

## UDC 34

**A Comparative Study of Trademark Registration Procedures Between China and Russia****Tong Zhang**

Lecturer,  
Heihe University of China,  
164300, Heihe, China;  
e-mail: science\_heihe@mail.ru

**Hailin Fu**

President,  
Aihui District Court of China (Heilongjiang),  
Pilot Free Trade Zone;  
e-mail: science\_heihe@mail.ru

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**Abstract**

After Russia launched military action against Ukraine, the sanctions imposed by Western countries on Russia have led Chinese companies to shift their investment focus more towards Russia, hoping to fill the gap left by the Russian market and establish a more stable cooperative relationship. To achieve the healthy development of intellectual property between the two countries, it is necessary to vigorously promote legal exchanges and cooperation, and face the differences in trademark registration procedures between China and Russia. This article mainly introduces the procedures for Chinese people to apply for trademark registration in Russia and Russian people to apply for trademark registration in China. Based on this logical starting point, this article summarizes the main differences and institutional arrangements between the trademark registration systems of China and Russia, and concludes trademark applicants and handlers of trademark matters in China and Russia to avoid legal and institutional risks arising from different institutional arrangements. Overall, both China and Russia should seize opportunities, fully tap into the potential and advantages of Sino-Russian cooperation, and achieve a higher level and larger scale development of pragmatic cooperation between the two countries. At the same time, attention should also be paid to the legal risks caused by changes in the international situation and differences in legal culture and systems between China and Russia, fully recognizing the differences in intellectual property legal systems between China and Russia, and reducing legal risks in trade and investment operations between both sides.

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**Keywords**

Trademark registration procedures, protection of the interests of prior rights holders, priority, comparative study, Russia and China.

**Introduction**

China and Russia have established diplomatic relations for a long time and have always maintained a good partnership, with the highest level among all China's foreign partnerships. From March 20th to 22nd, 2023, Xi Jinping exchanged in-depth views on important issues related to the development of China Russia's comprehensive strategic partnership and bilateral practical cooperation in the new era. He pointed out that the two people will carry out bilateral economic cooperation in eight key directions, promote high-quality development of Sino-Russian economic and trade cooperation, and inject new impetus into the comprehensive promotion of bilateral cooperation. After Russia launched military action against Ukraine, the sanctions imposed by Western countries on Russia have led Chinese companies to shift their investment focus more towards Russia, hoping to fill the gap left by the Russian market and establish a more stable cooperative relationship. To achieve the healthy development of intellectual property between the two countries, it is necessary to vigorously promote legal exchanges and cooperation, and face the differences in trademark registration procedures between China and Russia.

**Procedures of Chinese Applying for Trademark Registration in Russia***Application Channels*

Russia is a contracting party to the "Madrid Agreement on the International Registration of Marks", and Chinese applicants can now choose Russia as the target country for trademark applications. The registration process is as follows: First, applicants submit the application to the State Trademark Office of China, and then the office will transfer the application documents to the International Bureau under the World Intellectual Property Organization [Li Zheng, 2020], and then submit the documents to the Intellectual Property Office of the Russian Federation [Hou Lin, 2000]. The trademark registration protection obtained through this method has the same legal validity as the trademark directly applied for registration with the Russian intellectual property administrative department. The biggest advantage of this trademark application is its low cost, but the corresponding process progress is relatively slow. It should also be noted that registration requests submitted through the International Intellectual Property Organization require applicants to submit applications or registered information within their own country as a prerequisite, and to ensure that the trademark design and other key trademark information are consistent with the original domestic trademark. The types of related goods cannot be extended beyond the scope of the original trademark coverage [Dai Xiaodan, 2018]. If there is a change in the legal status of the initial trademark within the country, it may also affect the legal validity of international registration.

Trademark applications can directly submit relevant documents for trademark registration to the Russian Intellectual Property Office. Adopting this direct application process is more convenient than transferring through international channels, but it is necessary to hire an intellectual property agency within Russia to complete the relevant application procedures. The required materials to be submitted include: the applicant's name and address, trademark design, specified goods and service categories,

and an authorization letter. Once all documents are ready, they can be submitted to the Russian Intellectual Property Office for processing. This approach is more flexible compared to the trademark registration process transferred through the International Intellectual Property Office and has no specific requirements for the legal validity of the basic trademark. As it directly faces the Russian examination agency, the review process is often faster. Its disadvantage lies in the relatively high cost to be paid.

### **Registration Process**

The process of registering a trademark in Russia can be summarized into six steps, in order: submitting application materials, conducting formal examination, substantive examination, examination decision, issuing registration certificate, and publishing registration notice [Zhao Yuehong, 2018]. If the process is smooth and unobstructed, it is expected to take about 14 to 16 months from the beginning of the application to the completion of the public announcement.

The Russian intellectual property management agency will conduct a formal review of the submitted documents and the applicant's identity conditions. This review process is expected to last for 1 to 2 months, during which acceptance notices will be issued for those applications that meet the requirements. The application time for trademark registration shall be based on the specific date when the Russian intellectual property management agency receives all necessary documents.

After passing the formal review, the substantive review process will be initiated. This process is expected to take about a year. At this stage, the core of the examination is to verify whether the applied trademark meets the conditions set by the Trademark Law, involving the evaluation of the absolute and relative reasons for the trademark.

If the applicant's trademark identification is approved by the intellectual property authority during the critical substantive examination process, it will be announced; On the other hand, if the examination authority determines that the submitted trademark identification does not comply with the relevant provisions of the Trademark Law, or is identical or similar to the trademark of the same category or similar products used by others in the early stage, the applicant shall issue a notice of rejection of the application and fail to pass the substantive examination. Within a six-month period of receiving a notice of rejection, the trademark applicant may exercise the right to apply for re-examination.

After the registration decision is approved, the national intellectual property agency will notify the applicant to complete the payment of the registration fee within a period of four months. If the applicant has paid the corresponding fees in full and on time, the institution will file and record the trademark, and within the following month, officially record the trademark registration in the national trademark registry. The China National Intellectual Property Administration will issue the corresponding trademark registration certificate within one month from the date of registration of the trademark.

After the Federal Intellectual Property Office includes a registered trademark in the national trademark registry, the information on trademark registration will be immediately published in the official gazette.

#### *Objections and Revocations*

After the trademark registration application is submitted to the Intellectual Property Office, anyone has the right to access the application documents. The Federal Intellectual Property Office shall publish the submitted trademark application information in the official gazette. After the publication of trademark application information, anyone has the right to raise objections in writing to the Federal Intellectual Property Office before making a decision on trademark registration in the country.

The prior rights holder may state the facts and reasons for opposing the approval of the opposed trademark registration through the objection procedure, in order to prevent defective trademarks from being approved for registration. Trademark applicants can have the opportunity to defend and strive for the approval of their trademark application [Shen Lanlan, 2014]. In Russia, the patent dispute agency of the China National Intellectual Property Administration is responsible for managing the hearing of objections [Zhao Yuehong, 2018]. The law does not explicitly specify the time limit for the objection review stage, but past practice has shown that this process usually takes 4 to 12 months or even longer, and the specific period is often affected by the number of hearing meetings. Objections initiated for absolute reasons may be raised at any time during the validity period of the trademark. And those objections based on relative reasons must be raised within five years from the date of approval and publication of the relevant trademark registration.

If the owner of the original trademark objects to the registration of this trademark, the applicant has the right to request the revocation of the original registered trademark on the grounds that the original trademark has been vacant for three years, in order to effectively avoid the existing vacant trademark becoming an obstacle to the applicant's registration process [Zhang Ling, 2019]. The benefit of this revocation mechanism is to stimulate the vitality of brand transactions and effectively reduce the stock of idle trademarks. From a procedural perspective, the prior trademark owner is responsible for presenting evidence within the prescribed period that can challenge the effective use of the trademark, otherwise they will bear the adverse consequences of the trademark being revoked.

The official agency responsible for trademark revocation cases in Russia is the Federal Intellectual Property Court. Handling such lawsuits usually takes a long time, with a cycle typically between 8 and 12 months. The burden of proof for filing a request for revocation lies with the prior owner of similar trademark rights, who must present valid documentation proving that their similar trademark rights have been used to produce the corresponding category of goods.

The effective protection period for Russian trademarks is ten years, calculated from the date of trademark registration application. If the trademark owner wishes to continue holding the right to use the trademark after the protection period expires, they need to go through the relevant procedures for extending the term. The extension application should be processed within one year before the expiration of the original trademark protection period. If the application period is missed, the trademark owner has the right to apply for extension of protection within a grace period of six months after the expiration of the trademark protection period, after paying additional fees. The new validity period for trademark renewal thereafter is also ten years, starting from the day after the end of the previous protection period.

## **Procedures of Russian Applying for Trademark Registration in China**

### *Application Channels*

Russian businessmen seeking trademark registration or handling related trademark matters in China can either handle them in person or entrust a trademark agency that has been registered and filed with the China National Intellectual Property Administration. If individuals submit their own registration applications, they can use the online service platform of the China National Intellectual Property Administration to apply electronically, or go to the registration hall of the China National Intellectual Property Administration and the special window set by the Office to complete the relevant procedures. There is no difference in the implementation of trademark examination procedures between the two approaches in trademark registration applications.

If the applicant handles trademark registration or other related procedures on their own, they must

submit the required documents in accordance with regulations; If using agency services for trademark registration or other related procedures, the applicant must also provide an additional formal authorization letter granting the corresponding authority to the trademark agency.

If the applicant personally handles it, the applicant or relevant personnel will directly receive all documents issued by the Trademark Office; On the contrary, if a trademark agency is appointed, it should be the trademark agency that receives all documents from the Trademark Office.

Except for foreign nationals and companies with permanent residences or business locations in China, other foreign individuals or enterprises applying for trademark registration and handling related trademark matters in China shall authorize professional trademark agents established in accordance with the law in China to act on their behalf. The required documents for this application include a "Trademark Registration Application Form" signed by the applicant personally, a trademark design, a copy of the applicant's identity authentication materials, as well as a copy of the "Foreigner's Permanent Residence Permit" or "Foreigner's Residence Permit" issued by the public security organs with a validity period of more than one year [Luo Gang, 2012]. Finally, it is worth noting that wholly-owned subsidiaries established by foreign investment in China in accordance with the "Company of the People's Republic of China" belong to the category of Chinese companies, so their trademark application process should follow the norms of domestic applicants.

### **Registration Process**

The Chinese trademark application process must go through the following five stages. Application submission process: The applicant submits their documents to the trademark management agency and can receive a receipt of the list of submitted materials on the same day. The receipt is stamped with the "Received" seal of the Trademark Office through the center and the date of receiving the materials, which confirms that the trademark management agency has received the required documents. Formal examination stage: Within approximately 1 to 3 months from the date the document reaches the trademark management authority, the applicant will receive the "Acceptance Notice". This notice indicates that the document has passed the formal examination and has entered the substantive examination stage. Each trademark acceptance notice will have an exclusive number, which is the application number. Detailed substantive examination will be conducted in sequence based on the application number, and there is no possibility of randomly shuffling the application number. Substantive examination stage: After the issuance of the acceptance notice, the substantive examination work will be completed within approximately one to one and a half years. If this round of examination is passed, the trademark administration authority will issue a preliminary public notice of approval, with a public notice period of three months. Preliminary examination announcement stage: If the initial public notice period ends and there are no objections, the trademark management authority will issue a registration announcement, which marks the approval of the trademark and the applicant has the exclusive right to use the trademark. Registration and certification stage: Within about one month from the date of registration announcement, the applicant will be able to receive the trademark registration certificate.

#### *Priority Issues*

The specific provisions stipulated in China's "Trademark Law" have established two mechanisms: international convention priority and exhibition priority. If the applicant for trademark registration first registers abroad and applies to China for the registration of the same trademark for the same goods within six months from the date of initial submission, based on bilateral contracts or international

treaties jointly participated in, or following the principle of mutual recognition of priority, the applicant will be eligible to enjoy priority registration rights. Similarly, if the trademark is first used in an international exhibition hosted or recognized by the Chinese government and a registration request is submitted within six months of the first exhibition date, the applicant will also be entitled to priority rights.

If the applicant requests convention priority or exhibition priority, they must check "priority based on first application" or "priority based on exhibition" in the application documents at the time of application, and accurately fill in relevant columns such as "application/exhibition country/region", "application/exhibition time", and "application number". Meanwhile, the applicant is required to submit proof of priority (including the original text and its Chinese translation). If these documents cannot be submitted together, the option of "supplementing priority proof documents" should be selected, and the materials should be completed within three months from the date of application. If there is no clear written explanation or if priority proof documents are not submitted by the deadline, it will be considered as a waiver of priority requests<sup>1</sup>.

The proof document of the priority of the convention refers to a copy of the trademark registration application submitted by the applicant for the first time in another contracting country, which needs to be authenticated by the trademark authority of the receiving country of the application and clearly marked with the date and number of submission of the application. The proof of exhibition priority should include information such as the name of the exhibition held in other contracting countries, proof that the trademark has been used on the displayed goods, and the time of the exhibition. The proof of priority is usually provided or authenticated by the exhibition organizers or organizers of the participating countries<sup>2</sup>.

#### *Situations of Inadmissibility*

Generally speaking, rejected trademark registration requirements often include but are not limited to these situations: The key information in the application documents is missing, such as the application form, trademark identification pattern, and a copy of the applicant's identification document; The submitted application is not accurately filled out in the established format; There is unauthorized modification of the standard format of the application form; The type of goods or services on the application form is not clearly indicated; The application documents used are not written in Chinese characters; Unless foreign language documents, credentials, and supporting materials provide a Chinese translation version with the official seal of the applicant, agency, or translation company, it will not be accepted; The application form does not provide the applicant's name or address details; The applicant's name, signature, seal, and a copy of the attached identification document on the application form are different from the original; The trademark design is not printed or pasted within the frame of the application form, or the size of the printed or pasted pattern exceeds the specified size; The applicants declare that two or more applicants have jointly applied for the registration of the same trademark, but have not simultaneously submitted an attached page with the name of the joint applicant and their signature or seal; The natural person applicant in Chinese Mainland has not submitted the documents specified in Article 4 of the "Trademark Law"; The applicant fails to pay the prescribed

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<sup>1</sup> Refer to "Guidelines for Frequently Asked Questions in Trademark Registration Applications (II)" in "China Trademark", Issue 7, 2016, pp. 67-68.

<sup>2</sup> Refer to "Guidelines for Frequently Asked Questions in Trademark Registration Applications (IV)", published in "China Trademark", Issue 9, 2016, p. 67.

registration fee to the trademark management agency; In the case where the trademark agency requires supplementary materials, the applicant fails to make corrections within the specified period or fails to make corrections according to regulations.<sup>3</sup>

## **The Main Differences in Trademark Registration Procedures Between China and Russia**

### *System for Protecting the Interests of Prior Rights Holders*

According to the Trademark Law of our country, the application for trademark registration shall not infringe upon the existing prior rights of others, nor shall it preemptively register trademarks that have already been used and have a certain impact by others through improper means [Bai Lu, 2018]. If a registered trademark violates the provisions of Article 13 (2) and (3), Article 15, Article 16 (1), Article 30, Article 31, and Article 32 of the Trademark Law, the prior right holder or interested party may request the Trademark Review and Adjudication Board to declare the registered trademark invalid within five years from the date of trademark registration. For malicious registration, the owner of a well-known trademark is not subject to a five-year time limit. The Trademark Law directly starts from the perspective of not violating the principle of good faith and trustworthiness, and stipulates that no one shall register a trademark that has already been used by others and has a certain impact through improper means [Hu Qingwen, 2013]. After receiving an application to declare a registered trademark invalid, the Trademark Review and Adjudication Board shall notify the relevant parties in writing and provide a time limit for filing a defense. The Trademark Review and Adjudication Board shall make a ruling to maintain the registered trademark or declare the registered trademark invalid within twelve months from the date of receipt of the application, and notify the parties in writing. If there are special circumstances that require an extension, with the approval of the State Administration for Industry and Commerce, it can be extended for six months. If the parties concerned are dissatisfied with the decision of the Trademark Review and Adjudication Board, they may file a lawsuit with the people's court within 30 days from the date of receiving the notice. The people's court shall notify the other party to the trademark ruling procedure to participate in the litigation as a third party. Russia, on the other hand, regards national registration of trademarks as a prerequisite for the effectiveness of rights, and the use of unregistered trademarks does not generate any rights.

### *Priority Type*

The "Civil Code of the Russian Federation" stipulates three priority rights for trademark applications, namely trademark priority, convention priority, and exhibition priority. According to Article 1502 of the "Civil Code of the Russian Federation", the trademark applicant has the right to withdraw the application and the right to separate another application. The separate application should belong to a different category from the goods listed in the initial application, that is, apply for a new trademark of a different category for the same identifier, and the initial application is still valid. The trademark priority right is a priority right based on the provisions of Article 1502. In the case of a separation application for the trademark applied by the applicant, the application for separation shall enjoy the priority right with the original application date as the application date. The deadline is when the separation application is submitted, before the original application is approved or rejected. The

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<sup>3</sup> Refer to "Guidelines for Frequently Asked Questions in Trademark Registration Applications (IV)", published in "China Trademark", Issue 9, 2016, p. 67.

Chinese "Trademark Law" also provides for convention priority and exhibition priority, but there are no relevant provisions on trademark priority.

### Conclusion

Overall, both China and Russia should seize opportunities, fully tap into the potential and advantages of Sino-Russian cooperation, and achieve a higher level and larger scale development of pragmatic cooperation between the two countries. At the same time, attention should also be paid to the legal risks caused by changes in the international situation and differences in legal culture and systems between China and Russia, fully recognizing the differences in intellectual property legal systems between China and Russia, and reducing legal risks in trade and investment operations between both sides.

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### Сравнительное исследование процедур регистрации товарных знаков в Китае и России

**Тун Чжан**

Преподаватель,  
Хэйхэский университет,  
164300, Китай, Хэйхэ;  
e-mail: science\_heihe@mail.ru

**Хайлинь Фу**

Президент,  
Районный суд Айхуэй Китая (Хэйлунцзян),  
Пилотная зона свободной торговли;  
e-mail: science\_heihe@mail.ru



**Аннотация**

После того, как Россия начала СВО против Украины, санкции, введенные западными странами в отношении России, заставили китайские компании сместить свой инвестиционный фокус в сторону России, надеясь заполнить нишу, оставленную российским рынком, и установить более стабильные отношения сотрудничества. Для достижения здорового развития интеллектуальной собственности между двумя странами необходимо активно продвигать юридический обмен и сотрудничество, а также учитывать различия в процедурах регистрации товарных знаков между Китаем и Россией. В этой статье в основном представлены процедуры подачи китайцами заявки на регистрацию товарного знака в России и процедуры подачи россиянами заявки на регистрацию товарного знака в Китае. Основываясь на этой логической отправной точке, в данной статье обобщаются основные различия и институциональные механизмы между системами регистрации товарных знаков в Китае и России, а также делается вывод, что заявители на товарные знаки и специалисты, занимающиеся вопросами товарных знаков в Китае и России, должны избегать правовых и институциональных рисков, возникающих из-за различных институциональных механизмов. В целом, и Китай, и Россия должны воспользоваться новыми возможностями, в полной мере использовать потенциал и преимущества китайско-российского сотрудничества и достичь более высокого уровня и более масштабного развития прагматического сотрудничества между двумя странами. В то же время следует также обратить внимание на правовые риски, вызванные изменениями международной ситуации и различиями в правовой культуре и системах между Китаем и Россией, полностью признавая различия в правовых системах интеллектуальной собственности между Китаем и Россией, а также снижая правовые риски в торговых и инвестиционных операциях между обеими сторонами.

**Для цитирования в научных исследованиях**

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Порядок регистрации товарных знаков, защита интересов предшествующих правообладателей, приоритет, сравнительное исследование, Россия и Китай.

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