japanese phonetic letters call Katakana and Hiragana. One of the issue we concern that the trademark consisted of two lines, one line is English letter and in another line we have Katakana or Hiragana Japanese phonetic letters. About the issue concerning pronunciation and sound that the trademark should be read or pronounce. It's very complicated and unique to Japan. And the current of Japan trademark system, applicant is not really required to explain how to pronounce the specific words. Sometime it very difficult to determine what are they similar to something else or not. And the biggest issue from the user side, in term of similarity decision, it do not have very high predictability for the application will register or not. Because we really need to know that it can register or not in advance. However, if we find some similar looking prior registered trademark, it very difficult for us to see some that are similar or dissimilar. Therefore, all we can do, just go ahead and file some trademark application. And we have to wait at the time that examiner give decision.

2. According to JPO's trademark examination, are there any problem or issue that should be resolved? If yes, please specify.

2.1 Indicate designated goods and/or services and Similar Group Code

Summary of answers: The Japanese Similar Group Code are review and amended very frequently. Sometime designated goods, you need to be careful. Sometime, lists of goods and services they do not put together or put together. Maybe it difficult to grouping especially in the field of food and beverages, sometime they put together or separate it. Therefore, when you conduct the search some Similar Group Code you need to pay attention, exactly what year we talking about, what specific year

that trademarks were registered and you have to see what version of Similar Group Codes was use at the time of registration in case of the prior registered trademark.

2.2 Quality management

Summary of answers: Some examiners use a kind of documentation that very weak as ground of office action. That makes somewhat perplex that how should we respond to the office action. Therefore, we request to the JPO that have more clear guideline what kind of document that they use.

2.3 Others (please specify)

Summary of answers: The interviewees did not discuss in this topic.

3. The IT tools, and information relate to Trademark Examination, that provide through JPO's website, how is the satisfaction of them?

Summary of answers: Japanese system has been changed to now. It is very handy. And part of the practice, we have used it as a search tools. The function is quite easy for us to find out the Similar Group Code specific goods and services. However, in term of the filing of JPO, the interviewee wouldn't say it is easy to use. It is a question for how to use the e-filing system.

For BANDAI CO., LTD., in term of databases, quality, it is okay. But compare with other foreign countries, as Shinya Fuji's personal impression, in term of quality information, his impression is USPTO (United States Patent and Trademark Office) is the best.

4. Have you ever filed the trademark applications in Thailand? (Filing application by representative in Thailand, Madrid Protocol or both) If yes, what is your opinion on Thailand's trademark examination?

Summary of answers: Regarding to JPO designated goods and services. In case of JPO, they have Similar Group Code system. It is very easy to understanding. But if we compare to Thai system, and the point of view of the user, they are not clear between goods and services. In Thailand, they did not allow to designated "toys". We have designated "metal toys, plastic toys, wooden toys, electric toys...". But the goods had sold in the market, they sold in toy store. Another example is "electronics toys" is similar to the product in class 9. We always have considered these points. In Japan, have Similar Group Code. If the codes are similar to others, we have to avoid to registered. It is easy how we proceed. And the second point of view, in regards to trademark examination itself, as compare with Japan and Thailand system, the term of determination of distinctiveness is huge different between two offices.

5. Do you have any suggestion about Thailand's trademark examination? If yes, please specify.

Summary of answers: Toru Sugisaki from TAKEDA PHARMACEUTICAL COMPANY LIMITED, he said, in Thailand, have some database that conduct search. Therefore, please accept my apologies, maybe it is my misunderstanding. It is almost in Thai language. The issue in the top is English, but when I click, then the things will display is all in Thai language. That is my experience. Please modify, it might be grateful.

Moreover, Shinya Fuji form BANDAI CO.,LTD. , he use the Global Brand Database provided by WIPO (World Intellectual Property Organization). When database come to be some graphical data, it also indicated in Thai language. Therefore, he still need to use Google translation function to have the Thai language translated.

Minute of the interviews

Interviewee name, title, organization:

1. Tomohiko YAMADA Chairperson of the Trademark Committee, NISHIURA & ASSOCIATES
2. Emi AOSHIMA Vice Chairperson of the Trademark Committee, YUASA AND HARA

All of interviewees are member of Japan Patent Attorneys Association(JPAA).

Interview date, time and place:

November 18, 2019 at 14.00-16.00 pm, JPAA's meeting room in Tokyo Club Building.

Question and responses:

1. How is the satisfaction of the JPO's Trademark examination?

1. Goods and/or services indication and Similar Group Code

Summary of answers: In term of indication goods and services, The examiners' ground for refusal based on Article 6 and mainly involved with unclear indication issues whether or not the classes are correct or not.

For the similar-group code, the practice of the JPO is very clear and easy understand. We are often asked by the clients to conduct the trademark search, and then with the similar-group code, we are able to conduct the search easily and accurately predict the result of the examinations. Moreover, the similar-group code will not be effected by the results of Nice Union for the changing of classes. Because the similar-group code is still remain even the classes changed.

Sometimes in case of the new good and service come up, the similar-group code, that the JPO assigned, is inappropriate. Moreover, in the case of Nice Union committee's discussion on the new goods and services that should be in which class and how to indication it. After JPO got the result of that meeting, they need to decide that which Japanese translation

should be used for that term and what the similar-group code should be assigned. Normally the JPO also consult with JPAA and ask for the JPAA's view then if there is something that is inappropriate whether the Japanese translation or the similar-group code, The JPAA will point that out to JPO.

1.2 Quality management

Summary of answers: For nowadays, the JPO's examiners suggest and give directions for amendment regardless direct applications or Madrid applications. By the suggestions or directions, these are very helpful for the attorneys in drafting the amendment to response the JPO.

In addition, if the attorneys do not completely agree with the suggestions or directions based on the view of the examiners, the JPO allows the attorneys directly consult or discuss with the examiner to exchange the facts then the examiner will come up with the indication of goods and services that should be submitted.

The JPO conduct about the questionnaire and survey among the users to give the feedback to the examiner who handle the case. The JPAA quite satisfy for the way that JPO conduct the quality management.

1.3 Others (please specify)

Summary of answers: The interviewees did not discuss in this topic.

2. According to JPO's trademark examination, are there any problem or issue that should be resolved?

If yes, please specify.

2.1 Indicate designated goods and/or services and Similar Group Code

Summary of answers: The negative aspects of similar-group code, in case of determination similarity designated goods and services sometimes these are not flexible. Because the JPO has the examination guidelines and they said they determine the similarity of goods and services based on this guidelines but in the reality there are some cases that determine the similarity of goods and services based on the jurisprudence under the decision

of the supreme court in the past whether the same similar-group codes are assigned or not. Then sometimes the decision of similarity of designated goods and services may not be made on the actual situation of goods and services actual transaction.

Other JPO practice, sometime if they assigned the similar-group code in the past to the very similar goods and services, so they will refuse to change their minds. In addition, sometimes they issue an office action based on Article 6 for unclear indication, but the indication is very clear, and the problem is the examiner cannot find out what suitable similar-group code that should be assigned.

2.2 Quality management

Summary of answers: Sometimes the Examiners' decision may be different from the guidelines, then if the attorney receives the office action like that the attorney will point that out to the JPO. Normally after the attorney point that out to JPO, the office action can be overruled.

Normally if the substantive examiners eventually have to make decision to grant or refuse at the final stage this decision need to be approved by senior examiners. So, if the attorney points out to The JPO that the office action is different from the examination guidelines, the senior examiners who approve this decision will tell the younger examiner to change and try match the decision closer to the examination guidelines. And the case like this sometimes issue by the inexperienced younger examiners

2.3 Others (please specify)

Summary of answers: The interviewees did not discuss in this topic.

3. The IT tools, and information relate to Trademark Examination, that provide through JPO's website, how is the satisfaction of them?

Summary of answers: The JPAA quite satisfy with the information that provide by the JPO, which are the examination guidelines, the indication of goods and service also include the similar-group code, and also provide some the information detail about the changes of the rules, guidelines and regulations . On the other hand, the JPO also give the opportunity to the users for the public comments and always make sure that they have listened to the view of the users.

By the follow the situation that JPO announce through the website that make the users catch up the latest situation and confirm that there is no confusion.

4. Have you ever filed the trademark applications in Thailand? (Filing application by representative in Thailand, Madrid Protocol or both) If yes, what is your opinion on Thailand's trademark examination?

Summary of answers: Many members of the trademark committee handle with the Thai office. Some of members mention that, in case of distinctiveness and the decision on acquired distinctiveness, the examiner's decision is very strict when compare to the JPO practice. Moreover, the criteria or standard is not quite clear enough then it will be difficult to overcome the office action.

Another issue is that the decisions on the indications of designated goods and services are too strict, and such decisions made by different examiners are not uniform.

5. Do you have any suggestion about Thailand's trademark examination? If yes, please specify.

Summary of answers: One possible suggestion would be to make decisions on distinctiveness, acquired distinctiveness and the indication of goods and services less strict, and more clear and easy to understand. In addition, the Thai Office should ensure that decisions made by different examiners, become uniform and the criteria for such decisions should be clear and easy for everyone to understand. Furthermore, some members of the trademark committee would like the Thai Office to give an opportunity to file an argument before a decision for refusal is issued.

Note: If the interviewee references Trademark Examiner or Examiner in Thailand, we will use the wording “registrar” or “Trademark registrar” in the content of the report.

Colleagues' Feedbacks

The researcher has given the summary of the research to the colleagues in Trademark Office to ask for opinion and comments, then they give some comments and I have applied and revised the report along with their comment. The summary of the comments follow:

- Most of my colleagues agree with my ideas but there are some issues that I should declare in the report to clarify and prevent the misleading about the recommendations.

- This report should define the objectives and policies of quality management clearly and should be included the topics like the Testing parameter, cycle time, effectiveness, resource and expected results.

- The clarification of guidelines should define the specific practice standards and procedures.

- This report should express about the training that require for the examinations and other skill that need for work.

- About the implement of the check table and check sheet, they advise that should define the period of testing and asking for the feedbacks from the internals and externals.

After receiving these comments, the researcher has revised the report and clarified some recommendations to be specific and contain all of issues that need to be concerned for quality management on trademark examination.

Executives' Feedbacks

The researcher has given the summary of the research and the recommendations to the top management, and they have given some feedbacks as follows:

- The quality management on trademark examinations may be useful for trademark office in case of improvement of the trademark examinations.

- The researcher should be shared the experiences and exchange opinions with other staff through the Knowledge management section about the content of the report. Then the researcher and Trademark office may receive some useful recommendations in the different point of view.