

A2.08

Handling of Claims concerning the Description and Colors of the Trademark Claimed in an International Trademark Application (Detailed Explanation of the Trademark Provided in Article 5(4) of the Trademark Act)

1. In the case of filing an international trademark application using a motion mark, hologram mark, three-dimensional mark, color mark, sound mark or position mark as the basic registration or basic application, in principle, a content identical to the one described in the detailed explanation of the trademark (for three-dimensional marks and sound marks, only if such description is made) must be described in column 9 (e) (i) "Description of the mark contained in the basic application or basic registration, where applicable" (hereinafter referred to as the "column for describing the mark") of the written application for the international trademark application (MM2).

However, with respect to an international trademark application based on a color mark for which registration has been decided, the basic application or basic registration thereof falls under the case "that, if color is claimed as a distinctive feature of the mark in the basic application or the basic registration" as mentioned in Rule 9(5)(d)(v) of the Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement, the trademark must, in principle, be described in column 8 "COLOR(S) CLAIMED" (hereinafter referred to as the "column for claiming color(s)") in the written application for the international trademark application (MM2). In addition, if the applicant wishes to do so, he/she may describe the trademark in the column for describing the mark after describing it in the column for claiming color(s).

2. The following matters described in the basic registration or basic application cannot be stated in the column for describing the mark.

- The fact that the provision of Article 3(2) is applied;
- The explanation of the purport of the choice of the trademark;
- The fact that the trademark is claimed in a divisional or converted application;
- The fact that the trademark is claimed in an application handled by accelerated examination or an application for which such examination has been requested.

3. Since the office of origin must verify that the descriptions in the column for describing the mark and the column for claiming colors are identical with the descriptions made in the basic registration or basic application, the office of origin will confirm the identicalness of the descriptions, and if they cannot be found to be

A2.08

identical, the office will urge the applicant to replace them with a corrected written application.