

IPKey - Exchange in China on Trademark Law

Relevant Developments in Trademarks in the EU IP Key 商标法交流

欧盟商标的相关进展

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29.5.2019 2019年5月29日

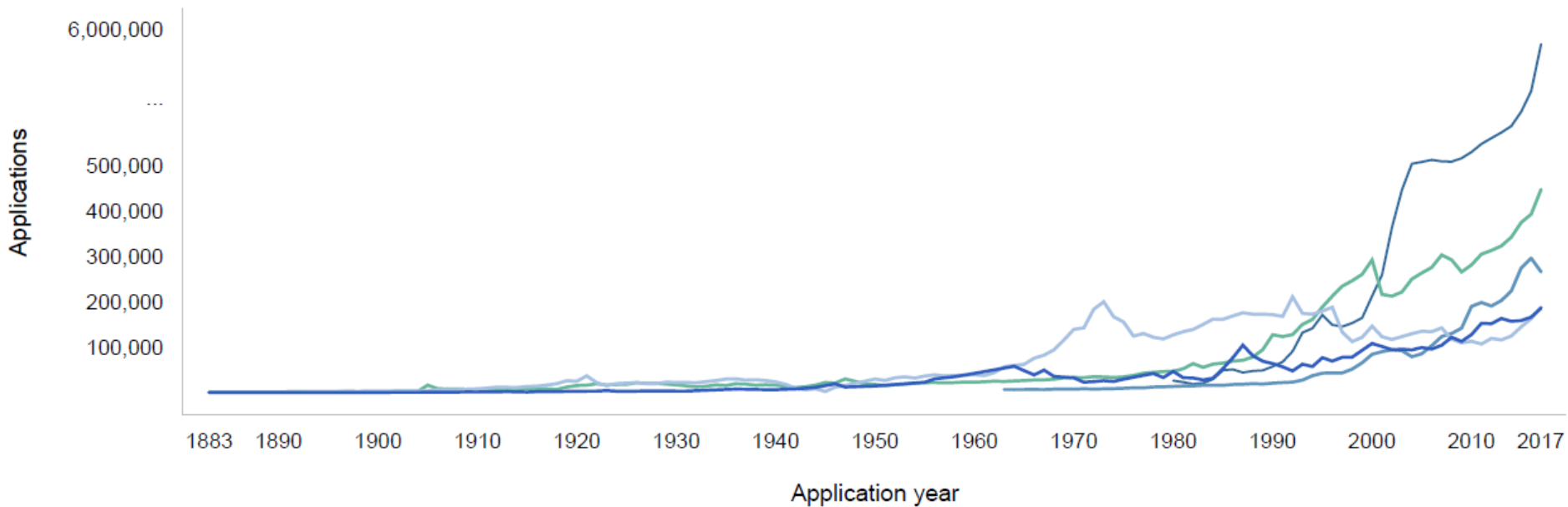


EUIPO 欧盟知识产权局



Trademark Statistics 商标统计

B9. Trend in trademark applications for the top five offices, 1883–2017



■ CHINA ■ U.S. ■ INDIA ■ JAPAN ■ BRAZIL

Proceedings Overview 程序概述

- Examination 审查

Opposition 异议

Cancellation 撤销

Boards of Appeal 上诉委员会



Full Judicial Review 全面司法评审

Jud. Rev. on Legal Gr.
对法律依据进行司法评审

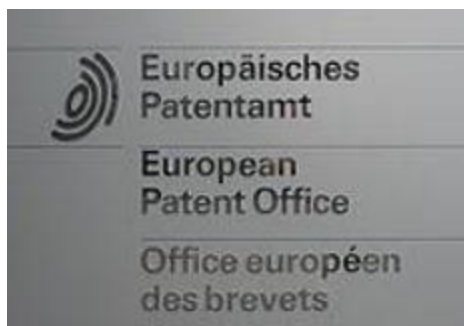


OHIM – EUIPO

欧洲商标与外观设计局-欧盟知识产权局

April 1996

1996年4月



March 2016

2016年3月

TIMELINE 时间线

Council approval
理事会批准

Parliament
15/12/2015
欧洲议会2015年
12月15日

24/12/2015
LEGISLATIVE REFORM
PUBLISHED
2015年12月24日
立法改革发布

23/03/2016
AMENDING REGULATION
ENTER INTO FORCE
2016年3月23日
修正条例生效

18/05/2017
COMMISSION ADOPTS I&D
REGULATIONS
2017年5月18日
委员会通过商标实施条例和
委派条例

01/10/2017
PROVISIONS OF EUTMR, EUTMIR &
EUTMDR ENTER INTO FORCE
2017年10月1日
《欧盟商标条例》条文, 《欧盟商标实施条
例》和《欧盟商标委派条例》生效

Q1 2015	Q2 2015	Q3 2015	Q4 2015	Q1 2016	Q2 2016	Q3 2016	Q4 2016	Q1 2017	Q2 2017	Q3 2017	Q4 2017	Q1 2018	Q2 2018	Q3 2018	Q4 2018
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DIRECTIVE ENTERS INTO FORCE 12/01/2016
2016年1月12日指令生效

+3 YEARS
TRANSPOSITION 3年过渡期

Recap of Phase I 第1阶段概述

- Restructuring of fees 重新确定费用结构
- Opt-in for Search reports 以选择性加入方式获得检索报告
- Suppression of disclaimers 限制免责声明
- Third party observations extended 扩大第三方观察意见
- Oppo period for Int Applications begins earlier 国际申请的异议期提前开始
- Dropping of Interlocutory Revisions 放弃中间修订
- Ancillary appeals expressly recognised 明确认可附属上诉

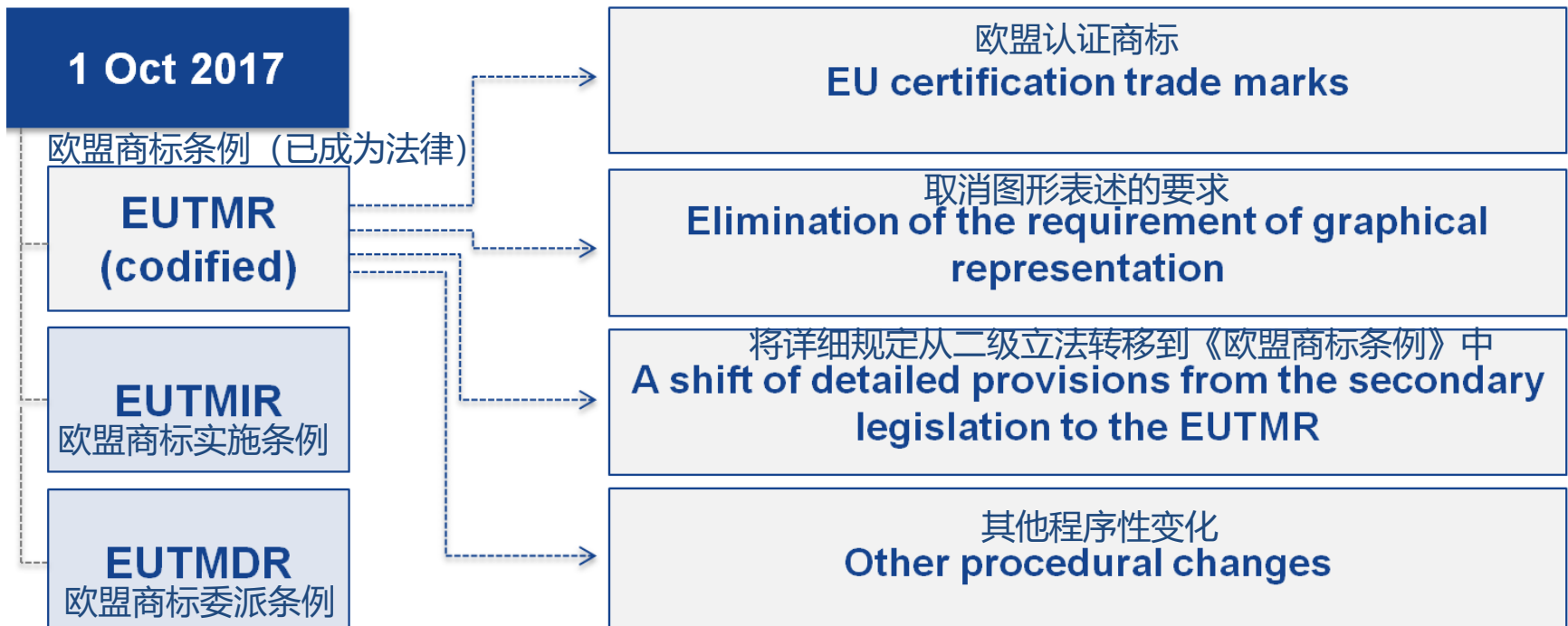
LEG REFORM II. PHASE 立法改革第2阶段



Changes in 1 GO

第1阶段的变化

EUTMIR and EUTMDR 《欧盟商标实施条例》和《欧盟商标委派条例》



Certification Mark 认证标记



Certification Mark 认证标记

EU certification mark

声明申请人没有在已认证的商品和服务上使用该标记
Declaration that the applicant does not use mark for the certified G&S

标记的表述
The representation of the mark

标记所覆盖的商品和服务
The G&S covered by the mark

待认证的商品和服务的特点 (材质、制造方式或性能、质量、准确度)
Characteristics of the G&S to be certified (material, mode of manufacture or performance of services, quality, accuracy)

管辖标记使用的条件 (包括制裁)
Conditions governing the use including sanctions

该标记的授权使用人员
Persons authorised to use the mark

认证机构如何检验标记的特点以及监督标记的使用

How certifying body tests characteristics and supervises the use of the mark

	Certification 认证	Collective 集体商标
Formalities 手续	Expressly applied for as such Regulations of use 明确适用于使用条例	Same 相同
Entitlement 资质	Natural persons 自然人 Legal persons 法人 The applicant cannot carry on a business involving the supply of goods and services of the kind certified 申请人不能从事涉及供应所认证类型商品和服务的商业	Certain associations 特定团体 Legal persons of public law (natural persons excluded) 公共法律意义上的法人 (自然人除外)
Absolute Grounds Examination 绝对理由审查	Additional requirements 附加要求 Geographic origin cannot be certified 不能认证 地理来源	Additional requirements 附加要求 7(1)(c) geographical origin exception 第7(1)(c)地理起源例外
Use 使用	Owned by proprietor 由所有者拥有 Used by certified companies and individuals 由经认证公司和个人使用	Owned by an association 由团体所有 Used by members 由成员使用
Function 功能	Distinguishes goods and services which are certified by proprietor (quality aspect) 区分由所有者认证的商品和服务 (质量方面)	Distinguishes goods and services of members' association 区分团体的商品和服务
Fees 费用	EUR 1 500 (if applied for online) for the first class; EUR 50 for the second class and EUR 150 for each subsequent class 第一类1500欧元 (在线申请) ; 第二类50欧元; 每个其他类都是150欧元	Same 相同

Representation Requirement 表述要求

- Article 3 EUTMIR ... trade mark must be represented in any appropriate form using **generally available technology**, as long as the representation is **clear, precise, self-contained, easily accessible, intelligible, durable and objective ...**
- 《欧盟商标实施条例》第3条.....必须以一种使用**普遍可用技术**的恰当形式来表述商标，且表述应该**清晰、准确、独立、易于获取、易懂、持久和客观**.....

WYSIWYG 所见即所得

Classic Examples 经典示例

KODAK;

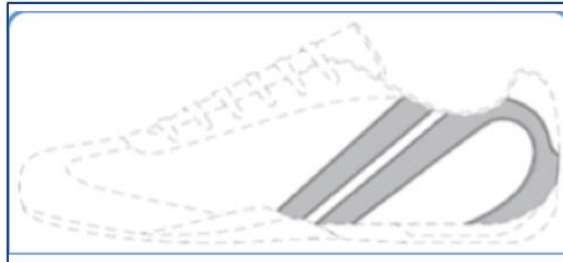
Word



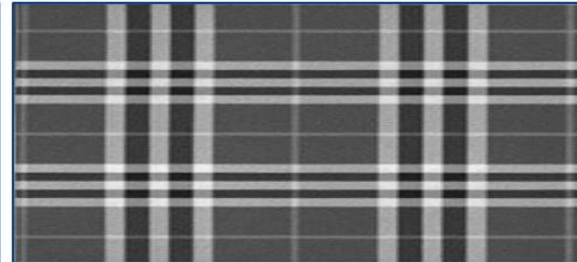
Figurative



Shape



Position

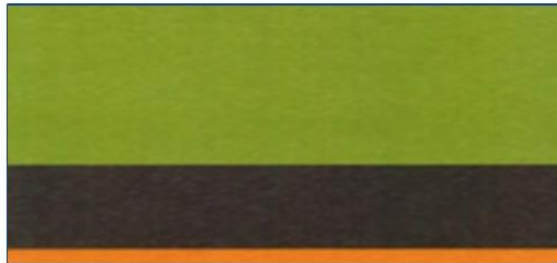


Pattern

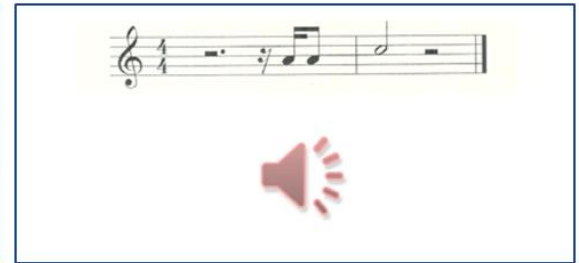
Innovative Examples 创新示例



Colour (single)



Colour combination



Sound



Motion



Multimedia



Hologram

Article 3(3)(b) and (c) EUTMIR 《欧盟商标实施条例》第3(3)(b)条

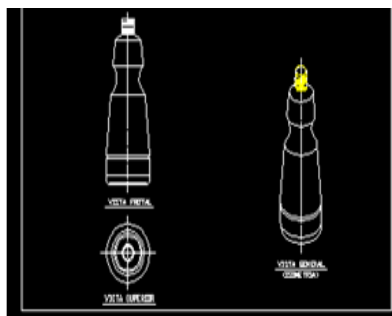
Figurative 比喻

火瀑

No description 无描述

**No colour claim WYSIWYG
无颜色主张，所见即所得**

Shape 形状



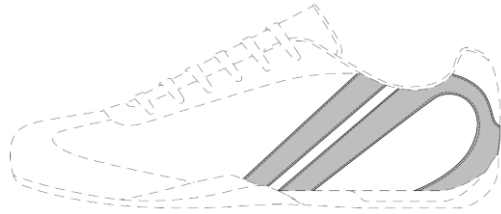
**Definition expanded, includes
appearance 定义扩大，包含外观**

No description 无描述

**New formats:
3D modelling CAD
新格式：三维建模CAD**

Article 3(3)(d) and (e) EUTMIR 《欧盟商标实施条例》第3(3)(d)条和(e)条

Position 位置



**Disclaim elements
(broken lines) 免责元素 (虚
线)**

**Description optional
(affixed to goods) 可选描述
(附于商品)**

Pattern 图形



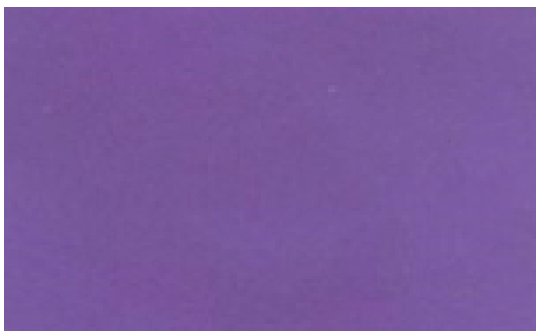
**Reproduction showing
pattern 体现图形的复现品**

**Description optional (how
elements are repeated) 可选
描述 (元素重复规律)**

Article 3(3)(f) EUTMIR 《欧盟商标实施条例》第3(3)(f)条

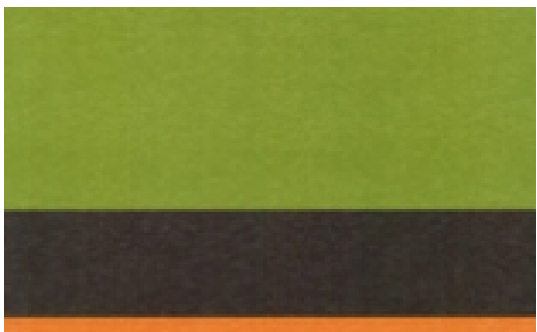
Colour marks 颜色标记

Indication of colour codes compulsory
必须说明颜色代码



Combinations: reproduction that shows the systematic arrangement of the colour combination in a uniform and predetermined manner

组合：以一种统一和预设的方式体现颜色组合系统性排布的复现品

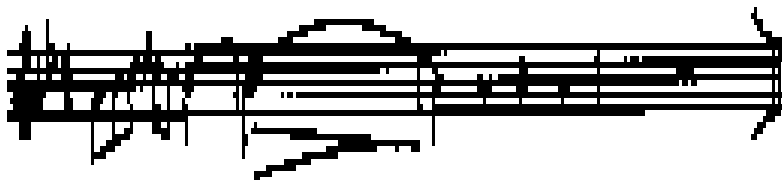


Combinations: description optional detailing the systematic arrangement

组合：详细说明系统性排布的可选描述

Article 3(3)(g) EUTMIR 《欧盟商标实施条例》第3(3)(g)条

Sound 声音

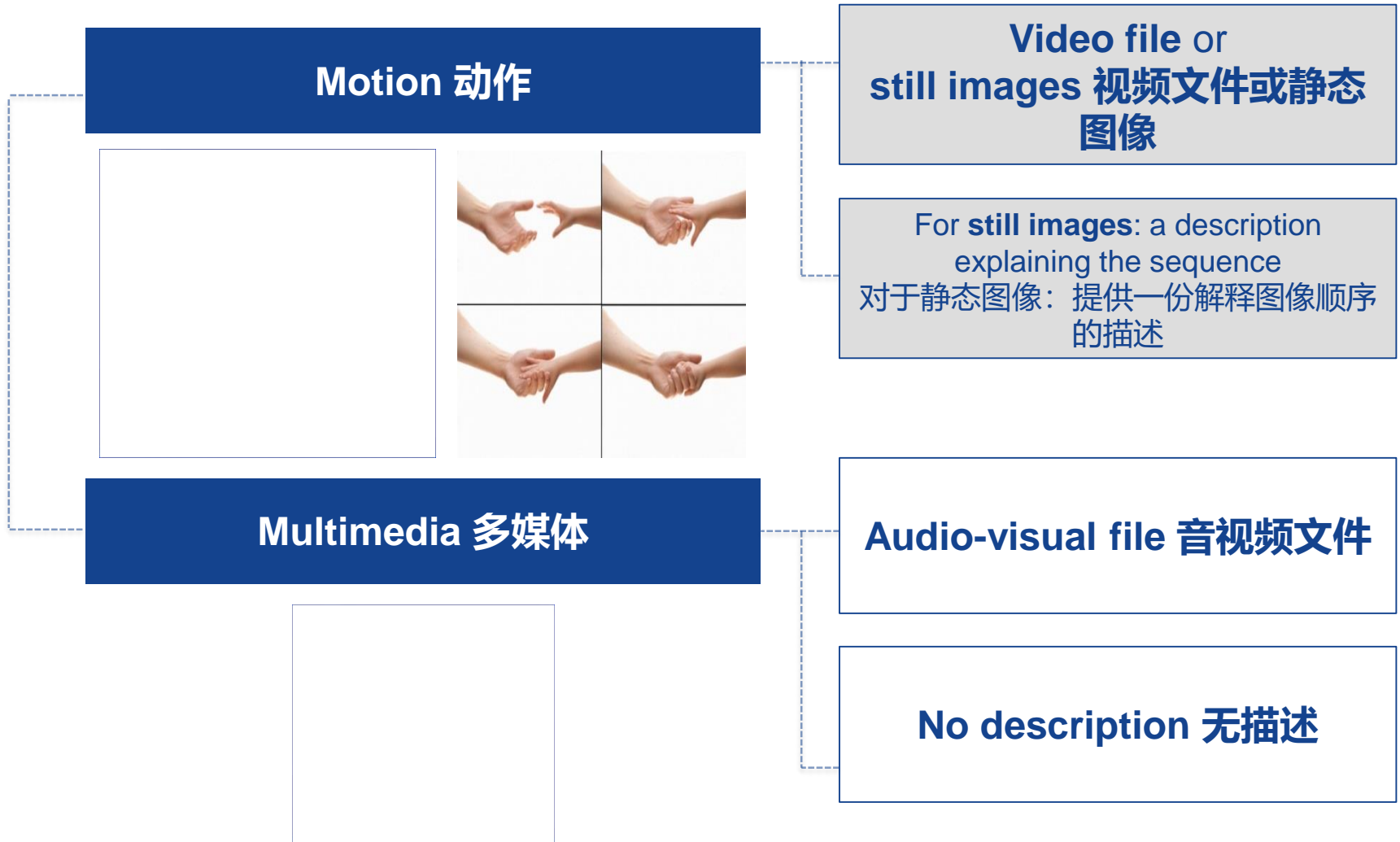


**Audio file
Or
音频文件或**

**Musical notation
五线谱**

No description 无描述

Article 3(3)(h) and (i) EUTMIR 《欧盟商标实施条例》第3(3)(h)和(j)条



Article 3(3)(j) EUTMIR 《欧盟商标实施条例》第3(3)(j)条

Hologram 全息图



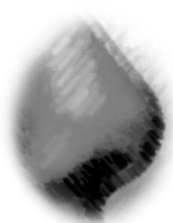
Video file, graphic or photographic reproduction containing the views which are necessary to sufficiently identify the holographic effect in its entirety

视频文件，图形性或照片性复现文件，包含充分识别整体全息效果所需的必要视图

**No description
无描述**

Article 3(4) and (9) EUTMIR 《欧盟商标实施条例》第3(4)和(9)条

‘Other’ marks 其他标记



Smell 气味

Taste 味道

Tactile/texture 触感/质地

Samples not acceptable 不接受样品

Procedural Changes 程序性变化



EUTM OPPOSITION/CANCELLATION PROCEEDINGS 欧盟商标异议/撤销程序

Articles 2 to 20 EUTMDR 《欧盟商标委派条例》第2至20条

EUTMDR 《欧盟商标委派条例》

Cancellations aligned with oppositions 撤销与异议规定相一致

Substantiation online 在线提供证据

Procedure for **oppositions** not substantiated from the outset 针对一开始并未提供证据的
异议的程序

Provision for **new relative grounds** 提供**新的相关理由**

Substantiation online 在线提供证据

Registered signs 已注册的标志

National law 国家法律

‘Where the evidence concerning the filing or registration of the earlier rights referred to in paragraph 2(a) or, where applicable, paragraph 2(d) or (e), or the evidence concerning the contents of the relevant national law, is accessible online from a source recognised by the Office, **the opposing party may provide such evidence by making reference to that source.**’

“如果可以在线从知识产权局认可的来源获得有关第2(a)款，或在恰当的情况下，有关第2(d)或(e)款，所述在先权利申请或注册的证据，或者有关相关国家法律内容的证据，**则异议方可以通过引述该来源提供该证据。**”

Priority/Seniority Claims 优先权/在先权主张

- Must be filed with the application 必须与申请一起提交
- Supporting Docs within 3 months 在3个月内提供支撑文件
- Priority/Seniority claims not examined 不审查优先权/在先权主张
- No material changes with Seniorities 关于在先权，无重大变化

Opposition/Cancellation Proceedings

异议/撤销程序

- Admissibility and substantiation 可注册性与证据支持
- Alignment with opposition proceedings 撤销程序与异议程序规则相一致
- Belated evidence 相关证据
- Suspension of surrenders 暂停放弃
- Continuation of pending revoc and inval proceedings 待决撤销和无效程序的继续

Communication with the Office 与知识产权局的通信

- Hand Delivery, PO Box 通过邮政信箱人工递送
- Electronic Means 电子方式
- Courier 信使
- Online Sources 在线来源
- Evidence “structured” ‘结构化’ 证据

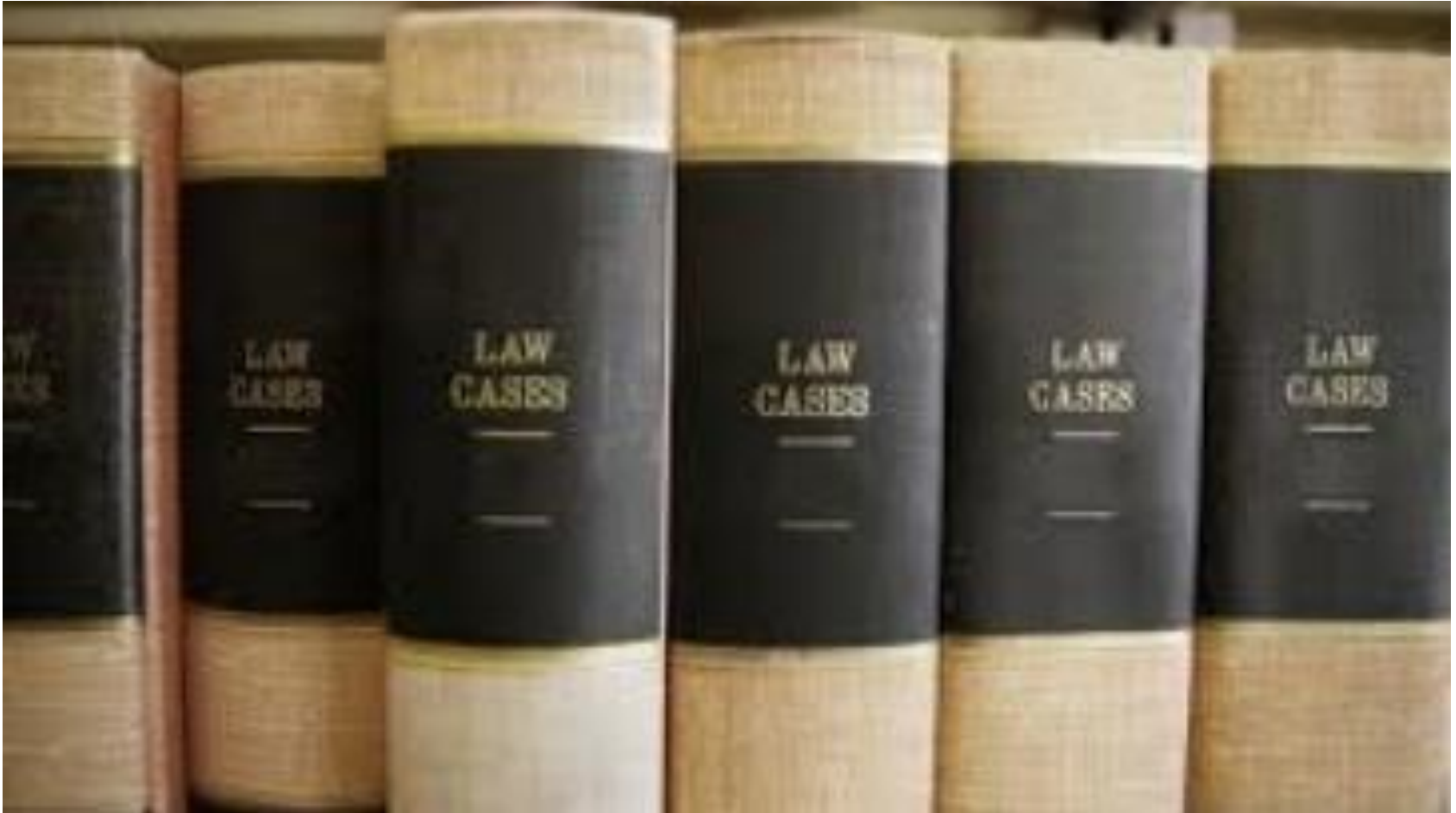
Boards of Appeal 上诉委员会

- Statement of grounds 理由陈述
- Cross Appeals 交叉上诉
- Claims raised for the first time 首次提出主张
- New absolute grounds raised 提出新的绝对理由
- Expedited proceedings 快速程序
- Organisation and Structure BoA 上诉委员会的组织结构

Trade Mark Directive 商标指令

- Adopted 16 December 2015
于2015年12月16日采纳
- 3 years for transposition except
Invalidity/revocation proceedings 7 y
3年过渡期
只有无效/撤销程序为7年过渡期
- Alignment to EUTMR Reform
与《欧盟商标条例》改革一致

Case Law 判例法



Case 958/2017-G 第958/2017-G号案例



- Class 32 – Energy drinks, beer
- 第32类——能量饮料、啤酒

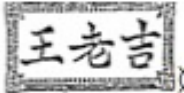

R 1720/2017-G

第R1720/2017-G号案例

Contested EUTMA	Earlier marks (CZ, DE)
ICEBERG	ICEBERG
Class 32 – Mineral and aerated water; non-alcoholic beverages; fruit beverages and fruit juices	Class 33 - Vodka

R 889/2016-2

第889/2016-2号案例

1) EUTM No 8 293 631: 王老吉 	
2) EUTM No 8 293 714: 王老吉	
3) EUTM No 10 386 911 : 王 老 吉	
4) EUTM No 8 293 599: WANG LAO JI	
<i>Earlier marks</i>	<i>Contested sign</i>

R-1780/2016-5

第R-1780/2016-5号案例

美心

Registered Mark



Mark as used



Classes 6, 16, 20, 25, 26, 28, 29, 30, 35, 38

XIE XIE
谢谢



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Thank you

25 Years
25年