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A REVIEW ON THE TRADEMARK REGISTRATION PROCEDURES IN THE MAJOR TRADING COUNTRIES

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ABSTRACT

The impact of the quality, life cycle of management towards the production and consumer satisfaction has become a major concern with product development, manufacturing, and maintaining the standards as per the requirements. Thus, the product to be sustained in the market and worldwide should meet the standards that makes the manufacturer and service provider to concentrate on the trademark registration. The need for registration is recognized by all the countries and thus they stepped ahead for making treaties, agreements and arranging conventions. This manuscript emphasis on comparative study of trademark registration procedures in the various countries like India, Australia, China, European Union, UK and USA. The key regulatory bodies that are governing these procedures are conversed in this article. The regulations that are assigned for the registration of the trademark by the governed body are to be stringently followed for the outcome of good quality product into the market.

KEYWORDS

Trademark registration, Regulatory body, Intellectual Property rights and Treaties.

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INTRODUCTION

The mark which distinguishes the goods and services of one manufacturer or provider from the other. This is one of the intellectual property rights that restores the right to protect the identity of the product.

The products which are sold under one manufacturer can be of superior quality when compared with the other who is selling the same product. The customer can only recognize them and extricate them from each other by the name, on which they are sold. So, in order to pop up from the

other competitors in the field of trading and stand alone, the manufacturers are striving to make the unique and discrete mark called "Trademark". The designed distinct trademark marked on the products for selling can be subjected for copying or duplicating, unless it undergoes proper registration procedure before using on the products. This registration of the mark prevents the others from using it as it leads to judiciary proceedings. The first registered trademark is in U.K under no.1 of 1896 for the equilateral red triangle marked on alcoholic beverages.

SIGNPOSTS INVOLVED IN TRADEMARK PROTECTION

The Roman empire is the one first to use trademark on the breads baked. It was followed during Harappa civilization also. The economy of the various Asian and European countries radically downed after the world war that agitated the trading throughout the World. This led to the formation of organizations such as UNO (United Nations Organization), WTO (World Trade Organization), ITO (International Trade Organization). Many agreements and treaties were made in order to bring cooperation and to restore rights related to trademarks^{1,2}.

Paris convention was the first to be held with the intention to protect the intellectual property rights in 1883 with the main aspects of National treatment, priority rights and other rules. India joined in 1998^{4,5}. There are 177-member countries signed for this convention till February 2017⁶. The articles from 6 to article 12 are related to trademarks⁷.

Madrid system includes Madrid agreement (1891) and Madrid protocol (1989). The Madrid Agreement with the intention for filing a single application that is valid internationally in all the contracting states. This agreement failed to attract the countries which feared of central attack (Rejection in one country can affect in all the countries).

This agreement with the means to get the attention from the major trading countries and to remove this fear framed a protocol in 1989. This protocol concluded that the application when failed in one

country can be applied and can be made as a national registration. Thus, the protocol facilitated the countries for contracting that increased the number of contracting countries to 116 in 2018^{8,9,10}. The single set of fees with the single application filing in multiple countries through the application MM2 for trademark registration. The renewal and maintenance are also made easy¹¹.

In order to have a single code system for the classification system, WIPO (World Intellectual Property Organization) classified the goods and services into 45 classes under Nice Agreement (1957). The classification revised periodically and published for reference. The latest is of 11th edition released in January 2018^{12,13}. The pharmaceutical products are categorized under class 5¹⁴.

Vienna Agreement (1973) concluded with the classification of the figurative marks with the single coded system¹⁵.

Trademark Law treaty (1994) was mounted in order to make simplified rules and to bring harmony among the countries in the registration procedures of trademark. This treaty is concerned with the registration procedures, renewal and the changes after registration¹⁶.

An Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) was signed up in 1994, for bringing trade relations among the countries along with the protection of their Intellectual Property Rights. Of which includes the articles 15-21 describing the Trademark protection and the rights conferred for it^{17,18}.

The progression in the technology asserted for the changes in the trademark law treaty by the signatories which resulted in the Singapore treaty in 2006. The acceptance in the electronic form of application, technical support for required, authorization aspects, etc., are the key aspects concluded in this treaty¹⁹.

TYPES OF TRADEMARKS

The trademarks are registered as per its features. The classification is made accordingly which is mentioned in the below table with few examples^{20,21}.

PROCEDURE FOR TRADEMARK REGISTRATION

The trademark registration procedure differs in each country. The mark has to be registered as per their legislation. The regulatory bodies have the control over the trademark registrations.

The trademark registration procedures for the below countries which are considered to be major trading countries throughout the world are studied in this article.

The registration procedures and the regulatory authority governing in each country are discussed below:

INDIA

- Controller General of Patents, Designs and Trademarks is the regulatory body that controls the registration procedures in India.
- This register, protects the marks, maintains the register for reference. TM A is the basic application form to be filled for registering the mark.
- The application filed in the office of registry undergoes scrutiny, published in official gazette for opposition and registered. In case of any opposition, then Intellectual Property Appellate Board (IPAB) resolves it by judiciary proceedings.
- The registration procedure usually takes about 18-24 months without any opposition.
- The trademark is registered for 10 years and has to be renewed for every 10 years.
- If any Infringement found and case filed then the penalty of ₹50,000-2,00,000 and imprisonment for 6 months-3 years, based on the degree and intention of the case²²⁻²⁷.

The below mentioned flow chart clearly mentions about the procedure followed in registration of trademark

The total trademark registrations in India were recorded to be 187248, during the year 2016²⁸. The international filing of trademark application is done through Madrid system to the World Intellectual Property Organization.

EUROPEAN UNION

- Trademarks are filed in the European Union Intellectual Property Office (EUIPO) by the 28 countries of European Union. The filing is done at different levels such as national, Regional, EU and international Level based on the requirement by the applicant in 23 official languages. This controls the registration of trademarks and community designs. This provides its services from Spain.
- The application filed at EUIPO undergoes examination and rectified if any corrections required. Then the mark is published in the official journal and invited for oppositions, called Opposition period. If no opposition found then the mark gets registered. Appealing can be done if applicant is not satisfied with the judgement.
- The renewal is for 10 years and takes 6-8 months of time period for registration.
- The filing at EU level extend the registration for all the countries in union^{29,30}.
- The total trademark registrations done for the year 2016 were 120375, as per WIPO statistical database.

The below flowchart mentions the procedure followed for registration of trademark in European Union³¹.

UNITED KINGDOM

- The filing of trademarks in United Kingdom is done at Intellectual Property Office (IPO). This grants the IP rights and protects them.
- It takes about 5-6 months for registering the mark and has to be renewed for 10 years.
- The registration in United Kingdom is restricted to Scotland, England, Wales and northern Ireland, unlike EU registration which extends for 28 countries with single filing.
- The total trademarks registered for the year 2016 were recorded by WIPO and found to be 55307.

The below flowchart shows the procedure followed for trademark registration in UK³².

Australia

- The trademarks registrations and the protection of them are controlled by IP Australia.
- The filing of the trademark is done in two ways i.e., Online and B2B transactions.
- The trademark registration process takes minimum of 8 months and the renewal has to be done for every 10years.
- The trademarks registered for the year 2016 recoded by the WIPO were 50177.

The below flowchart shows the registration procedure followed in Australia³³.

China

- The trademark in China is filed at China Trademark Office (CTMO).The china is considered to be fastest trading country in the world. The submitted documents by the applicant are checked and then the application is processed. The mark is declared in the journal for opposition before registering it.
- The time taken for the trademark registration in china is 30-36 months.
- The renewal has to be done for every 10 years.

The below flowchart gives the describes the registration process in china³⁴.

UNITED STATES OF AMERICA

- The trademark registration and protection is controlled by the United States Patents and Trademarks office (USPTO)³⁵.
- There are two types of registrations i.e., State and federal. Maximum number of applications are filed through Trademark Electronic Application System (TEAS).
- The renewal is for every 10 years.
- The total trademarks registered were 234256 for the year 2016 according to the WIPO statistical database.

The below flow chart describes the trademark registration process in USA³⁶.

DISCUSSION

The trademark registration procedure is almost same in all the countries. There are few differences which are studied in the below table.

The below graph shows the total trademark registrations done for the year 2016 directly and through Madrid system counted by the filing office and updated in the WIPO statistical database.

Table No.1: Types of Trademarks

Classification based on	Type of Mark	Features	Examples
Degree of protection	Generic	Gives common description of product. Least protective	BAND AID, ASPIRIN
	Descriptive	Nature of goods or services described	BRITISH AIRWAYS
	Suggestive	Type of goods or services can be known	JAGUAR, MICROSOFT
	Arbitrary/ Fanciful	Irrelevant and is highly protective	KODAK, DOVE, APPLE
Characteristics	Product Mark	For identifying products of particular manufacturer	MAGGI, PEPSI
	Service Mark	The mark used for service providing products	FEDEX, WALMART
	Collective marks	The goods and services provided by the organization	STELLAR Trading systems
	Certification Mark	Mark showing the products with the met standards in quality	ISI, BIS hallmark
	Shape Marks	Product distinguished by its shape	Shape of a Coca- cola bottle
	Pattern mark	Similar pattern used for products of particular manufacturer	Pattern on shoes
	Sound Mark	Audio form of Mark	Nokia tune
Perception	Visually Perceptible	3D mark, Color mark, Holograms, Slogans, Titles of books/films, Motion, Position, gesture marks	HARRY POTTER,
	Non Visible Marks	Sound, Olfactory, Taste, Texture marks	Scent of Bubble gum

Table No.2: Comparative study of trademark registration procedures in different countries

S.No	Differences	India	E.U	U.K	Australia	China	U.S.A
1	Authority	Controller General of Patents, Designs & Trademarks (CGPDTO)	European Union Intellectual Property Office (EUIPO)	Intellectual Property Office (IPO)	IP Australia	China Trademark Office (CTMO)	United States Patents & Trademark Office (USPTO)
2	Filing Type	Online/direct hand /Post	Online/Paper form	Online/through post/hand	Online	Online/Direct	Maximum Online
3	Journal	Trademark Journal	Official Journal	Trademarks Journal	Australian Official Journal of Trademarks	Official Gazette	Trademark Official Gazette
4	Opposition Period	04 Months	03 months	02 Months	02 months	03 Months	01 Month
5	Judiciary Board	Intellectual Property Appellate Board (IPAB)	Boards of Appeal	High Court (England, Wales & Northern Ireland) or session court (Scotland)	Federal court/Federal circuit court	Trademark review and Adjudication Board	Trademark Trial and Appeal Board (TTAB)
6	Time taken for process	18-24 Months	06-08 Months	04 Months	Minimum 8 Months	30-36 Months	About 12 Months
7	Validity	10 years	10 years	10 years	10 years	10 years	10 years

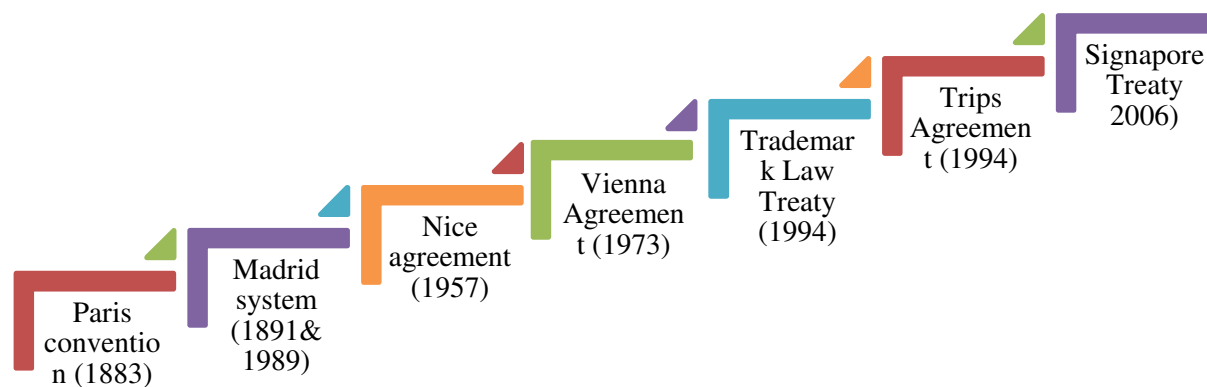


Figure No.1: The signposts that impacted the trademark and its protection³

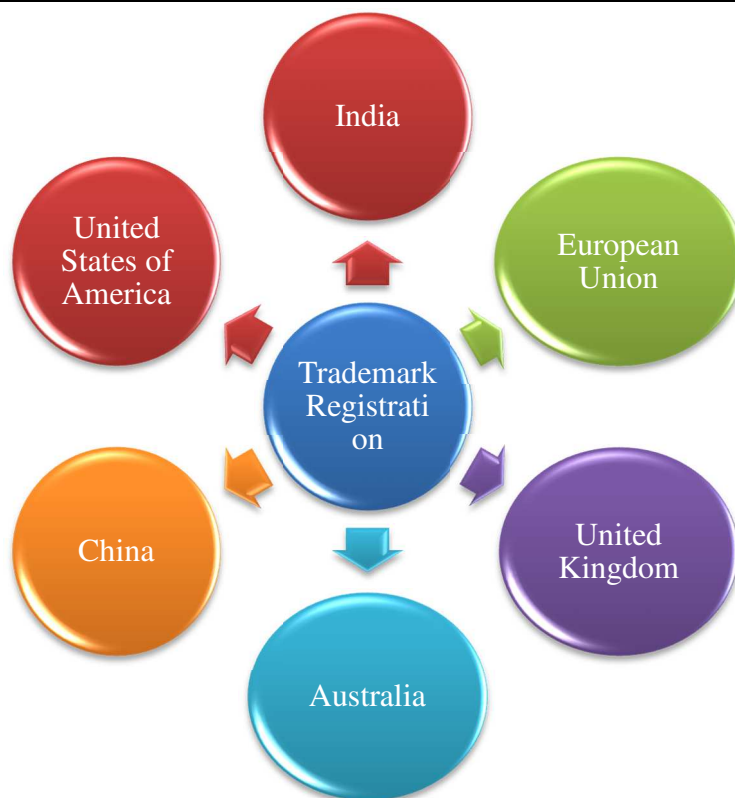


Figure No.2: Examples of major trading countries for which the trademark registration is studied

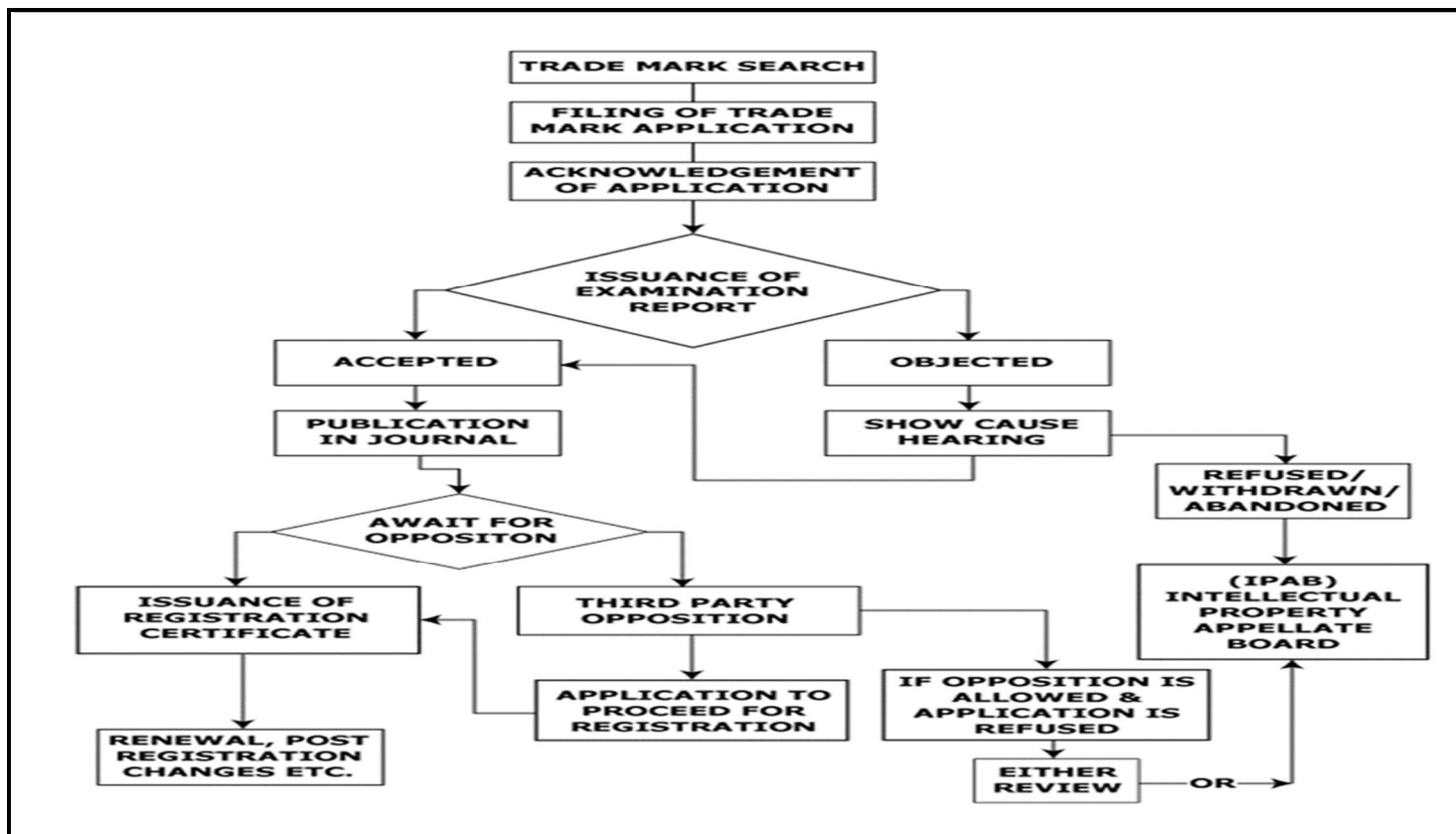


Figure No.3: Flowchart showing the trademark registration procedure in India

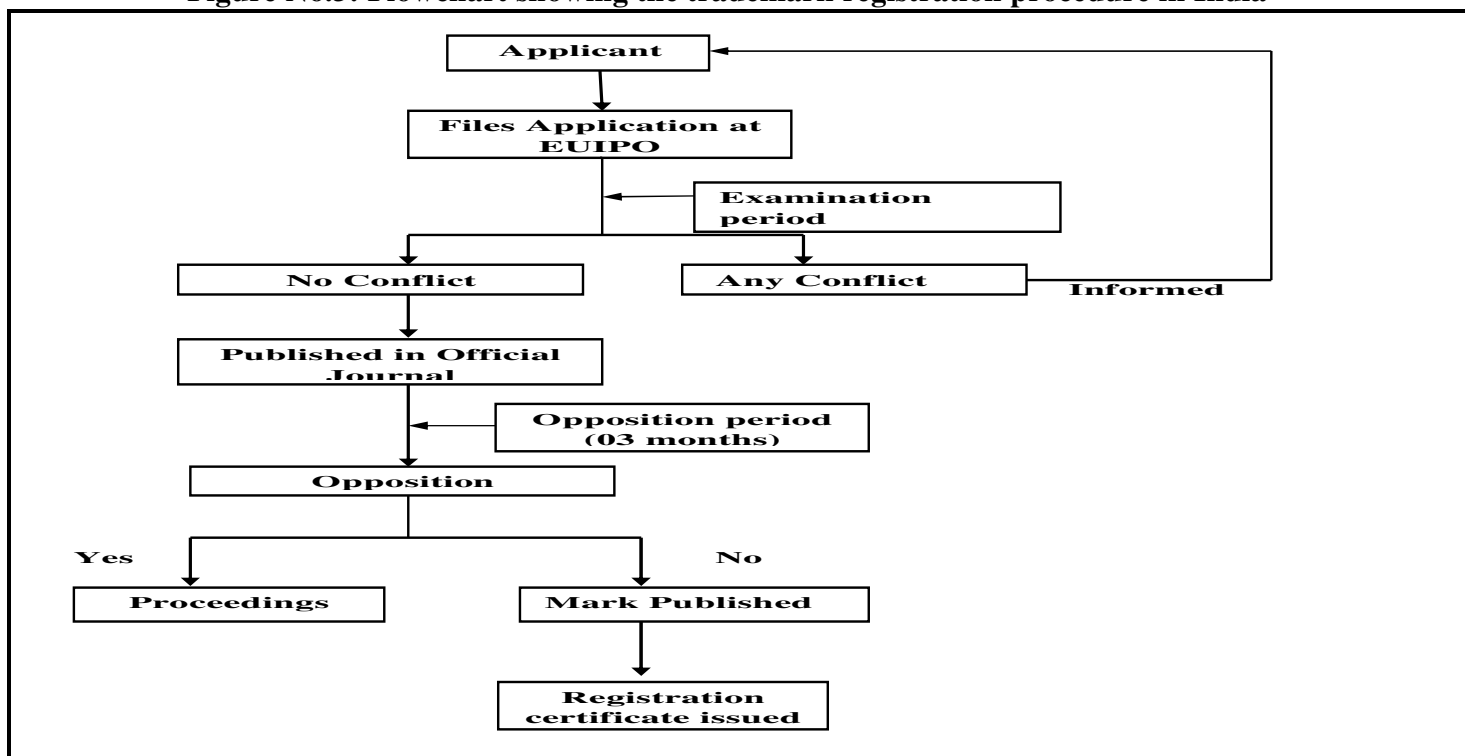


Figure No.4: Flowchart showing the trademark registration procedure in European Union

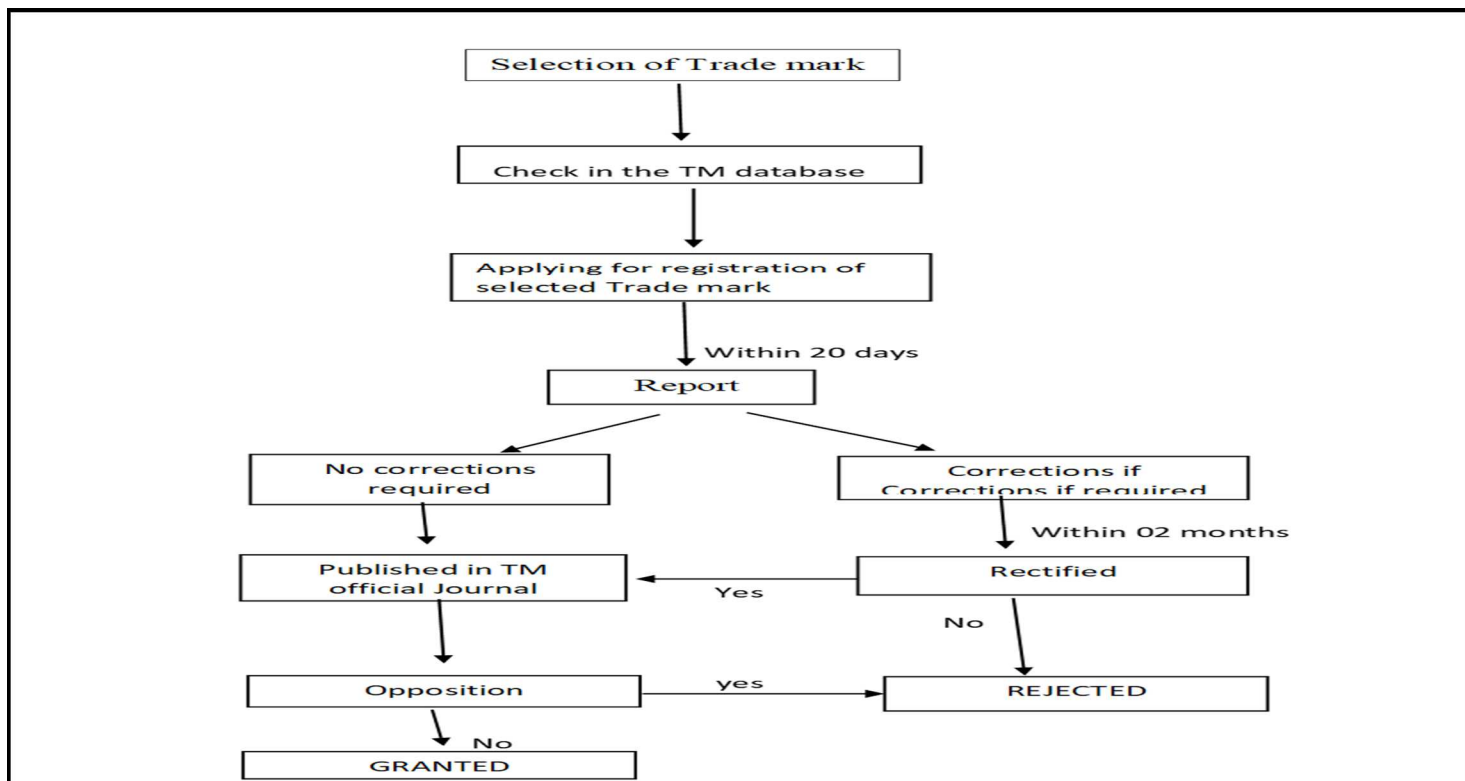


Figure No.5: Flowchart showing trademark registration process in United Kingdom

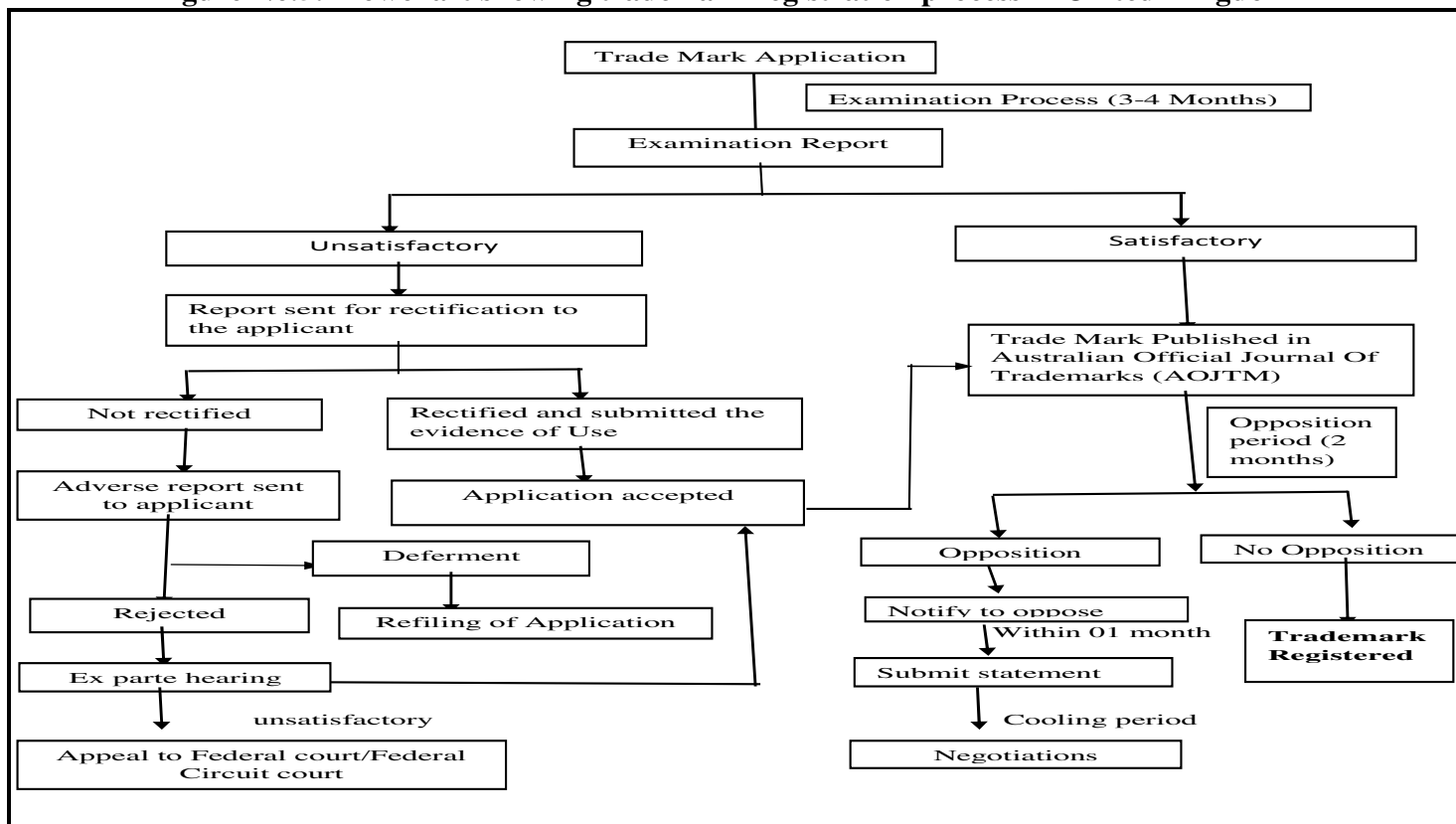


Figure No.6: Flowchart representing trademark registration procedure in Australia

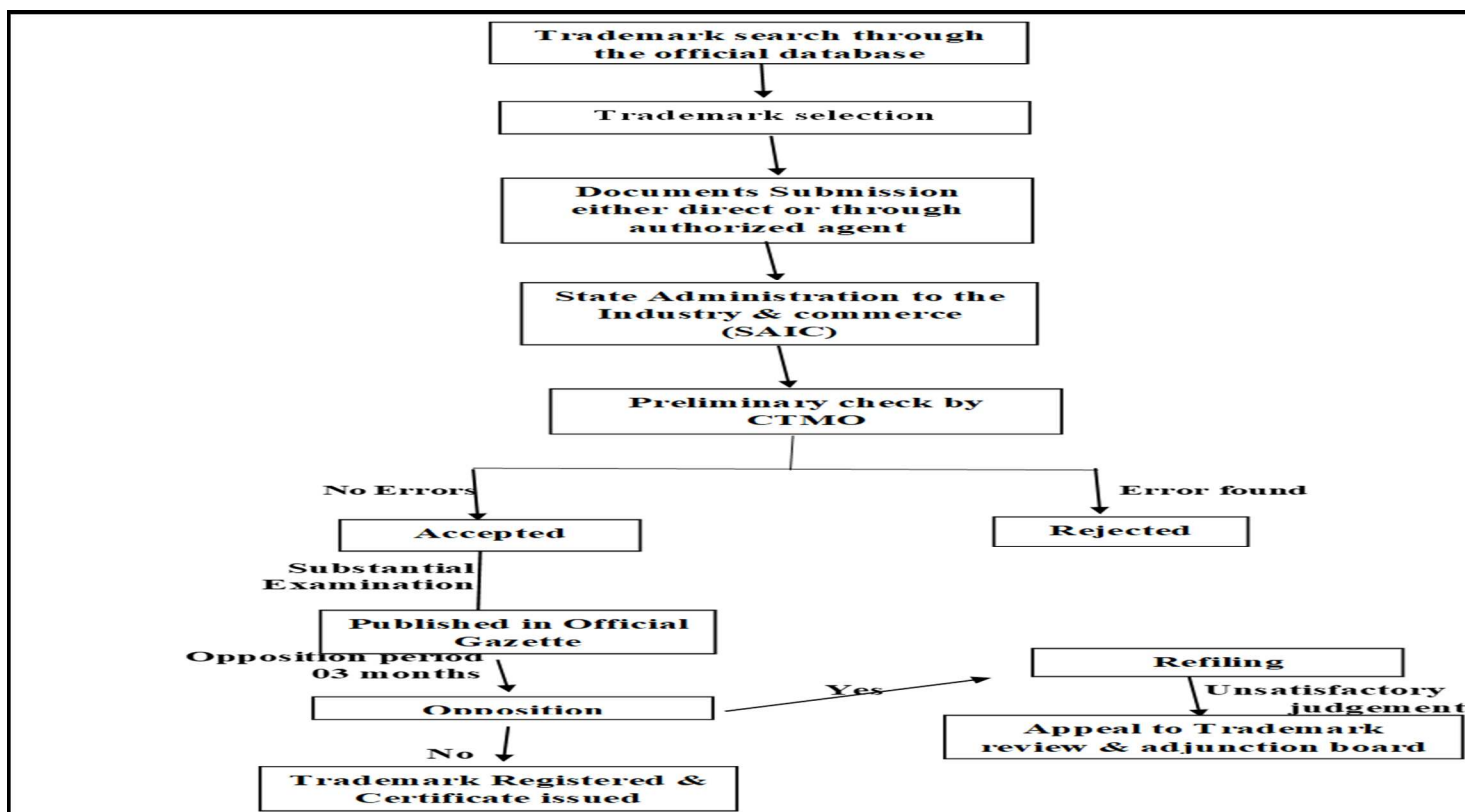


Figure No.7: Flowchart showing trademark registration process in China

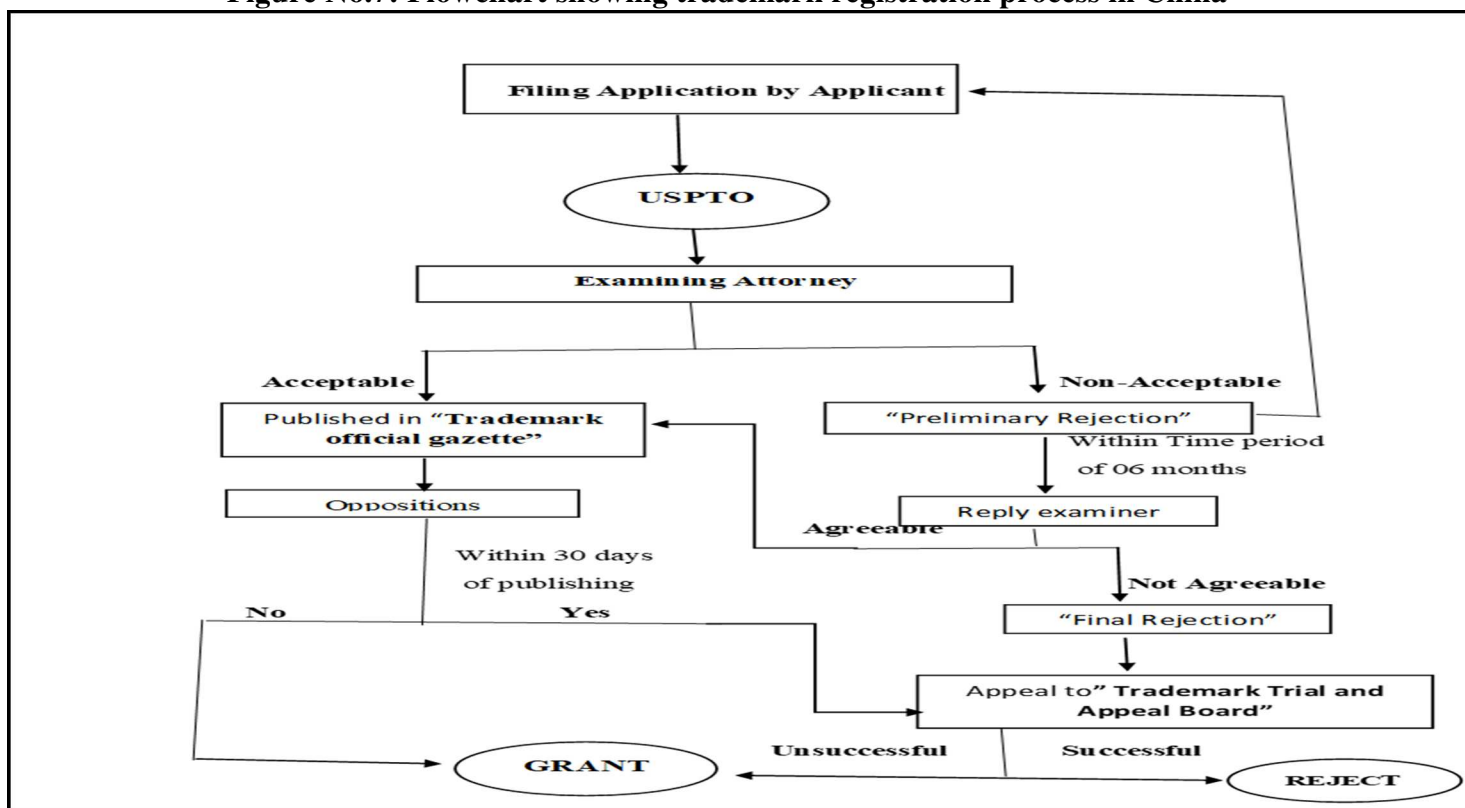


Figure No.8: Trademark registration procedure in United States of America

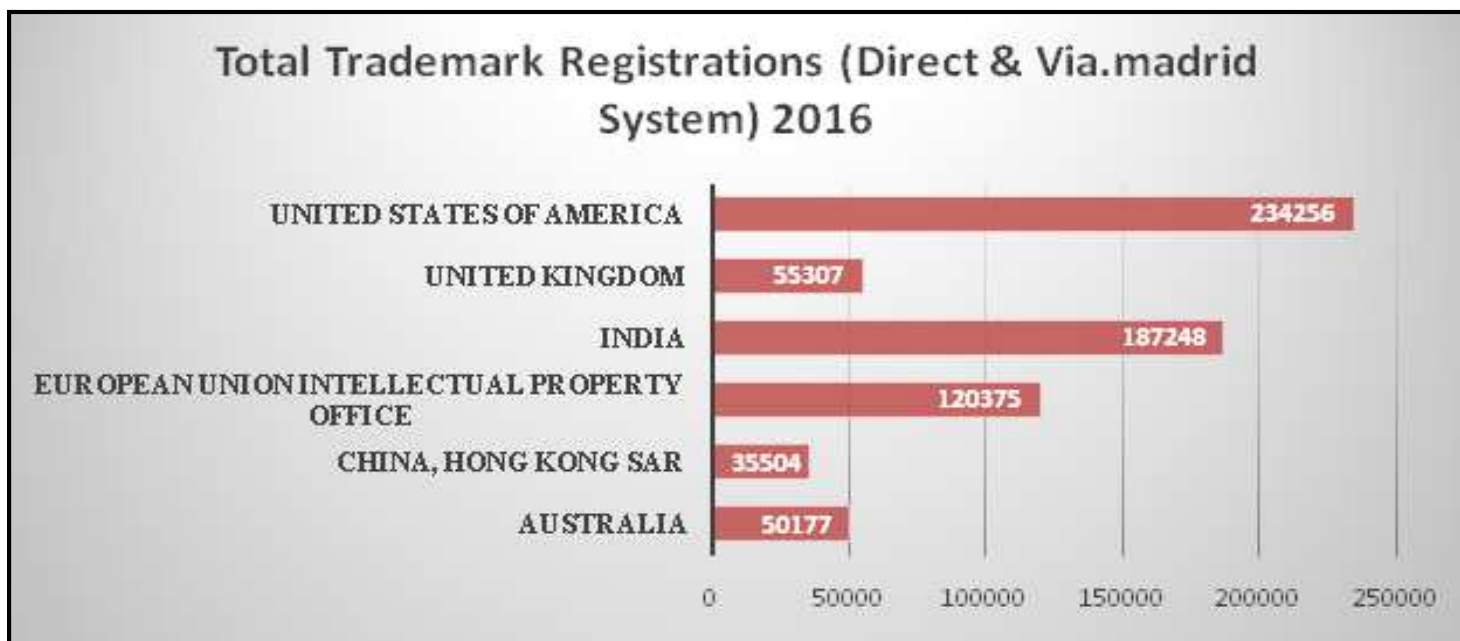


Figure No.9: The total trademark registrations filed in 2016 in different countries directly and via Madrid system

CONCLUSION

This review article gives the procedures to be followed for trade mark registration in different countries. The comparative study reveals the trademark registration criteria, process followed in each country, time period etc. There are only few differences in the procedures adopted in different countries for trademark registration. The graph clearly represents the number of registrations done in each country in 2016. There is progression in the registrations every year in each country. This concludes that the eager to trade, to register the marks, to safeguard the intellectual property rights throughout the world. Thus, trade mark registration brings the goods or services with quality, safety and efficacy and continual growth in life cycle and continues customer satisfaction.

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CONFLICT OF INTEREST

We declare that we have no conflict of interest.

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