

A2.03

Handling Concerning Declaration of Standard Characters and Identification of Trademarks Regarding an International Application when the Trademark Claimed in the Basic Registration or Basic Application is in Standard Characters

1. The item 7(c) “The applicant declares that the mark is to be considered as a mark in standard characters.” (hereinafter referred to as “the declaration of standard characters”) in the request for an international trademark application shall be a voluntarily described matter for the applicant irrespective of whether or not the trademark of the basic registration or basic application consists of standard characters, and the JPO shall not make a confirmation.
2. When the trademark concerning the basic registration or basic application consists of standard characters, if the trademark described in the request of an international trademark application is described in characters designated by the Commissioner provided in Article 5(3) of the Trademark Act or those recognizable as equivalent to such characters in constitution and form, the trademarks are handled as identical.

[Explanation]

(1) The legal effect of the declaration of standard characters in an international trademark application is recognized as one based on the legal system of the designated state, and it is not always the case that an application of a trademark is deemed the same as characters designated by the Commissioner in terms of constitution and form (chirography) under the Trademark Act, therefore, the declaration of standard characters in item 7(c) of a request for an international trademark application is considered to have no effect on the definition of identification of constitutions and forms of trademarks. In addition, since the International Bureau does not make confirmation on the description of the declaration of standard characters, this declaration shall be described as a voluntarily described matter, and the JPO does not make confirmation either.

(2) With regard to the definition that trademarks are identical or otherwise when the basic registration or basic application consists of standard characters, since the trademark consisting of characters or signs described in the request of the basic registration or basic application is handled as being described in characters designated by the Commissioner, it is considered proper to compare it with a trademark described in the constitution and form indicated by standard characters in principle, and therefore,

trademarks are handled as identical in the following cases.

1) When a trademark published in the Trademark Gazette (those published in or before December 1999) at time of registration is attached

This defines that when a copy of the trademark published in the Trademark Gazette in constitution and form of standard characters according to the Trademark Act is pasted onto the request, the trademark is handled as identical.

2) When a trademark is described in characters designated by the Commissioner provided in Article 5(3) of the Trademark Act or those recognizable as equivalent in constitution and form (however, when a trademark is of a pending application, this shall be limited to cases where the respective trademark is recognizable as a trademark in standard characters).

This defines that when the respective trademark is described in the constitution and form of standard characters in the request, or when the trademark is described in a constitution and form recognized as equivalent to those of standard characters such as the Ming-cho type, the trademark is handled as identical.

When the basic application is pending, it is described in the request that the trademark consists of standard characters, but the respective trademark may not be in a constitution and form recognizable as standard characters, and in such cases, the application cannot be handled as consisting of standard characters.

Therefore, when such a trademark is described in a request for an international trademark application, it must be described in a constitution and form identical to those described in the request for the basic application (including similar figures) (→ Trademark Examination Manual A2.01).