

96 年商標法修正各主要國家聲明不專用規定 相關立法例參考資料

2007 年 11 月 5 日

議 題	國 別	相 關 立 法 例
聲明不專用規定	澳洲	<p>74・放棄聲明</p> <p>（1）商標註冊的申請人或註冊商標的所有人可以以書面形式通知註冊長官放棄其商標的任何部分的專用權，許可使用權或商標的特定部分。</p> <p>（2）放棄聲明僅影響本法在核准商標註冊時給予其註冊所有人的權利。</p> <p>（3）註冊長官必須在注冊商標或收到放棄聲明時（二者</p>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;">聲明不專用規定</p>	<p style="text-align: center;">澳洲</p>	<p>中較晚者) 將放棄聲明的內容記入《註冊簿》。</p> <p>(4) 以適當方式提出的放棄聲明不可撤回。</p> <p><i>Disclaimers</i></p> <p>74.-(1) An applicant for the registration of a trade mark, or the registered owner of a registered trade mark, may, by notice in writing given to the Registrar, disclaim any exclusive right to use, or authorise the use of, a specified part of the trade mark.</p> <p>(2) The disclaimer affects only the rights given by this Act to the registered owner of the trade mark on registration of the trade mark.</p> <p>(3) The Registrar must, on registering the trade mark or on receiving notice of the disclaimer (whichever is later), enter the particulars of the disclaimer in the Register.</p> <p>(4) A disclaimer properly made may not be revoked.</p> <p>122(2) In spite of section 120, if a disclaimer has been registered in respect of a part of a registered trade mark, a person does not infringe the trade mark by using that part of the trade mark.</p>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;">聲明不專用規定</p>	<p style="text-align: center;">澳洲</p>	<p>238 · 放棄聲明</p> <p>如果根據第 207 (2) A 在《註冊簿》中關於一註冊商標的事項，包括由註冊商標所有人放棄商標特定部分專用權的聲明（根據廢止商標法第 32 條），該放棄聲明有效，如同它是根據本法第 74 條做出的。</p> <p><i>Disclaimers</i></p> <p>238. If the particulars entered in the Register under paragraph 207(2)(a) in respect of an existing registered mark include particulars of a disclaimer made (under section 32 of the repealed Act) by the registered proprietor of the mark about the exclusive right to use a specified part of the mark, that disclaimer</p>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;">聲明不專用規定</p>	<p style="text-align: center;">歐盟</p>	<p>has effect as if it were a disclaimer made under section 74 of this Act.</p> <p>第 38 條 對駁回的絕對理由的審查</p> <p>1．根據第 7 條的規定，一商標不適合在共同體商標申請所包括的部分或全部商品或服務上註冊的，申請應以那些商品或服務為由予以駁回。</p> <p>2．商標包括無顯著性的部分，而且在商標中包含該部分會對商標的保護範圍產生懷疑的，協調局應要求申請人聲明放棄該部分的專用權作為註冊該商標的條件。放棄聲明應與申請或者根據具體情況與共同體商標的註冊一起公告。</p>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;">聲明不專用規定</p>	<p style="text-align: center;">歐盟</p>	<p>3・在允許申請人有機會撤回或者修改申請書或者提出意見之前，申請不應予以駁回。</p> <p>Article 38: Examination as to absolute grounds for refusal</p> <p>1. Where, under Article 7, a trade mark is ineligible for registration in respect of some or all of the goods or services covered by the Community trade mark application, the application shall be refused as regards those goods or services.</p>
	<p style="text-align: center;">英國</p>	<p>2. Where the trade mark contains an element which is not distinctive, and where the inclusion of said element in the trade mark could give rise to doubts as to the scope of protection of the trade mark, the Office may request, as a condition for registration of said trade mark, that the applicant state that he disclaims any exclusive right to such element. Any disclaimer shall be published together with the application or the registration of the Community trade mark, as the case may be.</p>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;">聲明不專用規定</p>	<p style="text-align: center;">美國</p>	<p>3. The application shall not be refused before the applicant has been allowed the opportunity of withdrawing or amending the application or of submitting his observations.</p> <p>第六條 聲明不專用</p> <p>(a) 局長得要求申請人就標章不能註冊部分聲明不專用。申請人亦得主動聲明不專用申請註冊標章之一部。</p> <p>(b) 聲明不專用(包括依本法第七條第(e)項之聲明不專用)並不影響申請人或註冊人對於聲明不專用部份已存在或其後發生之權利。如該聲明不專用之部份已成為註冊人或註冊申請人之商品或服務之識別標誌時，申請人或註冊人提出其他申請之權利不受影響。</p>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;">聲明不專用規定</p>	<p style="text-align: center;">英國</p>	<p>§6 (15 U.S.C. §1056). Disclaimers</p> <p>(a) The Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.</p> <p>(b) No disclaimer, including those made under subsection (e) of section 7 of this Act, shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.</p> <p>13 · 以放棄或受限制為條件的註冊</p> <p>（1）商標註冊申請人或註冊商標所有人可以</p> <p>（a）放棄該商標任何指定部分的任何專用權；</p>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;">聲明不專用規定</p>	<p style="text-align: center;">英國</p>	<p>(b) 同意由註冊獲得的權利應受指定的領土或其他條件的限制；</p> <p>商標的註冊有放棄權利或受限制的，依據第 9 條（通過註冊商標獲得的權利）獲得的權利也相應地受到限制。</p> <p>(2) 放棄或者限制事項的公告及登載註冊簿由細則規定。</p> <p>附則 3 過渡條款</p> <p>3 (2) 在本法開始生效之前剛剛錄入先前的註冊簿中的有關某一已有註冊商標的放棄或限制應被轉到新的註冊簿中，並</p>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;">聲明不專用規定</p>	<p style="text-align: center;">英國</p>	<p>且依然有效，就如同依本法第 13 條記錄到註冊簿中一樣。</p> <p>Registration subject to disclaimer or limitation.</p> <p>13.-</p> <p>(1) An applicant for registration of a trade mark, or the proprietor of a registered trade mark, may-</p> <p>(a) disclaim any right to the exclusive use of any specified element of the trade mark, or</p> <p>(b) agree that the rights conferred by the registration shall be subject to a specified territorial or other limitation;</p> <p>and where the registration of a trade mark is subject to a disclaimer or limitation, the rights conferred by section 9 (rights conferred by registered trade mark) are restricted accordingly.</p> <p>(2) Provision shall be made by rules as to the publication and entry in the register of a disclaimer or limitation.</p> <p>Transitional provisions</p> <p>3 (2) A disclaimer or limitation entered on the former register in</p>

議 題	國 別	相 關 立 法 例
<p>聲明不專用規定</p>	<p>英國</p>	<p>relation to an existing registered mark immediately before the commencement of this Act shall be transferred to the new register and have effect as if entered on the register in pursuance of section 13 of this Act.</p>