

Singapore-IPR Toolkit

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Of Intellectual Property

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Singapore – IPR TOOLKIT

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NOTE: The United States Government thanks you for your interest and concern regarding the protection of intellectual property rights. This toolkit is meant to be a helpful resource for basic information gathering with respect to Singapore's intellectual property laws. This toolkit is not to be used to guide legal decisions, and does not qualify as any type of legal advice. Always seek legal counsel within the jurisdiction in which protection is sought before making any decisions concerning your intellectual property rights protection. A list of lawyers and legal aid is available on the United States Ambassador's website.

IPR TOOLKIT

I. What is IPR?

Intellectual property (“IP”) and intellectual property rights (“IPR”) refer to the legal rights given to people for creations and innovations of their minds. IPR contains of a multitude of facets, including primarily, but certainly not limited to: copyrights, trademarks, patents and trade secrets. Copyrights are the rights granted to original works of authorship in fixed, tangible mediums. Trademarks are words, names, symbols or devices used by a business to distinguish its goods from those of its competitors. Patents are granted to inventors of a new, useful process, machine, article of manufacture or composition of matter, or to any useful improvement thereof. Trade secrets are things such as recipes, processes, formulas and strategies that derive independent economic value and advantage to an individual or business that goes through reasonable efforts to maintain their secrecy. Smaller, but equally-important facets of IP include things such as geographical indications, plant variety patents, registered designs, *etc.*

II. Current IPR Snapshot

Singapore's intellectual property law involves an interesting play between local statutes and international IP treaties and conventions. Whilst the local statutes have their roots in similar United Kingdom IP legislation as a result of Singapore's colonial ties with the United Kingdom, these statutes have been modified periodically in light of Singapore's obligations under international treaties and conventions.

Some of the significant international IP treaties and conventions include:

- A. Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS);
- B. Berne Convention for the Protection of Literary and Artistic Works;
- C. Paris Convention for the Protection of Industrial Property;
- D. Patent Cooperation Treaty;
- E. Protocol relating to the Madrid Agreement Concerning the International Registration of Marks;
- F. Paris Convention for the Protection of Industrial Property; and
- G. Hague Agreement Concerning the International Deposit of Industrial Designs.

Singapore also became a party to the World Trade Organization in 1995.

Various pieces of IP legislation, including the Copyright Act 1987, the Patents Act 1994, the Trade Marks Act 1998, the Layout-Designs of Integrated Circuits Act 1999, the Geographical Indications Act 1999, the Registered Designs Act 2000 and the Plant Varieties Protection Act 2004, were enacted during the period from 1980 until 1990.

The Intellectual Property Office of Singapore (“IPOS”) was formed as a statutory board under the Ministry of Law in 2001. The Intellectual Property Academy (“IP Academy”) was established in 2002 to provide executive

training, seminars and discussions regarding intellectual property to facilitate public access to and understanding of the processes and issues relating to intellectual property rights.

IP legislation underwent further changes after the conclusion of the US-Singapore Free-Trade Agreement in 2003.

In 2012, an Intellectual Property Steering Committee was established for the formulation of an Intellectual Property Hub Master Plan (“IP Hub Master Plan”). The Master Plan, introduced to the public on April 1, 2013, outlines the main goal of Singapore, which is to become a hub for IP transactions and management, quality IP filings, and IP dispute resolution.

III. TRADEMARKS

Trademark rights are rights granted for the use of symbols representing or attached to specific goods or services to distinguish those goods and services from the proprietor's competition. The governing statute is the Trade Marks Act.

Trademark rights can be statutory or common law rights. Because common law rights are involved, the trademark protection system in Singapore operates on a “first-to-use” basis.

Statutory rights in trademarks are obtained via registration. The exclusive rights conferred by registration of a trademark do not expire, as long as renewal applications are filed every 10 years from the date of registration.

Unregistered marks may also enjoy protection by virtue of common law rights, specifically under the law of “passing off” (addressed below under “Common Law Rights”).

a. What can be Registered

Any sign which is capable of being represented graphically, and is capable of distinguishing goods or services dealt with or provided in the course of trade by a person from the goods or services of another can be

registered.

A mark can be in a variety of forms, including a letter, word, name, signature, numeral, device, brand, heading, label, ticket, shape, color, packaging or any combination thereof. Trademark protection can also be sought for sounds, smells and movements although there are often difficulties in establishing the graphical representation requirement for these signs.

Registration will however only be granted if absolute and/or relative grounds of refusal are inapplicable. Pre-filing clearance searches should usually assist in pre-empting any possible grounds of refusal and are therefore highly recommended prior to filing.

Absolute Grounds of Refusal

Commonly raised absolute grounds of refusal include:

- the mark is devoid of any distinctive character;
- the mark consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services; or
- the mark consists exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade.

These grounds of refusal are usually raised against applications for marks which, in the Registrar's view, are incapable of being viewed as a badge of trade origin either because they are generic, descriptive or have become common names.

These absolute grounds of refusal may be overcome if it can be established through evidence that the mark has already acquired distinctiveness by way of use prior to the filing date. This means that, notwithstanding the supposed descriptiveness or commonality, the mark is already being viewed as a badge of trade origin.

Even if the mark proceeds to registration, a third party can file for invalidation of the registered mark on the basis of any absolute grounds of refusal.

Other absolute grounds of refusal may also be raised on the basis that:

- use of the mark is prohibited in Singapore by law;
- the mark is deceptive as to the nature, quality or geographical origin of the goods or services;
- the mark is contrary to public policy or morality; or
- if the application for the mark is made in bad faith, *i.e.* there is no bona fide intention to use the mark at all.

There are also grounds of refusal particular to shape marks only. Specifically, three types of shapes cannot be

protected under Singapore's trademark regime:

- *Nature*: a mark cannot be registered where it consists exclusively of the shape which results from the nature of the goods themselves;
- *Technical result*: a mark cannot be registered where it consists exclusively of the shape of the goods which is necessary to obtain a technical result; and,
- *Substantial value*: a mark cannot be registered where it consists exclusively of the shape which gives substantial value to the goods, *i.e.* aesthetic-type shapes.

The Singapore High Court in a recent decision concerning the "Kit-Kat" bar shape also clarified that, for a shape mark to obtain protection as a trademark, an unusual or attractive shape is not enough. The shape must depart significantly from norms and customs of the relevant sector. This naturally sets a much higher threshold for a shape to obtain protection as a trademark in Singapore. Appropriate protection may however be sought under the registered designs regime.

Relative Grounds of Refusal

Relative grounds of refusal deal with signs which conflict with prior trademark rights. Under the relevant provisions of the Trade Marks Act, a sign may be considered as a conflicting mark if:

- it is identical to a prior mark in respect of identical goods or services;
- it is identical to a prior mark in respect of similar goods or services, thus resulting in a likelihood of confusion; or
- it is similar to a prior mark in respect of identical or similar goods or services, thus resulting in a likelihood of confusion.

A priority claim therefore becomes important in the assessment of prior rights. An applicant in Singapore can claim priority from the date of its first-filed application for the same mark in relation to the same goods or services filed in another Paris Convention country, another WTO country, or in countries with which Singapore has bilateral agreements for the reciprocal protection of trademarks. The application in Singapore however has to be filed within 6 months from the date of the first-filed application so that the "later" application in Singapore can enjoy priority. This means that applications filed after the priority date will no longer be considered prior marks for the purpose of determining prior conflicting rights.

These relative grounds of refusal may however be overcome at the examination stage if evidence of sufficient pre-filing use of the mark is filed so as to show honest and concurrent use of both the mark applied for

and the prior marks.

Notwithstanding the acceptance of the application on the basis of honest concurrent use, the prior mark owner would be entitled to take action at the publication stage by initiating opposition proceedings on the same grounds. Any third party can also take action to invalidate the registered trademark on the same grounds. The right to invalidate the registration may be lost if the plaintiff has acquiesced to the use of the registered mark for a continuous period of five years, unless the registration of the mark was applied for in bad faith. Whether the applicant had done so in bad faith will depend on whether the application had, at the time his application was made, knowledge of, or reason to know of, the plaintiff's earlier trademark or other right.

Specification Objections

Singapore adopts the Nice Classification system for the purposes of classifying the goods and services to be protected under trademark registrations. In total, there are 45 classes of goods and services. Goods are classified in 34 classes and services are classified in 11.

Objections can also be raised on the basis that some goods or services are incorrectly classified or are vague such that amendments are required. These objections are usually resolved via submissions clarifying the nature of the items objected to or via proposals to amend or transfer the item to other classes accordingly.

Common Law Rights

The prior mark can also be an unregistered mark. Rights protecting the unregistered mark would be in the nature of common law rights, and an action based on the tort of "passing off" may be initiated to prevent or stop a third party proprietor from registering or using an identical or similar mark. To succeed in an action based on the tort of passing off, the rights-owner must establish that:

- *Goodwill*: its use of the unregistered mark in relation to the goods and services in Singapore has generated an attractive force which brings in custom as of the relevant date on which the conflicting mark was applied for;
- *Misrepresentation*: use of the conflicting mark in connection with the goods and services for which registration is sought would result in misrepresentation leading to confusion, *i.e.* that such use is likely to mislead the public into believing that the goods and services offered by the applicant are offered by the rights-owner or that the parties are connected in some way; and
- *Damage*: as a consequence of the misrepresentation, there would be damage or a likelihood of damage to the goodwill. Some evidence to show actual or likelihood of damage would be required.

Prior rights can also be established under copyright law or laws protecting registered designs.

Comparison of Statutory Rights vs. Common Law Rights

Statutory protection provides more security than common law principles because:

- A registration allows the registered proprietor an exclusive right to take action against an offending party on the basis of an infringement without having to first prove the element of goodwill;
- A registration acts as a notice of a claim to the exclusive use of the trademark to all third parties;
- Use of a registered trademark cannot infringe the rights in another registered trademark in relation to goods or services for which the former mark is registered;
- Criminal action can be also taken against infringement of a registered trademark which may act as a larger deterrent to potential infringers;
- Registration of a trademark can provide protection in advance for foreign traders who do not trade in the country yet. Although pre-trading activity can go towards providing goodwill, such pre-trading activity has to unequivocally evince the trader's intention to enter the Singapore market and would have to be sufficient to generate an attractive force which would bring in custom when the business in Singapore eventually materialized; and
- A registered trademark is intangible personal property which can be licensed, assigned or have security interests whether by way of fixed or floating charges created over it. Although an unregistered trademark can also be licensed or assigned, the scope of protection under such a license or assignment is comparatively unclear.

If a registered trademark is not used in Singapore on the goods and/or services for which it is registered for a continuous period of five years from the "date of completion of the registration procedure," a third party may apply to the courts or the Registrar of Trade Marks to have the registration expunged on the basis of non-use. Alternatively, goods and services may be restricted if the mark is not used in relation to the entire range of product which the registration covers.

Well Known Marks

The regime protecting well-known marks allows proprietors to take action against third parties who have applied for identical or similar marks for dissimilar goods or services where the mark would indicate a connection between those goods or services and the proprietor, and is likely to damage the interests of the

proprietor; or if the mark is well known to the public at large in Singapore, would cause dilution in an unfair manner, or take unfair advantage, of the distinctive character of the mark. This regime was introduced in accordance with the WIPO Joint Recommendations Concerning the Provisions on the Protection of Well-known Marks.

A well-known trademark is defined in the Trade Marks Act as:

- any registered mark that is well known in Singapore; or
- an unregistered mark that is well known in Singapore and belongs to a person who:
- is a national of a Paris Convention Country; or
- is domiciled in, or has a real and effective industrial or commercial establishment in, a Paris Convention country.

Rights in an unregistered well known mark arise even if the person does not carry on business or does not have any goodwill in Singapore. The requirement of goodwill under passing off is not required here.

In deciding if a well-known status can be granted to a trademark, the following factors may be relevant:

- the degree to which the trademark is known to or recognized by any relevant sector of the public in Singapore;
- the duration, extent and geographical area of -
- any use of the trademark; or,
- any promotion of the trademark, including any advertising of, any publicity given to, or any presentation at any fair or exhibition of, the goods or services to which the trademark is applied;
- any registration or application for the registration of the trademark in any country or territory in which the trademark is used or recognized, and the duration of such registration or application;
- any successful enforcement of any right in the trademark in any country or territory in which the trademark is used or recognized, and the duration of such registration or application; and,
- any value associated with the trademark.

A well-known trademark can either be a well-known mark in Singapore, *i.e.* well known to any relevant sector of the public in Singapore, or a mark which is well known to the public at large.

If a mark is regarded well known to any relevant sector in Singapore, the plaintiff must show that the whole or an essential part of the mark applied for is similar to its prior marks, and the use of the mark applied for will create confusion among consumers.

Marks which are well known to the public at large belong to a very select group of trademarks which have attained a high degree of fame with the public at large in Singapore. The fame and reputation of such a well-known trademark has to extend beyond the relevant sector in which the mark is being used in to the public at large in Singapore. Extensive evidence is usually required. Only a handful of marks, for *e.g.*

CLINIQUE and NUTELLA, have since been granted the status of being marks well known to the public at large. In holding that these marks are well known to the public, the Singapore Court had considered the long history of these brands in Singapore, the extensive advertising efforts in various media both in Singapore and internationally, and the presence of the goods offered under these brands in numerous supermarkets and departmental stores in Singapore and worldwide.

Once this threshold is crossed, the plaintiff also must show that use of the mark will:

- cause unfair dilution of the distinctive character of its marks; or
- take unfair advantage of the distinctive character of its marks.

b. Geographical Indications

A geographical indication is defined in the Geographical Indications Act as "any indication used in trade to identify goods as originating from a place, provided that the place is a qualifying country or a region or locality in the qualifying country; and a given quality, reputation or other characteristic of the goods is essentially attributable to that place." A qualifying country refers to a member of the World Trade Organization, a party to the Paris Convention or is otherwise designated by the Minister as a qualifying country.

Geographical indications (GI) may be registered as certification or collective marks under the Trademark Act. However, protection for geographical indications may also be sought under the GI Law. Trademark protection cannot be obtained for geographical indications for wines or spirits where the use or proposed use is in relation to wines or spirits which do not originate from the place specified in the geographical indication. This prohibition applies even if there is no element of deception.

Protection of a geographical indication will not apply against a trademark which is identical or similar to the GI if:

- the application was made in good faith;
- the mark has been continuously used in good faith either before January 15, 1999 or before the geographical indication in question was protected in its country of origin; or

- the geographical indication no longer enjoys protection or has fallen into disuse in its country of origin.

c. Where to Register

National applications are filed with the Registrar of Trade Marks in the Intellectual Property Office of Singapore. Priority claims, if any, have to be indicated at the time of filing. The applicant for the registration of a national application can be any person or corporation, local or foreign, although a local address for service is required.

As Singapore is a party to the Madrid Protocol, an international application with the World Intellectual Property Organization (WIPO) on the basis of a national application or registration can also be filed, especially if protection for the mark in other Madrid jurisdictions is sought. The applicant for international registration based in Singapore must be a person or entity which:

- is domiciled in, or is a national of, Singapore; or
- has a real and effective industrial or commercial establishment in Singapore.

The particulars in the international application must also mirror those in the basic Singapore application, in particular the form of the mark.

While applications can be filed either manually or electronically via IPOS' e-services portal IP2SG, applicants are encouraged to file the applications electronically, which reduces filing fees. Generally, supporting documents are not required.

A national application will undergo the following registration process:

(1) Application

Application filing can be done electronically and may be completed within two working days. No notarization or legalization of documents is required. Upon successful filing, the Registrar may take up to seven working days (or longer) to issue the trademark particulars *i.e.* application number and filing date.

(2) Search and Examination by the Registrar

During the Examination stage, an examiner reviews the application and ensures it is in accordance with the Singapore Trade Marks Act and Rules. The examiner also searches the register to ensure that the proposed mark is not identical or confusingly similar with any prior registrations or applications.

Any queries or objections raised by an examiner (*i.e.* office actions) have to be answered within the given deadline.

(3) Publication in Singapore Trade Marks Journal & Opposition

Upon acceptance, the mark will be published in the Singapore Trade Marks Journal for opposition purposes. During the publication stage, any third party who wishes to oppose your mark may do so by filing a notice of opposition within the prescribed two-month period (extendable for a further two months) from the date of publication.

(4) Registration

If no opposition is filed by third party within the prescribed period, the Registrar will issue a Certificate of Registration. In Singapore, registration of a trademark is valid for ten years. Protection can extend indefinitely with proper use of the mark and with timely payment of renewal fees every ten years.

Registrable Transactions

A registered trademark may be assigned or licensed. Any such assignment or license must be in writing and signed by the assignor or grantor.

Transactions affecting the ownership of a pending or registered trademark are registrable, and include:

- assignment;
- license;
- the grant of any security interest (whether fixed or floating) over the mark, or any right in or under it;
- an assent in relation to the mark or any right in or under it; and
- an order of court or other competent authority transferring the mark or any right in or under it.

With the exception of a license, these transactions if not recorded with the Registrar of Trade Marks would be ineffective as against a person acquiring a conflicting interest in or under the trademark application or registration in ignorance of it. The subsequent proprietor is also not entitled to damages, an account of profits or statutory damages in respect of any infringement of a registered trademark during the period between the date of the transaction and the date on which the application to record the transaction is filed.

There is no requirement in Singapore for the goodwill of the business conducted under the mark to accompany the assignment of the mark. It may nevertheless be preferable to assign it in a formal sense given that the goodwill may nevertheless be regenerated in the hands of the assignee simply through its continued use of the mark.

d. Infringement and Enforcement

Action can be taken against infringing use of a trademark on the basis of the prior mark proprietor's exclusive rights to use the mark.

Infringing acts include:

- The use of a sign, in the course of trade, which is identical to the registered trademark in relation to identical goods or services for which the trademark is registered;
- use of a sign, in the course of trade, which is identical to the registered trademark in relation to similar goods or services, where the use is likely to cause confusion; and
- use of a sign, in the course of trade, which is similar to the registered trademark in relation to identical or similar goods or services, where the use is likely to cause confusion.

Certain uses, however, cannot be considered infringing uses, such as:

- honest use of one's own name;
- honest descriptive use, *i.e.* to indicate certain characteristics of the goods or services;
- fair use in comparative commercial advertising or promotion;
- use for non-commercial purpose;
- use for the purpose of news reporting or news commentary; and
- use in relation to genuine goods, *i.e.* those marketed in and outside of Singapore by the Singapore registered proprietor or with his consent.

Remedies for infringement include injunctive relief, either damages or an account of profits and orders for delivery and disposal of infringing articles in relation to the registered trademark.

Plaintiffs should be aware that countersuits are possible. Should the plaintiffs be unsuccessful, the defendants may obtain an injunction or damages based on the merits of the case.

Proceedings on the basis of passing off can also be initiated against use of a sign which is identical or similar to an unregistered trademark in relation to identical or similar goods or services.

The proprietor of a well-known trademark in Singapore can restrain by injunction the use of the offending mark in Singapore.

IV. COPYRIGHT

Copyright describes a bundle of statutory rights granted to owners of original works and other subject-matter. The key governing statute is the Copyright Act in Singapore.

Copyrights to a work may also be assigned or licensed, as copyrights are treated as intangible personal property. An assignment must be in writing and signed by or on

behalf of the assignor. While a license does not need to be in writing, it is nevertheless advisable to do so to avoid any issues with bona fide purchasers for value who are not aware of the license.

a. Registration

Copyright arises once the original work is created. It is not a registrable intellectual property right in Singapore and there is no such system for registration. Maintenance of proper documentation evidencing the ownership and place of first publication of the original works is therefore crucial in order to assert copyright protection.

b. What can be protected by copyright law

Copyright law protects original literary, dramatic, musical and artistic works, and other subject matter such as sound recordings, films, broadcasts, cable programs and published editions of works.

In order to be copyrightable in Singapore, the following factors must be satisfied:

- The first publication of the work took place in Singapore, a WTO country or Berne Convention country, or if the author was a citizen or resident of Singapore or a WTO or Berne Convention country at the time the work was first published or made;
- the work has been reduced to material and tangible form; and
- sufficient effort has been made to make the work original.

Generally, copyright protection subsists for 70 years after the death of the author. Copyright subsists for 70 years from the calendar year of first publication in photographs. For unpublished works, copyright would subsist until after 70 years from the year of eventual first publication. The 70-year duration also applies to sound recordings and films. For broadcasts such as cable television programs, copyrights last for 50 years following the date of the first broadcast or the first instance of inclusion in a cable program, whichever comes first. A 35-year duration of copyright protection follows the first publishing of a work.

If the original work was created under the terms of an employment agreement or contract of service, the employer or contractor owns the copyright. There is, however, an exception for journalists - the proprietor of the printed journal, *i.e.* newspapers, magazines or periodicals, would own the copyright but only the publication and reproduction rights.

Copyrights cannot protect an idea itself. In order to qualify for protection, the idea must be expressed in a tangible medium. Copyright cannot protect general information or facts. Protection is afforded when the work contains a modicum of expression and creativity.

c. Infringement and Enforcement

Copyright owners enjoy exclusive rights to their creations, including:

- the right to reproduce the work in a material form;
- the right to publish works which have not been published yet;
- the right to perform the work in public;
- the right to make an adaptation of the work;
- the right to communicate the work to the public;
- the right to enter into a commercial rental arrangement for recordings; and
- the right to make films available for public viewing.

Primary copyright infringement is established once an infringer commits any of the acts referred to above without the copyright owner's permission. Secondary copyright infringement is also established if there is any importation, sale, offering for sale, public exhibition of any article which the infringer knows, or reasonably should know, that was created without the copyright owner's consent. Countersuit on the basis of groundless threats is also available if copyright infringement, whether primary or secondary, is not successfully established.

A defense on the grounds of general fair dealing for copyright infringement is available for the accused infringer. The defense protects acts for the purposes of research and study, criticism or review, and reporting current events. Specifically, to invoke the fair dealing defense for the purpose of research and study, only a "reasonable proportion" of the work may be used without consent. Ten percent of the work is the typical threshold for this assessment, as any more is usually too much; however, the reasonableness of the proportion should be viewed in consideration of various factors, such as, the nature of the work, relativeness in relation to the entire piece of work, and the effect, if any, on the market. Remedies for infringement include injunctive relief, damages, an account of profits and orders for delivery and disposal of the infringing articles. An award of statutory damages can be elected instead of traditional damages or an account of profits. Statutory damages generally do not exceed S\$200,000 unless it is proven that the actual loss exceeds S\$200,000.

Criminal sanctions may also be imposed on primary and secondary copyright infringers if the infringements are considered wilful, significant and are committed in order to obtain a commercial advantage. Sanctions include, but are not limited to, fines and imprisonment.

d. Online Piracy

To combat online piracy, rights owners have two mechanisms available under the Copyright Act: the issuance of a "take-down" notice and a request for judicial site blocking.

Rights owners can obtain and issue a "take-down" notice to request that network service providers disable access to or remove infringing material from its network. If the network service providers comply, they can then avail themselves of the safe harbor provisions, which provide liability exclusion for network service providers only participating transmission and routing services, system caching services or storage and information services.

Rights owners can also apply directly to the Court for an order that the network service providers entirely block access to flagrantly infringing websites without having to first establish liability on the part of the network service providers for copyright infringement. These orders are, however, only limited to "flagrantly infringing online locations." The Court will therefore have to determine if the online location falls within the definition of "flagrantly infringing," and may rely on the following factors for consideration:

- Whether the primary purpose of the online location is to commit or facilitate copyright infringement;
- whether the online location makes available or contains the means to infringe copyright;
- whether the owner or operator of the online location demonstrates a disregard for copyright generally;
- whether access to the online location has been disabled by orders from any court of another country or territory on the grounds of, or related to, copyright infringement;
- whether the online location contains guides or instructions to circumvent measures or any court orders disabling access to the online location; and
- the number of visitors received by the online location.

Prior to applying to the Court for a site blocking order, rights owners should first notify the owner of the online location of their intention to apply for the order. If the owner of the online location refuses to comply, the rights owners may then inform the network service provider of their intention to obtain the site blocking order. Copies of the application for the site blocking order must be served on the network service provider and the owner of the online location. The site blocking order, once granted, may be changed or revoked once the infringing material is removed, or the address of the infringing online location is changed.

V. REGISTERED DESIGNS

Registered design rights are granted for the protection of a shape, configuration, pattern or ornament applied to an

article by any industrial process; in other words, the external appearance of an article. The key governing statute is the Registered Designs Act in Singapore. The registered designs system in Singapore operates on a "first-to-file" basis.

Exclusive registered design rights last for an initial period of five years from the date of filing. This validity period may be extended for two further periods of five years by filing the necessary renewal applications together with payment of the requisite fees. The maximum period of protection will therefore last for 15 years.

a. What can be Registered

Any features of a shape, configuration, pattern or ornament applied to an article by any industrial process are registrable. A method or principle of construction is not registrable as a registered design. Also, the features of shape or configuration of an article are not registrable if they fall within any of the following exceptions:

- Those dictated solely by the function the article is to perform;
- those dependent on the appearance of another article of which the article is intended by the designer to form an integral part; and
- those enabling the article to be connected to, or placed in, around or against, another article so that either article may perform its function.

To be registrable, a design must be "new" and applied to an article by an industrial process. Prior registrations for identical or similar designs for the same or any other article would therefore block the registration process. A design is also not considered "new" if:

- it has been published anywhere in the world, in respect of the same or any other article; or,
- it differs only in immaterial details or features from other designs commonly found in trade.

An applicant in Singapore can claim priority from the date of its first-filed application for the same design filed in another Paris Convention country or another WTO country. The application in Singapore, however, must be filed within six months from the date of the first-filed application so that the "later" application in Singapore can enjoy priority.

For the purposes of determining novelty, however, a proprietor's rights in the design will not be affected by the disclosure of the design to a third party in circumstances such that it would be in bad faith, or if such a disclosure was made in breach of good faith, or if the design was communicated to the Intellectual Property Office of Singapore or any governmental

department for a consideration.

Publication of the design representation or introduction of an article featuring the design at an official international exhibition, or a subsequent publication resulting from that display or introduction, will also not prevent a design from being registered or being revoked once registered. This principle applies so long as an application is filed within six months of disclosure.

As there is no substantive examination in Singapore, an application for the design may be filed even if there may be concerns with the novelty requirement. It would then be up to a third party to challenge its novelty in revocation proceedings. Such a registration could serve as a deterrent to those who do not wish to incur the time and expense of challenging the applicant's rights.

During examination, the Registrar will only conduct a formalities examination and will not consider the registrability of the design, whether the priority claim is valid and whether there is proper representation of the design. He may reject an application if, on its face, the application shows that the design is not new or purposeful. Once the application is accepted, it is published immediately. Publication of the design application may be delayed until 18 months from the date of filing upon request.

Interplay between copyright and registered designs protection

Designs may also qualify for copyright protection as artistic works. If a design qualifies for both design and copyright protection and is properly registered as a design under the Registered Designs Act, then it will only enjoy protection as a registered design. However, if such a design has not been registered, it will lose protection both as a registered design and under copyright. It is therefore important to ensure that if the artistic work is a registrable design and would be industrially applied, *i.e.* more than 50 copies of the article have been or are intended to be produced for sale or hire, steps are taken to file and register an application for the design.

The creator of the design is generally the owner of the design, unless otherwise assigned. However, if the design was created under the terms of an employment agreement or contract of service, then the employer or contractor owns the copyright. Also, if the design is generated by computer, the person arranging for the creation of the design will be the deemed designer and consequently the owner of the design.

b. Where to Register

National applications are filed with the Registrar of Designs in the Intellectual Property Office of Singapore. Priority claims, if any, have to be indicated at the time of

filing. The applicant for the registration of a national application can be any person or corporation, local or foreign, although a local address for service is required.

As Singapore is a party to the Hague Agreement, an international application may be filed either through the Intellectual Property Office of Singapore or directly with WIPO designating Singapore as a jurisdiction where protection is sought. However, the applicant for the registration of an international application must:

- be a national of a contracting party to the Hague Agreement;
- be domiciled in the territory of a contracting party;
- have a real and effective industrial or commercial establishment in the territory of a contracting party; or
- have a habitual residence in a contracting party (applicable only in certain circumstances).

Unlike in the case of trademarks, a basic national application or registration is not required to support the international application.

While applications may be filed either manually or electronically via IPOS' e-services portal IP2SG, applicants are encouraged to file the applications electronically, which reduces the filing fees. Generally, supporting documents are not required. A clear representation of the design, however, is important and must be included in the application form.

A national application will undergo the following processes before it can enjoy protection as a registered design:

(1) Application

Application filing can be done electronically and may be completed within 1 – 2 working days if the filing requirements have been satisfied. No notarization or legalization of documents is required. Upon successful filing, the Registrar may take up to seven working days (or longer) to issue the design particulars (*i.e.*, application number and filing date).

(2) Formalities Examination by the Registrar

During the formalities examination, an examiner reviews the application and checks that information such as the statement of novelty, the classification and article name or specification are in order. The representation of the design should also be suitable for reproduction.

Any queries or deficiencies raised by an examiner (*i.e.*, office actions) must be answered within the given deadline.

(3) Publication and Registration

Once the formalities examination is completed, the design will be published for public inspection in the *Singapore Designs Journal and the Register*. Publication

may, however, be delayed for up to 18 months.

Registrable Transactions

A registered design is considered intangible personal property and may be registered or licensed. Any such assignment or license, however, must be in writing and signed by the assignor or grantor.

Transactions affecting the ownership of pending or registered designs are registrable, and include:

- assignments;
- licenses;
- grants of any security interest (whether fixed or floating) over the design or any right in or under it;
- assents in relation to the design or any right in or under it; and
- court orders or other competent authorities transferring the design or any right in or under it.

Unless recorded with the Registrar of Designs, the above transactions would be ineffective against a person acquiring a conflicting interest in or under the design application or registration in ignorance of it. Any period between the date of the transaction and the date on which the application to record the transaction is filed will also be excluded for the purposes of calculating any damages or account of profits entitled in respect of infringements or compensation payable as a result of governmental use of the design.

c. Infringement and Enforcement

Owners of registered designs enjoy the exclusive rights to manufacture, import, sell or hire, or offer for sale or hire, articles embodying the same or substantially the same registered design. Infringement is established when the infringing party commits any of these acts without consent. Infringement proceedings cannot be commenced on the basis of a pending design application.

Certain acts, however, cannot be considered infringing use, such as:

- acts for a private non-commercial purpose;
- acts for the purpose of evaluation, analysis, research or teaching; and
- acts in relation to genuine articles marketed in and outside of Singapore by the registered owner or with his consent.

Otherwise, remedies include injunctive relief, damages, an account of profits, an order for delivery up and disposal of infringing articles in relation to the registered trademark. Similarly, a countersuit on the basis of groundless threats is also available if design infringement is not established.

Revocation of Registration

Third parties can apply to the Registrar of Designs or to the Court for the revocation of a design on the following grounds:

- The design was not new as of the date of filing;
- the design was, as of the date of filing, a corresponding design of an artistic work in which copyright subsisted, and that the right in the registered design had expired by virtue of the expiration of copyright of a corresponding design; or
- any other ground on which registration may be refused.

VI. PATENTS

Patents are registrable intellectual property rights. These rights are granted to owners of inventions to prevent others from making, using, importing or selling their inventions without permission. Patents protect inventions which can be in the form of products, composition of products or even technical processes that serve as a solution to a problem. The patent owner is obliged, in exchange for patent protection, to publicly disclose the invention to allow the public to benefit from the inventor's intellectual work. The governing statute is the Patents Act, which serves to establish the law of patents, as well as enable Singapore to participate in certain international conventions on patents and related matters. The patent protection system in Singapore operates on a "first-to-file" basis.

The exclusive rights conferred by registration of a patent will cease after twenty years from the filing date. To realize the full term of 20 years, however, renewal applications should be filed before the expiration of the fourth year and every year thereafter.

a. What can be Registered

An invention can be a product or a process, patentable if:

- it is new;
- it involves an inventive step; and
- it is capable of industrial application.

Novelty

An invention is regarded as new or novel if it does not form part of the state of the art, which comprises all matter (whether a product, a process, information about either, or anything else) which has at the time before the priority date of that invention been made available to the public (whether in Singapore or elsewhere) by written or oral description, by use or in any other way.

An applicant in Singapore may claim priority from the date of its first-filed application for the same patent filed in another Paris Convention or WTO country. The application in Singapore, however, must be filed within twelve months from the date of the first-filed application

so that the "later" application in Singapore can enjoy priority. A two-month extension may be requested, but only if the failure to file the application was unintentional and had occurred despite due care for the process.

One way to mitigate potential infringements due to disclosure is to make all parties to the disclosure sign a non-disclosure agreement, ensuring that the initial disclosure does not expose the design to the general public.

Disclosure of the patent due to, or in consequence of, a display of the invention at an international exhibition or via description of the invention in writing before any learned society, or via publication in any learned society's transactions will not compromise the novelty requirement. This principle applies only if the disclosure occurs within 12 months of filing the patent application.

Inventive Step

An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art.

Industrial Application

An invention shall be taken to be capable of industrial application if it can be made or used in any kind of industry, including agriculture. However, an invention of a method of treatment of the human or animal body by surgery or therapy, or of diagnosis practiced on the human or animal body, shall not be taken to be capable of industrial application. This prohibition does not, however, prevent a product consisting of a substance or composition from being treated as capable of industrial application merely because it is invented for use in any such method.

An invention is also non-patentable if the publication or exploitation of it would generally be expected to encourage offensive, immoral or anti-social behavior.

b. Where to Register

National applications can be filed with the Registrar of Patents within the Intellectual Property Office of Singapore. Priority claims, if any, must be indicated at the time of filing. It is an offense for a Singapore resident, without the Registrar's written consent, to file or cause to be filed a patent application outside Singapore without first filing an application for the same invention in Singapore at least two months before the application outside Singapore is made. Failing to do so will constitute a criminal offence under the Patents Act. Potential liabilities include a fine not exceeding SGD 5,000 and imprisonment for a term not exceeding two years.

Alternatively, an international application in accordance

with the Patent Cooperation Treaty may be filed, with either WIPO or with the Intellectual Property Office of Singapore acting as the receiving office for the application.

While applications may be filed either manually or electronically via IPOS' e-services portal IP2SG, applicants are encouraged to file the applications electronically instead by reducing the filing fees payable.

A national application will undergo the following processes before it can enjoy protection as a registered patent:

(1) Application

Application filing can be done electronically and may be completed within two working days if the filing requirements have been satisfied.

A complete application form should list a description of the invention, the number and type of claims, any drawing(s) referred to in the description or in the claim(s), and an abstract of the invention. Instead of filing a complete patent application, however, applicants may opt to first file a provisional patent application. An indication of claims is not required for a provisional patent application at the time of filing, but must be furnished within 12 months of the date of filing.

(2) Conduct of Date of Filing checks

A filing date will be issued only if, upon examination, the application contains the following:

- a clear indication that a patent is sought;
- a clear identification of the applicant for the patent; and
- a clear description of the invention for which the patent is sought.

The date of filing may be granted if the applicant makes a declaration of priority that the patent application contains:

- a reference to an earlier relevant patent application;
- the date of filing of the earlier relevant patent application and the associated country; and
- a statement that the description of the invention is incorporated by reference and is completely contained in the earlier patent application.

(3) Issuance of Date of Filing Notification Letter

If the above conditions are not met, the Registrar will issue a letter notifying the applicant of the deficiencies. The applicant will then have two months from the date of the notification to ensure that the necessary conditions are met. If the deficiencies are corrected, a notification confirming the date of filing will be issued. If the deficiencies are not corrected within two months, a notification of abandonment will be issued to the

applicant.

(4) Preliminary Examination

The application will then undergo preliminary examination to determine:

- Whether the declaration of priority specifies an earlier date of filing which is more than 12 months before the date of filing of the present patent application;
- Whether any drawing(s) are missing, or the description of the invention is missing or incomplete; and
- that all formal requirements are duly complied with.

Any issues are to be raised in a Registrar's notification letter. Observations in response to the Registrar's raised concerns and the requisite amendments, if any, must be filed within two months from the date of the notification letter.

If all formal requirements are in order, the Registrar will issue a letter confirming this.

(5) Publication of Patent Application

If a patent application accorded with a Date of Filing is still pending, it will be published in the *Patents Journal* as soon as possible after 18 months. Once published, details of the patent application become available for public inspection. The applicant may therefore exercise the option of withdrawing the patent application, if intended, before the expiration of the 18-month period.

A holder of a published patent application may use this as a basis for any infringement proceedings.

(6) Search and Examination

Search and examination to determine the patentability of the invention may then be requested. The search and examination process can be completed via any of the following approaches:

- All-local approach: Request for a search followed by examination within 36 months, or a combined search and examination process within 36 months;
- Combination approach: Request for examination within 36 months on the basis of the final results of a search in a patent application in a corresponding application, corresponding international application, *i.e.* an international search report (ISR), or related national phase application; and
- All-foreign approach: request for supplementary examination within 54 months on the basis of the final results of search and examination in a corresponding application, corresponding international application, *i.e.* an International Preliminary Report on Patentability (IPRP), or related national phase application.

The search should locate all materials and information

relevant to the subject of the invention. An examination will then determine whether the substantive requirements of novelty, inventive steps and being capable of industrial application are satisfied.

If the Examiner is of the view that all or some requirements are not satisfied, objections must be submitted via written letter. The applicant will then have a non-extendible five-month period to respond to the objections. The Examiner then reserves the discretion to issue a further written opinion. Amendments to the application to resolve these objections may be submitted in the meantime.

The supplementary examination conducted under the all-foreign approach will first involve a comparison of the claims in the application and the claims in the corresponding application. Objections, if any, will also be raised in a written opinion, but the applicant will only have a non-extendible three-month period to respond. Amendments to the application to resolve these objections may be submitted in the meantime.

Results of the examination will be reflected in either an examination report or supplementary examination report.

(7) Notice of Intention to Refuse Patent Application

If there are still outstanding objections in the examination report, a notice of intention to refuse the patent application will be issued. Unless an examination review within two months from the date of notice is requested for, the patent application will be refused. Amendments to the application to resolve these objections may be submitted in the meantime.

(8) Request for Examination Review

If the examination review report is clear, *i.e.*, there are no outstanding objections, a notice of eligibility to proceed to grant will be issued. Otherwise, a notice of refusal will be issued after two months have passed.

(9) Certificate of Grant

An applicant must then request for the issuance of the Certificate of Grant by filing the relevant official form together with payment of the requisite fees. This must be done within two-months from the date of the notice of eligibility.

A lapsed patent may be restored, but the request for restoration must be filed within 18 months and must satisfy the Registrar that the lapse was unintentional.

Registrable Transactions

A patent is treated as intangible personal property and may be licensed or assigned. Any such assignment or license, however, must be in writing and signed by the assignor or the grantor.

Transactions affecting the ownership of a pending or registered patent are registrable and include:

- assignments;
- mortgages;
- licenses;
- the death of the proprietor or one of the proprietors, or any person having a right in or under the patent, and the vesting by an assent of personal representatives of a patent or any right in or under it; and
- an order of court or other competent authority transferring the patent or any right in or under it.

These transactions are ineffective against persons acquiring conflicting interests in the patent if the transaction is not recorded with the Registrar of Patents. Any period between the date of the transaction and the date on which the application to record the transaction is filed will also be excluded for the purposes of calculating any damages or account of profits unless the transaction is registered within six months from the date of the transaction, and unless the Court is satisfied that it was not practicable to do so within that six month period.

License of Right

Any interested party may apply to the Court for a compulsory license of right to counter any anti-competitive practices. The Court will take into consideration the following factors in determining if a license of right should be granted:

- whether there is a market for the patented invention in Singapore;
- whether the supply of the patented products is not done on or being done on reasonable terms; and,
- whether the patent proprietor has valid reasons for filing to supply the market with the patented products whether directly or indirectly through a licensee on reasonable terms.

c. Infringement and Enforcement

Any of the following acts done without the consent of the patent owner will constitute infringement under the Patents Act:

- where the invention is a product:
 - to make, dispose of, offer to dispose of, use or import the product or keep it whether for disposal or otherwise; or
- where the invention is a process, to:
 - use or offer to use it with actual or constructive knowledge that its use without the consent of the owner would infringe the patent; or
 - to dispose of, offer to dispose of, use or import any product obtained directly by means of that process, or to keep any such product whether for disposal or otherwise.

There are exceptions under the Patents Act, such as, where the act is done privately and not for commercial purposes, or done for the purpose of experimentation related to the subject of the invention. In addition, particular acts committed by the Singapore Government and authorized bodies shall not be considered infringements under the Patents Act. These authorities are allowed to do anything in relation to a patent for a public non-commercial purpose, or for use in accordance with a national emergency, or other circumstances of extreme emergency.

Civil proceedings may be brought in the court by the patent owner in respect of any infringing activity under the Patents Act. A claim may be made for:

- an injunction to restrain the infringing action;
- an order for the infringer to deliver up or destroy any product to which the patent is infringed, or any article in which any such product is inextricably comprised of;
- damages in respect of the infringement, or an account of profits obtained by the infringer from the infringement; and
- for a declaration that the patent is valid and has been infringed upon by the infringer.

Invalidation of Patent

Third parties can apply to the Registrar of Patents or to the Court for the revocation of a patent on the basis that:

- the invention is not patentable;
- the registered patent owner is not entitled to the registration;
- the specification does not disclose the invention clearly and completely enough such that a person skilled in the art would not be able to perform it; and
- matter disclosed in the specification has a scope broader than that disclosed and filed in the application.

VII. TRADE SECRETS

Trade secrets are information important to businesses or companies which are not publicly available. These include confidential information that would usually have significant commercial value. In Singapore, the law protects confidential information, such as ideas and information not in the public domain, including trade secrets. Disclosure of trade secrets may amount to a breach of confidentiality, which avails to the owner of the information certain civil remedies.

Duty of Confidentiality

Under the common law, receivers of information (such as trade secrets) that contains a quality of confidence, and was imparted under circumstances requiring an obligation of confidence, would owe a duty of

confidence to the owner of the confidential information. A duty of confidentiality may also arise out of a contractual relationship, such as an employer-employee relationship, whereby the employee would be in breach of his or her duty of confidentiality if the employee discloses confidential information without authorization.

Civil and Criminal Sanctions

Civil remedies may be obtained against those who disclose information in breach of their duty of confidence. Owners of the confidential information and/or trade secret may commence proceedings against those in breach by applying for an injunction to prevent them from disclosing or further disclosing the confidential information. In addition, they may also bring a suit for losses, damages or an account of profits as a consequence of the breach of confidence.

Further, the Computer Misuse and Cybersecurity Act (Cap. 50A) ("Computer Misuse Act") provides protection against the commercial misappropriation of trade secrets and/or confidential information. Under the Computer Misuse Act, it is an offense for a person to:

- cause a computer to perform any function for the purpose of securing access without authority to any program or data held in any computer;
- cause a computer to perform any function for the purpose of securing access to any program or data held in any computer with intent to commit further offences; or,
- commit any act which causes the unauthorized modification of the contents of any computer.

VIII. PLANT VARIETIES

Singapore, as a member of the International Convention for the Protection of New Varieties of Plants (UPOV Convention), has a system in place for the protection of plant varieties. The governing statute is the Plant Varieties Protection Act. Plant variety rights protect plant genera and species as long as they are new and satisfy the requirements of being distinct, uniform and stable. A plant variety in particular is defined as a plant group within a single botanical taxon of the lowest rank.

The plant variety protection system in Singapore operates on a first-to-file basis. The maximum period of protection is 25 years from the date of grant of protection, subject to payment of the annual fees.

a. What Can be Registered

Any plant genera and species may be protected under the Plant Protection Variety Act (the "PVP Act") so long as it satisfies the following requirements:

- novelty;
- distinctness;

- uniformity;
- stability; and
- suitable denomination.

Novelty

A plant variety is considered new if its harvested or propagating material is commercially exploited with the breeder's consent, not more than the following time periods before the application is filed:

- in Singapore – 12 months;
- outside Singapore:
- six years for trees and vines; or
- four years for all other types of plant varieties.

The novelty requirement is not affected if, for the purposes of increasing the stock of a plant variety or for any testing of a plant variety, the plant breeder enters into arrangements in which propagating material of that plant variety is sold to or used by some other person, and any unused portion of that propagating material and all material produced from that propagating material is either resold back to the breeder or immediately becomes the breeder's property.

Prior to July 30, 2014, plant variety protection was limited to just 15 plant species being eight orchids, four aquatic plants, one ornamental and two vegetable varieties. The relevant provisions have since been amended to allow the protection of all plant genera and species, so long as they fulfil the requirements stated above.

As part of the transitional provisions, if a plant variety has been commercially exploited in Singapore for more than 12 months before the application is filed, it may still be protected if:

- the application is filed before July 30, 2015; and,
- provided that its commercial exploitation was not before the following time periods before the application is filed:
- six years for trees and vines; or,
- four years for all other types of plant varieties.

Distinctness

The plant variety intended for protection cannot be one whose existence is already a matter of common knowledge at the time of filing. To determine the existence of the plant variety, consideration may be given to the grant or registration of the same plant variety in the official registers of plant varieties in the world.

Uniformity

The plant variety must be sufficiently uniform in its

relevant characteristics, subject to any variations which should be anticipated from its propagation.

Stability

The stability requirement is satisfied if the relevant characteristics of the plant variety do not change after repeated propagation or at the end of each cycle in propagation.

Denomination

A distinguishing name or identification must be proposed as a generic designation for the plant variety. Unacceptable denominations include those comprising of numbers only, misleading or confusing denominations and those which are contrary to public policy or morality.

b. Where to Register

Applications can be filed with the Registrar of Plant Varieties within the Intellectual Property Office of Singapore. The application form should indicate a description of the plant variety and the proposed denomination. Priority claims, if any, must be indicated at the time of filing. Any breeder can apply for the protection of a plant variety. The definition of a breeder covers the following persons:

- a person who breeds, discovers and develops a new plant variety;
- the employer of such a person who does so in the course of employment; or
- the successor in title to any person defined above.

Priority may be claimed on the basis of an earlier filed corresponding application in another UPOV Convention member country, provided that the later application is filed within 12 months from the date of this first-filed application. As a reference, USA is a UPOV Convention member country.

After the application is filed, it will undergo technical examination to determine whether the plant variety intended for protection satisfies the substantive registration criteria set out above. The Registrar reserves the discretion to appoint any person, organization or entity as an Examiner to oversee or undertake this examination. The only examining authority used to be the Agri-Food and Veterinary Authority of Singapore (AVA). The amended provisions now allow the Registrar to engage the services of other professionals in the event the AVA does not have the expertise to conduct the technical examination of any particular plant variety.

Alternatively, the applicant may seek reliance on an examination report issued and certified by an examiner in any UPOV Convention member country. Such an examination report must be submitted to the Registrar of Plant Varieties within three years from the date of filing

of the foreign application. The Registrar nevertheless retains the discretion to reject the results of this examination report.

Registrable Transactions

A registered plant variety is considered intangible personal property and may be licensed or assigned. Any such assignment or license must be in writing and signed by the assignor or the grantor.

c. Infringement and Enforcement

A holder of a plant variety registration enjoys the exclusive rights to produce, or reproduce, conditions for the purpose of propagation, sale, import or export of the propagating material of the protected variety. Protection is also extended to:

- any plant variety that is essentially derived from the original plant variety;
- any plant variety that is not distinct from the original plant variety; and
- any plant variety where in which production requires the repeated use of the original plant variety.

Infringement is established when a third party commits or authorizes any of above in respect of the propagating material or harvested material of a protected plant variety without the registered proprietor's consent. This includes unauthorized stocking.

Such acts done for (i) private and non-commercial purposes, (ii) experimental or research purposes, or (iii) the purpose of breeding other varieties, however, do not constitute infringement.

Remedies for infringement include injunctive relief, damages or an account of profits. Damages will not be granted if the infringing party can prove that, at the time of infringement, they were not aware, and had no reasonable grounds for supposing, that there was an infringement. An account of profits will be granted instead.

Invalidation may be sought on the basis that any of the requirements, *i.e.*, novelty, distinctness, uniformity or stability, have not been satisfied, or that protection was granted to a person who is not entitled to it under the Act.

Cancellation of the registration can also be sought on the basis:

- that the grantee has failed to provide such information, documents or material as requested by the Registrar for the purposes of verifying the maintenance of the plant variety within the requisite period;
- the non-payment of the renewal fees;
- failure to propose another suitable denomination within the prescribed period; or

- the plant variety is no longer stable or uniform.

IX. ANNEXES

Figure 1: Patent Application Process

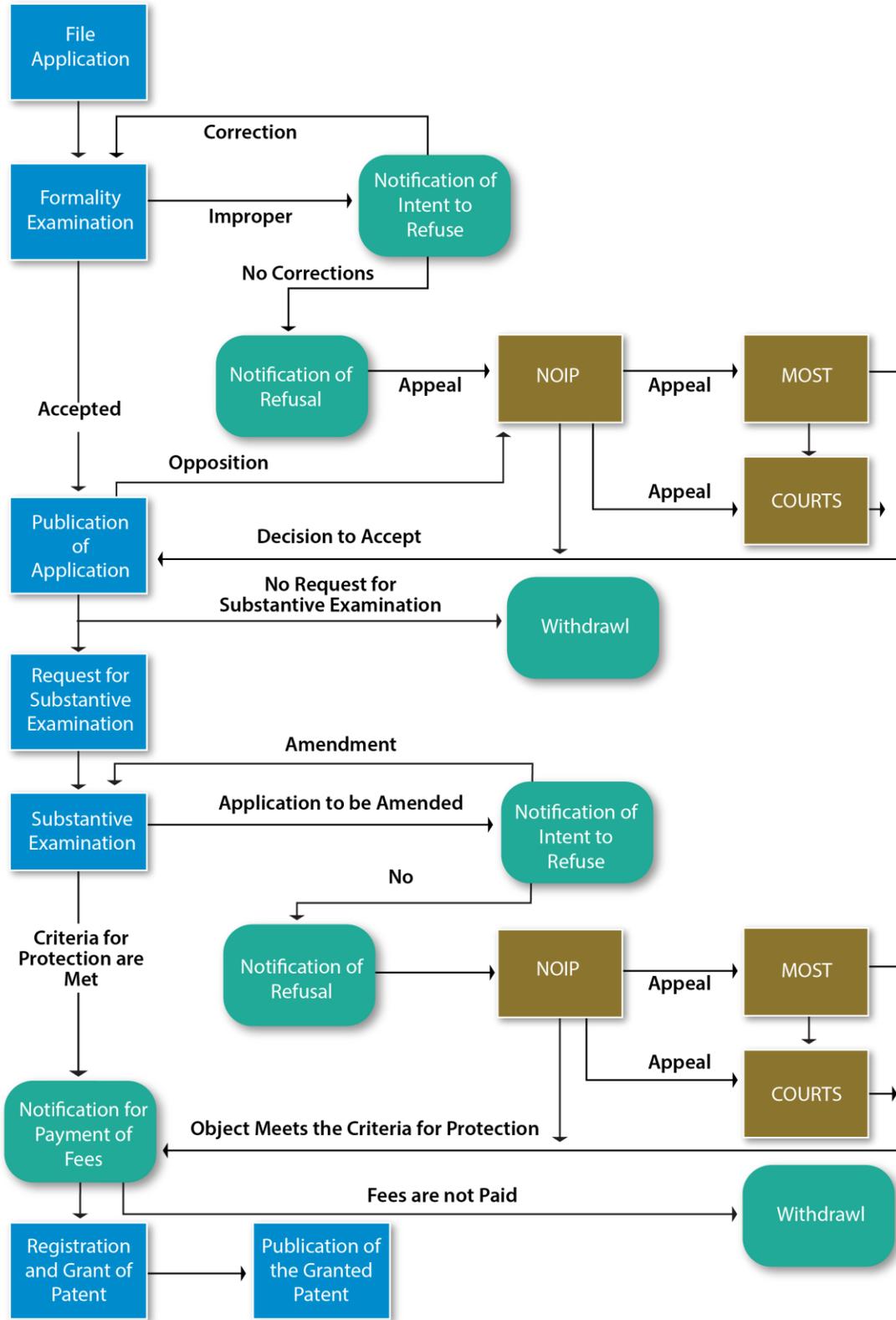


Figure 2. Trademark Application Process

