

Language

Language of proceedings

Chinese and English are the official languages of the Hong Kong SAR (Article 9 of the Basic Law and the Official Languages Ordinance (Cap. 5)).

An application for registration of a trade mark can be made in either Chinese or English. The choice of language determines the “language of proceedings” for the application. The language of proceedings will be used in all proceedings relating to the application before the Registrar (section 76(1)). For instance, for an application made in Chinese, the Registrar will write to the applicant in Chinese, and all documents filed must be in Chinese. If the application proceeds to publication in the Hong Kong Intellectual Property Journal, such publication and any resulting registration will also be in Chinese. If the application is opposed after its publication, the opposition proceedings will be conducted in Chinese. All documents relating to the opposition, such as notice of opposition, counter-statement, evidence and correspondence, should be in Chinese.

Any application for registration partly in Chinese and partly in English is likely to be considered a deficiency under rule 11 (see chapter on Deficiency Checking). In response to a deficiency notice the applicant will need to remedy the deficiency by making the application consistent, in Chinese or English as appropriate, within 2 months after the date of the notice.

The language of proceedings is therefore determined at the outset when the application for registration is made. However, a change of the initial language of proceedings is possible under rule 119 (see below). But any such change of language will not affect the data that has been entered in the Register, including data relating to applications for registration. Accordingly, while the Registrar may allow a change of language for the purpose of correspondence with the applicant, or for conducting a hearing, any publication of the particulars of the application in the Hong Kong Intellectual Property Journal and any Certificate of Registration issued will be

in the language in which the application was initially made, to ensure that the rights from registration, particularly in the specification of goods and services, reflect precisely the applicant's claims in the application for registration.

Change of language

Application for registration

At the application stage, only one party (i.e. applicant for registration) is involved and the Registrar will generally allow the applicant's request for a change of language of proceedings. However, such a change affects only the language used in correspondence at the application stage. The data already entered in the Register will not be affected. For instance, for an application made in English, if the applicant wishes to change the language of proceedings to Chinese, the Registrar may be expected to give the following directions:

“We agree that before this application is published in the Hong Kong Intellectual Property Journal all correspondence between the applicant and the Registrar will be in Chinese. However, particulars of such publication, and any Certificate of Registration subsequently issued, will be in English. The language to be used in any opposition proceedings in respect of this application (including opposition documents, correspondence, and any hearing) will also be English.”

Where an applicant files written representations or statutory declaration of evidence which is not in the initial language of proceedings, the Registrar may treat this as a request to change the language of proceedings and give similar directions as indicated above.

Inter partes proceedings

For proceedings involving more than one party, such as opposition, invalidation or revocation proceedings, a party's request to change the language of proceedings will

be allowed on the basis of consent of all parties involved.

Registrable transactions

All applications to record particulars of registrable transactions must be filed in the language of proceedings, i.e. the language in which the relevant trade mark was applied for and registered.

Translations of documents

If a document filed with the Registrar is not in Chinese or English, it must be accompanied by a verified translation of the document in the language of proceedings.

For any document filed with the Registrar in any proceedings and which is not in the language of the proceedings, the Registrar may direct the filing of a translation of that document into the language of proceedings within such period as he may specify.

Where an applicant's name is not in the Roman alphabet or in Chinese characters, any document bearing his name that is filed with the Registrar must also contain a transliteration of the name in the Roman alphabet.

The Registrar may require that any information supplied in connection with proceedings be in one or both of the official languages.

The Registrar may specify the time periods within which the translations of documents must be provided.

Trade mark not in English or Chinese

If the trade mark in an application for registration includes a word, letter or character which is neither in the Roman alphabet nor in Chinese characters, a translation or transliteration of that word, letter or character must be included in the application. The translation or transliteration must state the language to which the word, letter or character belongs.

If the trade mark in an application for registration includes a word, letter or character which is in a language other than English or Chinese, the Registrar may require the applicant to file an exact translation of that word, letter or character into English or Chinese. Such a translation must be endorsed and signed by the applicant or his agent. It must also state the language to which that word, letter or character belongs.

Language of hearings

At a hearing before the Registrar, a language other than the language of the proceedings can be used, provided that the party concerned gives the Registrar and the other parties written notice at least 10 days before the hearing date. The Registrar may require the party to make provision for interpretation into the language of the proceedings (rule 78).

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