

52.01

How to Describe a Motion Trademark in an Application

A motion trademark should be described in an application as follows.

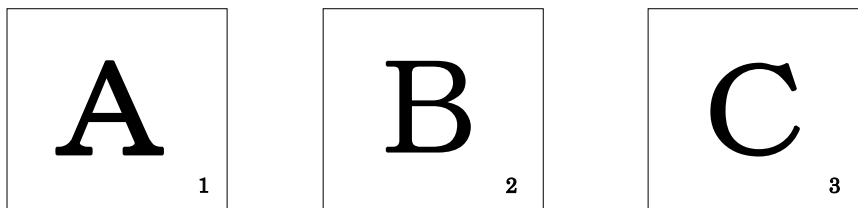
1. Trademark claimed in an application

In the case of a motion trademark, the trademark claimed in an application should be presented in one or more images or photographs in order to define how the trademark changes over time. It is necessary to describe all of the marks that comprise the motion trademark and the manners of all the transitions.

However, it is not necessary to describe every moment of transition. It would suffice if the application states the type of change that occurs during each transition (change in color, size, angle, position, etc.) and the mark that appears after each transition.

(Example 1) Case where a mark instantly changes to another mark

[Trademark for which trademark registration is sought]



[Motion trademark]

[Detailed explanation of the trademark]

The trademark claimed in the trademark application (the "Trademark") is a motion trademark.

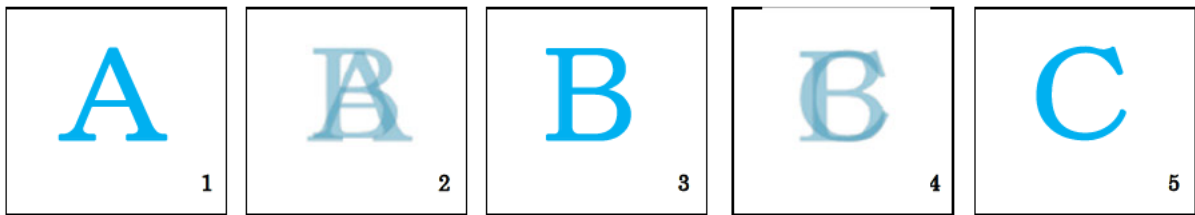
The images of the Trademark change in the order from 1 to 3. First, the character "A" appears. About five seconds later, "A" changes to "B." About five seconds after that, "B" changes to "C."

The motion trademark as a whole takes about 15 seconds.

The small number indicated at the lower right corner of each image shows the order of those images and is not a part of the trademark.

(Example 2) Case where a mark gradually changes to another mark

[Trademark for which trademark registration is sought]



[Motion trademark]

[Detailed explanation of the trademark]

The trademark claimed in the trademark application (the "Trademark") is a motion trademark.

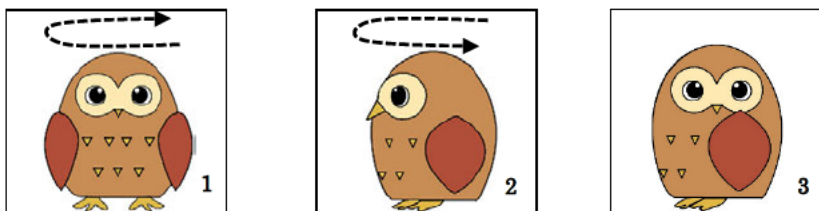
The images of the Trademark change in order from 1 to 5. First, the character "A" appears and gradually disappears over a period of about five seconds, during which the character "B" gradually appears. Over the next five seconds, the character "B" gradually disappears, while the character "C" gradually appears.

The motion trademark as a whole takes about 15 seconds.

The small number indicated at the lower right corner of each image shows the order of those images and is not a part of the trademark.

(Example 3) Case where a mark gradually changes

[Trademark for which trademark registration is sought]



[Motion trademark]

[Detailed explanation of the trademark]

The trademark claimed in the trademark application (the "Trademark") is a motion trademark.

The images of the Trademark change in order from 1 to 3. First, an owl facing the front appears. The entire owl turns clockwise over a period of two seconds and faces to the side. Then, only its face turns counterclockwise to the front over a period of two seconds.

The motion trademark as a whole takes about 10 seconds.

The small number indicated at the lower right corner of each image shows the order of those images. The dashed-line arrow contained in an image defines how the owl changes over time. The number and the arrow are not a part of the trademark.

(Example 4) Case where a mark instantly changes its color, while moving

[Trademark for which trademark registration is sought]



[Motion trademark]

[Detailed explanation of the trademark]

The trademark claimed in the trademark application (the "Trademark") is a motion trademark.

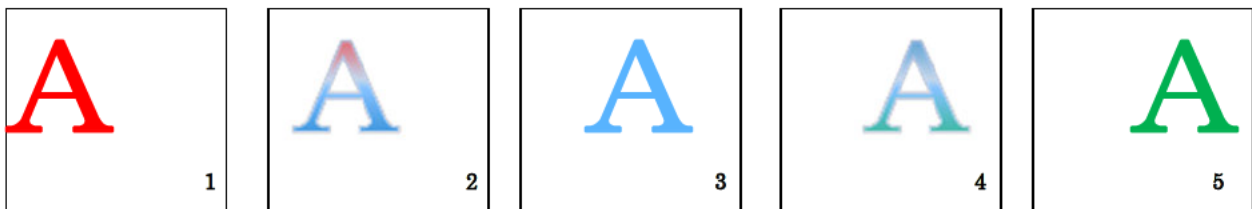
The images of the Trademark change in order from 1 to 3. First, the character "A" written in red appears. While the character moves to the right, its color changes from red to blue over a period of five seconds, and then changes from blue to green over a period of five seconds.

The motion trademark as a whole takes about 15 seconds.

The small number indicated at the lower right corner of each image shows the order of those images and is not a part of the trademark.

(Example 5) Case where a mark gradually changes its color, while moving

[Trademark for which trademark registration is sought]



[Motion trademark]

[Detailed explanation of the trademark]

The trademark claimed in the trademark application (the "Trademark") is a motion trademark.

The images of the Trademark change in order from 1 to 5. First, the character "A" written in red appears. While the character moves to the right, a color change starts in its lower part and gradually spreads to its upper part. Over a period of five seconds, the color changes from red to blue. Over the next five seconds, it changes from blue to green.

The motion trademark as a whole takes about 15 seconds.

The small number indicated at the lower right corner of each image shows the order of those images and is not a part of the trademark.

2. How to fill out the section "Detailed explanation of the trademark"

(1) How to state the required time in the section "Detailed explanation of the trademark"

Since a motion trademark changes over time, it is necessary to state the length of time required for the change (the required time). However, since it is impossible to state the required time in the section presenting the trademark in the application, it is necessary to state the required time in the section "Detailed explanation of the trademark."

The following are examples of how to state the required time in the section "Detailed explanation of the trademark."

(A) Example of the statements concerning the required time that can be considered to be sufficient to define the motion trademark

[i] The motion trademark as a whole takes 10 seconds.

[ii] The motion trademark as a whole takes about 10 seconds.

(B) Example of the statements concerning the required time that cannot be considered to be sufficient to define the motion trademark

[i] The motion trademark as a whole takes 10 to 15 seconds.

[ii] The motion trademark as a whole takes 10 seconds or 15 seconds.

[Explanation]

A motion trademark could give a different impression to consumers if the time required for the character changes becomes longer or shorter. However, if such change in the length of time is shorter than one second, the impression of the trademark would remain the same in most cases. Thus, the statement "about ten seconds" can be considered to be specific and clear enough to define the motion trademark.

However, a statement indicating a certain time frame such as "10 to 15 seconds" cannot be considered to be specific and clear enough to define the motion trademarks because the trademark could give a different impression to consumers if the time required for the changes becomes longer or shorter to such an extent.

(2) How to fill out the section "Detailed explanation of the trademark" in the case of a motion trademark that changes only in color

A motion trademark is a trademark that changes over time including a trade mark that consists solely of colors. In the case of an application claiming a motion trademark consisting solely of colors, the applicant is required to define the colors in the section "Detailed explanation of the trademark" with the same level of precision and clarity that is required for the definition of an ordinary trademark consisting solely of colors (the name of each color, RGB values, the registration number of each color in the color sample book, the combination of the colors (the position and ratio of each color in the color combination, etc.)).

3. Handling concerning a motion trademark in an international application for trademark registration

(1) A motion trademark in an international application for trademark registration is described as follows in a designation notification.

- (i) In a case where a motion trademark comprises a plurality of images or photographs, a single image or photograph representing all of the plurality of images or photographs in order to define how the trademark changes over time
- (ii) Video file (e.g., MP4 format)

(2) In a case where a trademark pertaining to international application for trademark registration is represented as a video file, the requirement specified in the main paragraph of Article 3(1) of the Trademark Act is not satisfied since video files are not recognizable as a motion trademark in Japan (Part I, Chapter 2, Main Paragraph of Article 3(1), 7(1) of the Examination Guidelines for Trademarks).

However, if a trademark pertaining to international application for trademark registration is a combination of sound and image (referred to as “multimedia mark”), since definitions of a trademark do not include combinations of “sound” and “character, figure” or the like, such trademark does not correspond to the trademark prescribed in Article 2(1) of the Trademark Act. Thus, notification is made with the addition that the applied trademark does not fall under the trademarks registrable in Japan. (Part I, Chapter 2, Main Paragraph of Article 3(1), 4(1) of the Examination Guidelines for Trademarks, and Article 4 of the Ordinance for Enforcement of the Trademark Act).