

## **Chapter 3:**

### **Comparison Tables**

- **Tables summarizing comparisons of systems and practices in each Office**

### Chapter 3: Comparison Tables

Each office's system and practice concerning bad faith filings was compared and summarized in a table.

#### I. General

	JPO	KIPO	OHIM	SAIC	USPTO
1. Definition of bad faith under the legal system	No definition	No definition	No definition	No definition	No definition
2. Timing when bad faith is taken up	①Examination (by ex officio) ②Opposition, trial ③Counterclaim in national infringement case	①Examination (by ex officio) ②Opposition, trial	①Cancellation after registration ② Counterclaim in national infringement case	①Opposition, trial (invalidation)	①Opposition, trial (cancellation)
3.(1). The earliest stage when bad faith is taken up	Stage of examination	Stage of examination	After registration of mark	Opposition	Opposition
(2). Is there any time limit to claim bad faith ?	No time limit	No time limit	No time limit	5 years, However, no time restriction for owner of famous trademark in China	At onset of a proceeding, or after discovery conducted.
4. What is an important time point when bad faith is legally identified ?	At time of application (also necessary at decision)	At time of application	At time of application	At time of application	At time of application of intent to use application, or at time of adoption of mark
5. Does a subjective element that applicant has an awareness of bad faith relate to judgment	It does	It does	It does	It does	It does
6. Rules on burden of proof (1). Who bears	Opponent Demandant	Opponent Demandant	Cancellation applicant Demandant	Opponent Demandant	Opponent Demandant
(2). Presumption	It is inferred in consideration of circumstantial evidence.	It is inferred in consideration of circumstantial evidence.	Good faith is presumed unless cancellation applicant/demandant	Bad faith is inferred by some factual actions.	Bad faith may be considered as a factor in a likelihood of confusion analysis.
7. Existence of checklist for establishing bad faith	Not exist	Not exist (There are a certain guidelines.)	Not exist	Not exist	Not exist

**II. Details**

	JPO	KIPO	OHIM	SAIC	USPTO
1. From The View of “Intent to Use”					
Does lack of intention of use become a reason for rejection or invalidation ?	Yes It is possible to refuse or invalidate regardless of bad faith if there is no intention of use.	Yes It is possible to refuse or invalidate regardless of bad faith if there is no intention of use.	No However, an indication of dishonest intention could be, if becomes apparent, subsequently, that sole objective of owner was to prevent third party from entering the market (CJ judgment C-529/07 of 11 June 2009, “Lindt Goldhase”, Item 44).	No (There’s no provision to exclude application with no intention of use.)	Yes A verified statement of bona fide intent to use must be filed. Examiner will not evaluate intent and will not make an inquiry unless evidence of record clearly indicates that the applicant does not have a bona fide intention to use the mark in commerce. May be challenged by third party.
i) Text	Principal Paragraph of Article 3(1)	Article 3	Article 52(1)(b)	Not applicable	Article 1 (b) Article 44 Article 66 (a)
ii)At time of judgment standard	At time of decision	At time of decision	Assessment whether bad faith was present back when registered mark was applied for	Not applicable	At time of application
iii)Examination by ex officio or opposition, trial	(1)Examination (by ex officio) (2)Opposition, trial	(1)Examination (by ex officio) (2)Opposition, trial	Cancellation (invalidity) trial	Not applicable	(1)Examination if no verified statement of intention to use is filed (2)Opposition, trial (cancellation)
iv)Burden of proof	(1)(2)Applicant, right owner	(1)(2)Applicant, right owner	Party claiming that other side was in bad faith, i.e. invalidity applicant	Not applicable	(1)Not applicable to examination (2)Opponent, Petitioner

	JPO	KIPO	OHIM	SAIC	USPTO
v)Examination standard	Trademark Examination Guideline, Principal Paragraph of Article 3(1)	Trademark Examination Guideline Article 42-2	Guidelines for examination, Part D, Section 2, Sub-heading 3.3	Not applicable	TMEP818 (Article 1(b) or Article 44) TMEP1904.01(c) (Article 66(a))
vi)Specific judgment method					
Example 1) Evidence demonstrating use in cancellation for non-use	Documents allowing to clearly confirm trademark user, using products, using trademark and use period (such as catalog, newspaper advertisements) (Article 50)	Evidential materials showing that a mark, which is substantially identical to the registered one, has been used on goods/services, which are also substantially identical to the goods/service of registered mark within 3 years from the date when a cancellation action is filed.	Cancellation of registered mark for non-use is separate action (not bad faith related), which can be raised at end of 5 year grace period (CTMR, 51(1)(a)). Bad faith cancellation challenge cannot be based on non-use as such as there is no requirement of intention to use. However, an indication of dishonest intention could be, if it becomes apparent, subsequently, that sole objective of owner was to prevent third party from entering the market.	Cancellation of registered mark for non-use is separate action (not bad faith related), which can be raised 3 years after registration of a trademark.	Elements taken into consideration for bona fide use of mark in the ordinary course of trade: <ul style="list-style-type: none"> <li>• Amount of use</li> <li>• Nature or quality of trade</li> <li>• Typical use in particular industry</li> <li>• Any other probative facts</li> </ul>
Example 2) Whether the following facts and situations ((1)~(7)) are taken into consideration when intention of use of trademark is judged					
(1)Applicant designates a broad range of goods and services.	Principal Paragraph of Article 3(1) is applied as there's a rational doubt in use of trademark or its use intention.	The examiner can consider that there is a rational doubt about whether an applicant has used a mark or had a intention to use.	Intention to use not required by CTM system. No bad faith based on the length of the list of goods and services designated .	No answer	It is necessary to submit a verified statement of intention to use each good or service. May be refused if no statement is filed, see answer above.

	JPO	KIPO	OHIM	SAIC	USPTO
(2)Applicant applied for a large number of unregistered trademarks of other person.	There's a judgment that applicant was not identified to use the trademark or to have any intention to use. "RC TAVERN" case judgment (Intellectual Property High Court, 2012 (Gyo Ke) No. 10019)	(Article 42-2, Trademark Examination Guideline) When a KIPO examiner has a doubt that the application was filed for the purpose of prior occupation and/or interfering with a third party's trademark registration without the intention of use, the examiner can issue a provisional refusal. In this case, the examiner can presume the subjective intention such as prior occupation by referring to not only the pertinent application, but also the history of the applicant's trademark applications and/or registration and/or the scope of the applicant's current business.	Intention to use not required by CTM system. However, large number of applications for trade marks of others can be a strong indication that owner of registered CTM had dishonest intention when applying for it.	An element to be considered in bad faith.	An examiner will not evaluate the good faith intention to use. Third party may challenge based on lack of intent to use in good faith. Judges have found pattern of filing for other's parties marks shows lack of intent to use.
(3)Individual person applied for goods and services which required large scale facilities such as general merchandise store.	Principal Paragraph of Article 3(1) is applied as there's a rational doubt in use of trademark or its use intention.	(Article 42-2, Trademark Examination Guideline) A KIPO examiner can issue a provisional refusal. In this case, the examiner should consider the nature of goods/services, market situation, etc. as a whole; however, the examiner should not regard the scope of the possible business conducted by individual person too narrowly.	Intention to use not required by CTM system. However, an indication of dishonest intention could be, if it becomes apparent, subsequently, that sole objective of owner was to prevent third party from entering the market.	No answer	An examiner will not evaluate the good faith intention to use. There's a case example that lack of intention of use in good faith was identified (HONDA case).

	JPO	KIPO	OHIM	SAIC	USPTO
(4)When services etc. prohibited by laws are designated	Principal Paragraph of Article 3(1) is applied as there's a rational doubt in use of trademark or its use intention.	(Article 42-2, Trademark Examination Guideline) A KIPO examiner can issue a provisional refusal on a condition that an individual files an application for more than two non-closely related services such as hospital services and legal services, for which law requires licenses.	Intention to use not required by CTM system. However, an indication of dishonest intention could be, if it becomes apparent, subsequently, that sole objective of owner was to prevent third party from entering the market.	No answer	This may be a factor to support lack of intention to use in good faith.
(5)When intention to interfere with market is clear	This may be a factor to be taken into consideration.	The intention of market interference can be considered to determine whether there is bad-faith or not on the condition that the intention of market interference includes filing a trademark application for the purpose of prior occupation and/or interfering with a third party's trademark registration without the intention of use.	Intention to use not required by CTM system. However, an indication of dishonest intention could be, if it becomes apparent, subsequently, that sole objective of owner was to prevent third party from entering the market.	No answer	This may be a factor to support lack of intention to use in good faith.

	JPO	KIPO	OHIM	SAIC	USPTO
(6)When trademark registration was cancelled due to non-use	Insufficient to identify bad faith.	Insufficient to identify bad faith.	Insufficient, in itself, to find for bad faith.	Insufficient to identify bad faith.	Insufficient to identify bad faith.
(7)Others	Nothing, in particular	Nothing, in particular	Repetition of application of same mark to prevent cancellation for non-use may suggest dishonest intention of CTM owner.	(1)-(6)are totally considered together with other elements to identify bad-faith	Each case is fact specific, and a judge would weigh evidence carefully.
vii)Examination example, decision example, judgment example	There's "RC TAVERN" case judgment (Intellectual Property High Court, 2012 (Gyo Ke) No. 10019).	istar logitics case (Case No. 2010Heo4397, rendered by the Patent Court on Oct. 7, 2010)	There are, inter alia, the following judgments. •「Lindt Goldhase」(CJ judgment of 11/06/2009, C-529/07) •「Pollo Tropical CHICKEN ON THE GRILL」(GC judgment of 01/02/2012, T-291/09) •「BIGAB」(GC judgment of 14/02/2012, T-33/11) •「Pelikan」(GC judgment of 13/02/2012, T-136/11)	Not applicable	The following are some examples of judgments. •Honda Motor Co. , Ltd. Versus Friedrich Winkelmann, 90USPQ2d1660 (TTAB2009) •Nintendo of America Versus Adar Golad, Opposition No.91178130,2011WL2360099 (TTABMay 31,2011) [not precedential]

	JPO	KIPO	OHIM	SAIC	USPTO
2. From The View of “Unfair Intention”.					
Is there any legislation for refusing an application (or invalidating the registration) on the basis of unfair intention?	Yes	Yes	Dishonest intention of CTM owner is an element of particular relevance in the overall assessment.	Yes	Bad faith is an element to consider in a likelihood of confusion analysis. Bad faith may also be considered in a claim of misrepresentation of source claim under Section 14(3).
i) Text	Article 4(1)(xix) Article 4(1)(vii)	Article 7(1)(xii) Article 7(1)(xviii) Article 23(1)(iii)	Article 52(1)(b)	Article 32	Case law (In re E.I.DuPont DeNemours & Co., 476 F.2d 1357 (CCPA 1973); Polaroid Corp. v. Polarad Elecs.Corp., 287 F.2d 492(2d Cir. 1961)
ii)At time of judgment standard	At time of decision (Article 4(1)(vii)) At time of application and decision (Article 4(1)(xix))	At time of application [Article 7(1)(xii)] At time of decision [Article 7(1)(xviii) and 23(1)(iii)]	Assessment whether bad faith was present back when registered mark was applied for	At time of application	At time of application
iii)Examination by ex officio or opposition, trial	(1)Examination (by ex officio) (2)Opposition, trial	(1)Examination (by ex officio) (2)Opposition, trial Article 23(1)(iii) shall apply only where an opposition has been filed by the owner, or information has been provided	Cancellation (invalidity) trial	Opposition, trial	Opposition, <del>trial for</del> cancellation
iv)Burden of proof	Burden of proof is on the side who insist on unfair purpose.	Burden of proof is on the side to insist on unfair purpose.	Party claiming that other side was in bad faith, i.e. invalidity applicant	Burden of proof is on the side who insist on unfair purpose.	Party claiming bad faith Once burden established, shifts to Applicant or registrant.



	JPO	KIPO	OHIM	SAIC	USPTO
v)Examination standard	Trademark Examination Guideline, Article 4(1)(vii) and (xix)	There are some standards. (Article 26 and Article 42)	Guidelines for examination, Part D, Section 2, Sub-heading 3.3	There are some standards.	No standard
vi)Specific judgment method					
Whether the following facts and situations ((1)~(5)) may be taken into consideration to judge unfair purpose of trademark					
(1)Business cooperation and some relations such as purchase request	This is taken into consideration when a bad faith is identified.	A relation between applicant and trademark right owner is one element to identify bad faith.	A relationship between the parties before application is one relevant element when assessing bad faith. Compensation request, in itself, and in the absence of other factors, does not establish bad faith.	This is one element to identify a bad faith.	This is taken into consideration when assessing bad faith.
(2)Applicant designates a broad range of goods and services.	This is taken into consideration when a bad faith is identified.	One element to identify a bad faith according to the judgment (Case No. 2007Heo2626)	No bad faith based on the length of the list of goods and services designated .	No answer	This may be evidence of bad faith or lack of bona fide intent to use.

	JPO	KIPO	OHIM	SAIC	USPTO
(3)Applicant applied for a large number of unregistered trademarks of other person.	This is taken into consideration when a bad faith is identified.	This may be one element when the Patent Court identifies a bad faith.	A large number of applications for trade marks of others can be a strong indication that owner of registered CTM had dishonest intention when applying for it.	This is one element to identify a bad faith.	This may be an evidence of bad faith.
(4)Others	<ul style="list-style-type: none"> <li>• Well-Known of other person's trademark</li> <li>• Creativity of well-known trademark</li> <li>• Preparation state of business of well-known trademark owner</li> <li>• Concern to impair credibility, reputation and customer attraction of well-known trademark</li> </ul>	<ul style="list-style-type: none"> <li>• Famousness of well-known and famous trademark</li> <li>• Creativity of well-known trademark</li> <li>• Preparation state of business of applicant</li> <li>• Whether designated goods and services are same or similar, or presence/absence of economic relation</li> </ul>	<p>Repetition of application of same mark to prevent cancellation for non-use may suggest dishonest intention of CTM owner.</p>	<ul style="list-style-type: none"> <li>• Commonality of sales route of goods and services and business areas of both of applicant and right owner</li> <li>• Presence/absence of previous other dispute between applicant and trademark right owner</li> <li>• Presence/absence of recognition of prior user's trademark</li> <li>• Presence/absence of previous exchange of (organizational) internal personnel between applicant and trademark right owner of dispute trademark</li> <li>• Presence/absence of whether applicant of trademark has a purpose to obtain unjust profit after registration</li> <li>• Advertisement causing misunderstanding</li> <li>• Presence/absence of strong creativity by other person's trademark</li> </ul>	<p>The TTAB or a court has broad discretion to consider any number of factors that could provide circumstantial evidence of bad faith, such as bad faith in disclosure of evidence during discovery.</p>

	JPO	KIPO	OHIM	SAIC	USPTO
(5)Is any relationship between the original owner of the trademark and applicant required?	This is not essential, but taken into consideration when unfair purpose is identified.	This is not necessary, but if there's any relation between the both, a bad faith may be highly recognized.	This is not a condition for a finding of bad faith, but a relevant factor to be taken into consideration in the assessment	One factor to identify a bad faith.	This is not a requirement, but may be a factor to consider in determining bad faith.
vii)Examination example, decision example, judgment example	<p>There are the following judgments.</p> <ul style="list-style-type: none"> <li>• Asrock case (Intellectual Property High Court, 2009 (Gyo Ke) No. 10297)</li> <li>• KYOKUSHIN case (Intellectual Property High Court, 2008 (Gyo Ke) No. 10032)</li> <li>• DUCERAM case (1998 (Gyo Ke) No. 185)</li> <li>• Kranzle case (2005 (Gyo Ke) No. 10668)</li> </ul>	<p>There is the following judgment.</p> <ul style="list-style-type: none"> <li>• 「TOM &amp; JERRY」(Case No. 2007Heo2626)</li> <li>• 「LVY」(Case No. 2013Hu2484)</li> <li>• 「BarbieQueen」(Case No. 2013Hu1986)</li> </ul>	<p>There are, inter alia, the following judgments.</p> <ul style="list-style-type: none"> <li>• 「Lindt Goldhase」(CJ judgment of 11/06/2009, C-529/07)</li> <li>• 「Pollo Tropical CHICKEN ON THE GRILL」(GC judgment of 01/02/2012, T-291/09)</li> <li>• 「BIGAB」(GC judgment of 14/02/2012, T-33/11)</li> <li>• 「Pelikan」(GC judgment of 13/02/2012, T-136/11)</li> </ul>	<p>There are the following judgments.</p> <p>①“黑面蔡” Trademark opposition case (No. 1611206)</p> <p>②KUREYON Shinchan Figure trademark dispute case (No. 1033444)</p> <p>③“ERE” Trademark opposition case (No. 4809737)</p>	<p>There are the following examples:</p> <ul style="list-style-type: none"> <li>• Estrada v. Telefonos de Mexico, 447F.App'x197 (Fed.Cir.2011)</li> <li>• Carr v. Garnes, Opposition No.91171220,2010WL4780321 (TTAB Nov. 8, 2010 [not precedential])</li> </ul>

	JPO	KIPO	OHIM	SAIC	USPTO
3. From The View of “Protecting Well-Known/Famous”					
Are trademark application in bad faith rejected or invalidate by protection of well-known and famous trademarks?	Yes	Yes	There’s no separate law. But, level of distinctiveness, reputation of mark of cancellation (invalidity) applicant and CTM right owner is taken into consideration when bad faith is identified.	Yes	Yes
i)Text	Article 4(1)(x) Article 4(1)(xv) Article 4(1)(xix)	Article 7 (1)(xii)	Article 52 (1)(b)	Article 13	False Association : Article 2(a) Article 43 (a) Likelihood of confusion : Article 2(d) Dilution : Article 43 (C) Misrepresentation of Source 14(3)
ii)At time of judgment standard	At time of application and decision	At time of application	Assessment whether bad faith was present back when registered mark was applied for	At time of application	At time of application
iii)Examination by ex officio or opposition, trial	(1)Examination (by ex officio) (2)Opposition, trial	(1)Examination (by ex officio) (2)Opposition, trial	Cancellation (invalidity) trial	Opposition, trial	<del>Trial for</del> opposition and cancellation

	JPO	KIPO	OHIM	SAIC	USPTO
iv)Burden of proof	Burden of proof is on the side to claim that the application falls under Article 4(1)(x), (xv) or (xix).	Burden of proof is on the right owner of well-known and famous trademark.	Party claiming that other side was in bad faith, i.e. invalidity applicant	Burden of proof is on the right owner of trademark.	Opposer, challenger Trial demandant (Challenger)
v)Examination standard	Trademark Examination Guideline, Article 4(1)(x),(xv) and (xix).	There are some standards. (Section26)	Guidelines for examination, Part D, Section 2, Sub-heading 3.3	Trademark Law, Article 14 Regulations for the Implementation of the Trademark Law, Article 3	No standard
vi)Specific judgment method					
Whether the following facts and situations ((1)~(11)) are taken into consideration in judging elements of well-known and famous trademarks.					
(1)Definitions of “well-known”, “famous” and “reputation” Standard and evidence of well-known famousness	<ul style="list-style-type: none"> <li>•No definition of each phrase</li> <li>•For “well-known” and “famous”, facts of advertisement activities and trademark use period are totally taken into consideration.</li> </ul>	<ul style="list-style-type: none"> <li>•No definition of each phrase</li> <li>•For “well-known” and “famous”, facts of advertisement activities and trademark use period are totally taken into consideration.</li> </ul>	<ul style="list-style-type: none"> <li>•“Well-known” (CTMR 8(2)(c)) is same as Paris, Article 6 bis. "Reputation" (CTMR 8(5)).</li> <li>•Kindred notions. Threshold for establishing "well-known character" or "reputation" is, in practical terms, usually the same.</li> <li>•Level of distinctiveness, reputation is taken into consideration when bad faith is assessed, but is not a prerequisite for a finding of bad faith.</li> </ul>	It is stipulated that facts of advertisement activities and trademark use period are totally taken into consideration on examination standard.	<ul style="list-style-type: none"> <li>• “Well-known” is identified when likelihood of confusion is judged. “Famous” is identified when dilution is judged (widely recognized by general consuming public).</li> <li>• There’s no specific standard of “Reputation”</li> <li>• For “well-known”, among other factors, advertisement activities and trademark use period are taken into consideration</li> </ul>

	JPO	KIPO	OHIM	SAIC	USPTO
(2) If well-known trademark is registered in areas where application in bad faith is made, but is not used for some periods, are some provisions of bad faith applied ?	May be refused due to similarity with original trademark.	May be refused due to similarity with original trademark.	Potentially yes; see GC judgment of 8 May 2014, T-327/12, "Simca"	Likely to be refused due to similarity with original trademark	If any mark is registered with the USPTO and not used for three years in the United States, there is a presumption that the mark has been abandoned; therefore, the registration may be subject to cancellation on grounds of abandonment. However, in certain limited circumstances where a mark retains "residual" goodwill after non-use, courts are unlikely to find in favor of a new user whose intent was to confuse consumers by capitalizing on the previous owner's reputation.
(3) Laws for trademarks which are well-known and famous only in foreign countries	Article 4(1)(xix)	Article 7(1)(xii)	No specific law for foreign famous marks.	No laws	No law or no practice
(4) Judgment and evidence of "Well-known" and "famous" of trademarks which are well-known and famous only in foreign countries	Trademark Examination Guideline, Article 4(1)(xix)	<ul style="list-style-type: none"> <li>Article 7 (1)(xii) was revised ("easily" is deleted) and the standard of famousness was relaxed.</li> <li>There's a decision by Supreme Court that judgment to recognize famousness of trademark in foreign country should be respected (case No. 2008Hu3131)</li> </ul>	It is necessary for cancellation (invalidity) applicant to demonstrate that CTM right owner knew or must have known about the existence of the cancellation applicant's mark outside the EU. "Well-known" character may help to establish this, depending on the specific circumstances of the case.	No laws	No law or no practice

	JPO	KIPO	OHIM	SAIC	USPTO
(5) Do well-known and famous trademarks protect up to non-similar goods and services ?	They are protected if any likelihood of confusion (Article 4(1)(xv)) or unfair purpose (Article 4(1)(xix)) are recognized.	There are some cases in which well-known and famous trademarks are protected up to non-similar goods and services, such as 「LVY」 (Case No. 2013Hu2484) or 「BarbieQueen」 (Case No. 2013Hu1986)	In addition to the situation of similar or identical goods and services, a finding of bad faith may also be justified if the CTM was applied for in respect of goods and services, which, although dissimilar, belong to a neighbouring market.	Yes.Paragraph 3 of Article 13 provides protection on non-identical or dissimilar goods/services for well-known trademarks that are registered in China.	Under Section 2(d), protected if there is a likelihood of confusion. The higher the fame, the higher the likelihood of confusion. Under dilution, there may be tarnishment or dilution if no similarity of goods or services.
(6) Co-relation between extent of recognition of trademark and burden of proof in bad faith	<ul style="list-style-type: none"> <li>•Bad faith unnecessary (Article 4(1)(x),(xv))</li> <li>•There's any relation between well-known and unfair purpose (necessary to prove unfair purpose) (Article 4(1)(xix))</li> </ul>	Extent of famousness of trademark is one element to evaluate bad faith.	Extent of recognition of mark is just one element in the assessment. Proving recognition does not relieve the cancellation (invalidity) applicant of his burden of proof as regards bad faith in general.	Together with other elements,depending on the claim	To determine likelihood of confusion, bad faith or fame is not necessary. But if present, both are factors a judge will weigh in a likelihood of confusion analysis.
(7) Level of distinctive character of trademark (such as coined word)	One element to take into consideration when likelihood of confusion or bad faith is judged	One element to evaluate a bad faith	One element in the evaluation of bad faith.	One element to consider	Taken in consideration when the likelihood of confusion is determined, and becomes circumstantial evidence when judging bad faith.
(8) When identical or similar to house mark of other person	This is one element to take into consideration when bad faith is identified.	This is one element to take into consideration when bad faith is identified.	One element that might be taken into consideration in the evaluation of bad faith.	No answer	Possible to be an element of consideration when determining bad faith.
(9) Presence/absence of exclusion period to claim bad faith	No period	No period	No period	5 years, but no time restriction for well-known trademark.	A likelihood of confusion claim, with an assertion of bad faith, may be brought within 5 years of registration. There is no time limit for a claim brought on fraud or false association.

	JPO	KIPO	OHIM	SAIC	USPTO
(10) If a mark which is claimed to be applied in a bad faith acquires well-known characteristic or reputation, is there any relation ?	No Time of judgment standard is time of decision or trial decision, therefore, if well-known or reputation is later acquired, there's no relation with invalidation trial request.	Yes WARAWARA case (Case No. 2012Hu672) cited	Yes	No answer	No, the fame of the trademark that is alleged to have been filed in bad faith is not relevant.
(11) Other reasons	No reason	No reason	No reason	No reason	Fame of prior trademark plays a dominant role in a case of likelihood of confusion.
vii) Examination example, decision example, judgment example	There are the following judgments. 4-1-10 case example • Computer world judgment (Tokyo Supreme Court 1991 (Gyo Ke) No. 29) 4-1-15 case example • L'Air du Temps judgment (Supreme Court 1998 (Gyo Hi) No. 85) 4-1-19 case example • iOffice 2000 judgment (Tokyo Supreme Court 2001 (Gyo Ke) No. 205) • S design judgment (Intellectual High Court 2009 (Gyo Ke) No. 10220) • MARIE FRANCE trial decision (1995 Trial No. 25958) • M.A.C•MAKEUP ART COLLECTION Opposition decision (1998 Opposition No. 92239)	There is the following judgment. • 「TOM & JERRY」 (Case No. 2007Heo2626) • 「LVY」 (Case No. 2013Hu2484) • 「BarbieQueen」 (Case No. 2013Hu1986)	There is, inter alia, the following judgment. • 「Lindt Goldhase」 (CJ judgment C-529/07 of June 11, 2009)	There are the following judgments. ② 「金灶」 (金竈) Trademark opposition case (No. 4481864) ② 「雅虎YAHOO」 Trademark opposition re-examination (rejection decision dissatisfaction trial) case (No. 1649903) ③ 「神州三号」 Trademark opposition case (No. 3217926)	The following is one example: • L'Oreal S.A. v. Marcon, 102USPQ2d1434 (TTAB2012)



	JPO	KIPO	OHIM	SAIC	USPTO
4. Unfair Application filed by Agent or Representative					
Is there any legislation for refusing an unfair application (or invalidating the registration) filed by agent or representative (related to Article 6 section of the Paris convention)	Yes	KIPO has no such a law. However, if such an application is considered to be filed under the bad-faith, such as free-ride on the fame of a third party, the application can be rejected.	Yes	Yes	Yes
i)Text	Article 53 -2		Article 8 (3) CTMR Article 53(1)(b) CTMR	Article 15	Article 1 (a)(1), Article 1(b), Article 44, 37 C.F.R. Section 11.18
ii)At time of judgment standard	At time of application and decision		At time of application	At time of application	Application date
iii)Examination by ex officio or opposition, trial	Cancellation trial	—	①Opposition against application ②Cancellation/Invalidity against registered mark	Opposition or trial	①Examination (ex parte) if ownership contradicted in the record. ②Opposition or cancellation

	JPO	KIPO	OHIM	SAIC	USPTO
iv)Burden of proof	Burden of proof is in principle on demandant.	—	Opponent or invalidity applicant. For "negative facts", burden of proof reversed, e.g. agent to prove that he had owners consent	Burden of proof is on trademark right owner. (Opponent, demandant)	Opponent, demandant
v)Examination standard	No standard	—	Guidelines for examination, Part C, Section 3	There are some standards	TMEP1201.06(a)
vi)Specific judgment method	See vii)	—	See OHIM Guidelines for examination, Part C, Section 3	Refer to the examination standard in v)	See TMEP1201.06(a)
vii)Examination example, decision example, judgment example	There is the following judgment. •Chromax case	—	See OHIM Guidelines for examination, Part C, Section 3	There are the following judgments. ②「BRUNO MANETTI」 Trademark opposition case (No. 3083605) ②“头包西灵Toubaoxilin” Trademark opposition case (No. 3304260) ③“安盟SecurID” Trademark opposition re-examination (No.	The following is one example. •Lipman v. Dickinson, 174F.3d 1363,1372 (Fed.Cir.1999)

	JPO	KIPO	OHIM	SAIC	USPTO
5. From The View of The Relationship with Other Rights					
Is there any legislation for refusing an application (or invaliding the registration) as bad-faith on the basis of certain factors? (such as copyright)	•Name of other person	No	<ul style="list-style-type: none"> <li>•Reasons for invalidity/cancellation (CTMR 53(2))</li> <li>•Different invalidity ground from that of bad faith (CTMR 52(1)(b))</li> </ul>	Yes	Copyright or right of publicity: not a ground for opposition or cancellation; party may file a civil lawsuit on grounds of copyright infringement or right of publicity; trade name:possible to file an opposition, cancellation, or lawsuit; Right to a name or likeness (false association): ex parte, opposition, cancellation. Refusal ex parte if name of a living individual and no consent provided.
i)Text	Article 4(1)(viii) (Reference) Article 29	Article 7(1)6 (Reference) Article 53	Article 53 (2) CTMR	Article 32	Article 2(a) Article 2(c)
ii)At time of judgment standard	At time of application and decision	At time of application	In principle, any time after registration of the CTM.	At time of application	Application date
iii)Examination by ex officio or opposition, trial	(1)Examination (by ex officio) (2)Opposition, trial	(1)Examination (by ex officio) (2)Opposition, trial	Invalidity/cancellation action	Opposition, trial	(1)Examination (ex parte) (2)Opposition, cancellation
iv)Burden of proof	Burden of proof is on the side who claims that the application falls under the Article 4(1)(viii).	Burden of proof is on the rightful owner of well-known and famous works of copyright, person's name and trade name	Invalidity applicant	Burden of proof is on the side of trademark right owner.	(1)Examiner (2)Demandant

	JPO	KIPO	OHIM	SAIC	USPTO
v)Examination standard	Trademark Examination Guideline, Article 4(1)(viii)	Trademark Examination Guideline Article 20	Guidelines for examination, Part D, Section 2, Sub-heading 4.3 on Article 53(2) CTMR	There's a standard in Article 32.	See above TMEP Section 813, TMEP Section 1203.03(c).
vi))Specific judgment method	See v)	Same as above	Guidelines for examination, Part D, Section 2, Sub-heading 4.3 on Article 53(2) CTMR	See the answer in v)	Same as above
vii)Examination example, decision example, judgment example	There is the following judgment. •SONYAN case	There is the following judgment. •「2NE1」 (Case No. 2012Hu1033) •「KT」 (Case No. 2009Heo1705)	Guidelines for examination, Part D, Section 2, Sub-heading 4.3 on Article 53(2) CTMR	There are the following judgments. ①「季世家1915」 FigureTrademark opposition case (No. 7968391) ②“Figure”Trademark opposition case (No. 1563706) ③「洪河」 Trademark opposition case (No. 1965652) ④「余進華Y U J I N H U A」 Trademark opposition case (No. 3266232) ⑤FigureTrademark opposition case (No. 3308372) ⑥「易建联」商標係争案件 (No. 3517447) ⑦Figure商標異議復審案件 (No. 1004698)	The following are case examples. •In re Richard M. Hoefflin, 97USPQ2d 1174(TTAB2010) •In re Jackson Int'l Trading Co., 103USPQ2d 1417 (TTAB2012)
6. Any other views except for 1.- 5.					
Viewpoints other than the above	None	—	None	None	None

	JPO	KIPO	OHIM	SAIC	USPTO
<b>III. Procedures</b>					
	JPO	KIPO	OHIM	SAIC	USPTO
1. Information submission system					
i) Means that any person other than an applicant offers information to an examiner	Information provision system (Trademark Act, Ordinance, Article 19)	Allowed to offer information and oppose.	Bad faith is a reason for invalidity and not related to procedure for examination or opposition (except for specific opposition rules against mark registered by an agent of the owner without owner's consent, Article 8(3) CTMR).	There's no provision to offer information. However, it is allowed to submit documents.	"Letter of protest" may be submitted. If accepted, it will be forwarded to examiner.
ii) Handling of Information by an examiner	Reasons for refusal may be noticed based on information providing fact.	Reasons for refusal may be noticed based on information offering fact. Further, KIPO has strengthened its efforts to prevent the bad-faith filing application from being registered since August 2013, indicating that the bad-faith filing application could be rejected by ex officio examination even without information provided by a third party.	Same as above	It can be referred as work of the Trademark office, however, reception of this kind of document is not a legal procedure.	There's no provision to offer information. However, it is possible to submit documents. "Letter of protest" is unofficial procedure. It may be taken into consideration at discretion of examiner.
2. Integration of procedures in opposition, trial	They are integrated (Patent Act, Article 154(1) shall apply to Trademark Act, Article 56(1), and Article 43-10(1))	They are integrated (Trademark Act, 77-23)	They may be treated as related cases.	They are integrated.	They are integrated.

	JPO	KIPO	OHIM	SAIC	USPTO
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**IV. Others**

	JPO	KIPO	OHIM	SAIC	USPTO
Other special instructions	No other special instruction	No answer	No other special instruction	No answer	<ul style="list-style-type: none"> <li>• Judgment by default Refer to Trademark Trial Appeal Board Manual (TBMP) Article 312.01</li> <li>• Suspension of application pending resolution of opposition or cancellation. 37C.F.R. Article 2.83(c).In re Direct Access Communications(M.C.G)Inc,30 USPQ2d 1393(Comer Pats.1993)</li> </ul>