

## 16.04

### **Explanation of the Standards for Exhibitions Specified by the Commissioner of the Patent Office**

1. The standards specified by the Commissioner of the Patent Office (hereinafter referred to as the "Standards") specified pursuant to Article 4(1)(ix) and Article 9(1) of the Trademark Act are as follows:

Public Notice No. 6 of the Patent Office

Based on the provisions of Article 4(1)(ix) and Article 9(1) of the Trademark Act (Act No. 127 of 1959), the standards for exhibitions specified by the Commissioner of the Patent Office are established as follows and shall come into force as from April 1, 2012.

March 13, 2012

The Commissioner of the Patent Office, Iwai Yoshiyuki

1 An exhibition held by those who are not the national or local government (hereinafter referred to as the "Government, etc.") that complies with the standards specified by the Commissioner of the Patent Office provided in Article 4(1)(ix) of the Trademark Act, must satisfy the following requirements:

(i) the purpose of the exhibition is to contribute to the development of the industry, and, whatever the name, such as, "exhibition" and "trade fair," it is held in order to exhibit and display goods, etc. relating to the industry;

(ii) the place it is held, the period during which it is held, the eligibility for exhibitors and attendances; the number of the exhibitors, and the kinds and quantities of goods on exhibition, etc. are determined as appropriate in light of the purpose of that item;

(iii) it is an exhibition co-sponsored or sponsored by the Government, etc. or other exhibitions equivalent thereto.

2 An exhibition held by those who are not the Government, etc. and an international exhibition held by the Government, etc. of a country which is not a contracting party to the Paris Convention, a member of the World Trade Organization or a contracting party to the Trademark Law Treaty, or by those authorized thereby to hold such exhibition in the country's territory, which complies with the standards specified by the Commissioner of the Patent Office as provided in Article 9(1) of the Trademark Act, must satisfy the following requirements:

(i) the purpose of the exhibition is to contribute to the development of the industry, and, whatever the name, such as, "exhibition" and "trade fair," it is held in order to exhibit and display goods, etc. relating to the industry;

(ii) the place it is held, the period during which it is held, the eligibility for exhibitors and attendees, the number of the exhibitors and the kinds and quantities of goods on exhibition and the like are determined as appropriate in light of the purpose of that item;

(iii) an exhibition held in Japan, in principle, is an exhibition co-sponsored or sponsored by the Government, etc. or other exhibitions equivalent thereto.

2. The explanations of the Standards are as follows:

(1) The purpose of Article 4(1)(ix) of the Trademark Act is to maintain the authority of the prize of the exhibition and to prevent misconceptions regarding the quality of goods or services while the purpose of Article 9(1) of that Act, following Article 11 of the Paris Convention, is to protect an exhibitor in a case where an application for trademark registration of a trademark used for goods or services exhibited at an exhibition by the exhibitor is filed first by a person other than the exhibitor who should be the correct applicant for trademark registration, and thus, their purposes are different from each other.

Item "1" of the Standards provides the requirements for the exhibition provided in Article 4(1)(ix) of that Act while Item "2" of the Standards provides the requirements for the exhibition provided in Article 9(1) of that Act.

In the Standards, except for the requirements set forth in "1(iii)" and "2(iii)," the same requirements are provided, but, in examination, it shall be determined whether an exhibition satisfies each of the requirements in light of the respective purposes.

(2) "1(i)" and "2(i)" of the Standards provide the purpose and the name of an exhibition.

An "exhibition" prescribed in this provision is referred to as a "meeting held for the purpose of collecting and exhibiting various kinds of products to be viewed and purchased by public, thus, promoting the industry and the culture. ("Koujien 6th-edition; Iwanami Shoten, Publishers"), and the purpose is "to contribute to the development of the industry" as provided in the Standards.

(3) "1(ii)" and "2(ii)" of the Standards exemplify the points to be taken into consideration in the general outline for holding an exhibition, such as, the place it is held, the period during which it is held, the eligibility for exhibitors and attendees the number of the exhibitors and the kinds and quantities of goods on exhibition.

(4) "1(iii)" of the Standards provides, as requirements for an exhibition held by those who are not the Government, etc. provided in Article 4(1)(ix) of the Trademark Act, the relevant exhibition to be "an exhibition co-sponsored or sponsored by the Government, etc. or any other exhibition equivalent to these."

"2(iii)" of the Standards provides, as requirements of an exhibition held by those who are not the Government, etc. provided in Article 9(1) of the Trademark Act, that "an exhibition held in Japan should be one co-sponsored or sponsored by the

Government, etc. or any other exhibition equivalent to these."

(i) An exhibition with a profit-making purpose or an exhibition whose purpose is to give a profit only to some: such as a specific enterprise, does not fall under the exhibition of this provision.

When an exhibition is held, in general, the requirements for being co-sponsored or sponsored by the Government, etc., are that the purpose for holding the exhibition is non-profit and is not to give a profit only to some: such as, a specific enterprise. Thus, in the Standards, based on these actual conditions, the fact that an exhibition is co-sponsored or sponsored by the Government, etc., is made as the requirement for the exhibition to be a subject exhibition of this provision.

However, in light of the purpose of Article 4(1)(ix) of the Trademark Act, i.e. "to maintain the authority of the prize of an exhibition and to prevent misconceptions regarding the quality of goods or services," it is necessary to take note that even if an exhibition is co-sponsored or sponsored by a local government, in some cases, the exhibition may not be determined as applicable to this item, as a result of considering the general outline for holding an exhibition (such as, a case where the exhibitors and attendances are limited only to persons belonging to the local government) and the name recognition, etc. of the exhibition.

(ii) "Other exhibitions equivalent thereto" include exhibitions held by an Incorporated Administrative Agency, Public Interest Incorporated Associations or Public Interest Incorporated Foundations (including the Exceptional Incorporated Associations or Exceptional Incorporated Foundations provided in Article 42(1) of the Act on Arrangement of Relevant Acts Incidental to Enforcement of the Act on General Incorporated Associations and General Incorporated Foundations and the Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundations (Act No. 50 of 2006)), and other non-profit organizations undertaking a business for public interest. An exhibition held by an Incorporated Administrative Agency, etc. shall be treated as being equivalent to the exhibition co-sponsored or sponsored by the Government, etc. by considering that the exhibition is not held for a profit-making purpose or a purpose to give a profit only to some, such as a specific enterprise, based on the characteristics of these juridical persons.

(iii) In the Standards concerning Article 9(1) of the Trademark Act, the phrase "in principle" is described. The purpose of this description is to make clear that even if not being co-sponsored or sponsored by the Government, etc., an exhibition may be recognized as one held by those who are not the Government, etc. provided in this paragraph, and a well-known exhibition not sponsored by the Government, etc., or the like may be an example for this exception.

(Note) Click below to see the Examination Guidelines for Trademarks

Examination Guidelines for Trademarks:

Article 4(1)(ix) (Prize awarded at an exhibition)

Article 4(1) (xi) (Another person's registered trademark applied for prior to the filing date of the trademark application concerned)

Article 9 (Special provisions concerning the time of filing of applications)