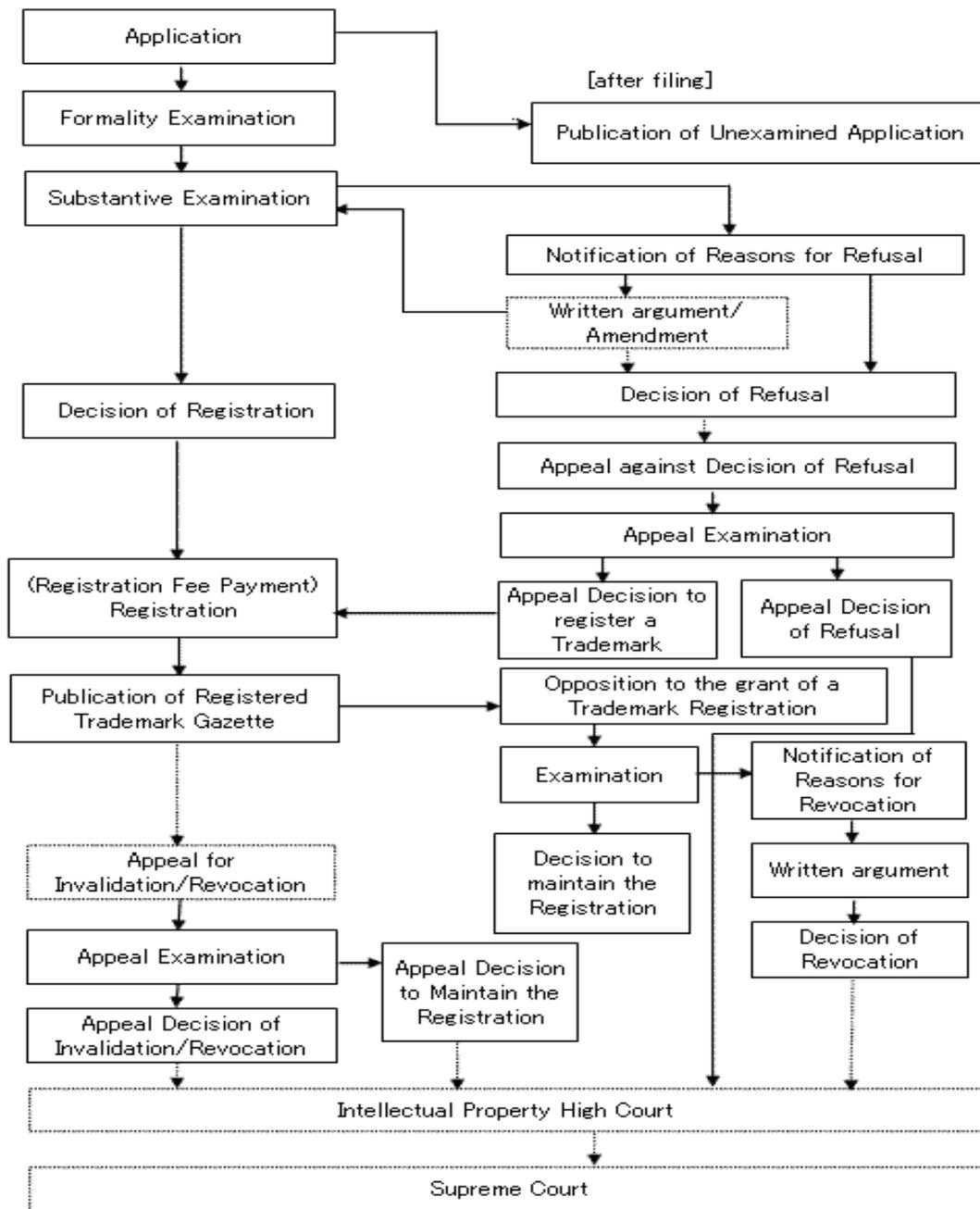


## **Procedures for Obtaining a Trademark Right in Japan**

### **Effects of Registering a Trademark in Japan**

1. A granted trademark right is effective throughout Japan, and the owner of the trademark right may use it exclusively.
2. The act of a third party using an identical or similar trademark with regards to a similar range of goods or services constitutes infringement, and the trademark owner may request that the infringer cease the infringing acts (injunction remedies) and request that the infringer pay damages.

## Procedures for Obtaining a Trademark Right



## **Application**

All applications and forms prescribed in the relevant ordinances must be submitted to the Japan Patent Office (JPO). The JPO will conduct a formality examination to determine whether the application fulfills the required procedural and formal requirements. If errors in the procedural and formal requirements are found or sections are deemed to be missing, an invitation to correct will be made to the applicant.

## **Substantive Examination**

An examination will be made of whether the application fulfills the substantive requirements. The following trademark applications will be refused/rejected as they do not meet the substantive requirements.

A) Trademarks in which consumers cannot differentiate between the applicant's goods or services and those belonging to other parties.

B) Trademarks which cannot be registered due to public interest or for the protection of private interests.

## **Notification of Reasons for Refusal & Remarks (Argument) and Amendment**

Should the application fail to satisfy the substantive requirements, a notification of reasons for refusal (Office Action) will be sent to the applicant. The applicant may submit either a remarks (argument) against the notification of reasons for refusal and/or an amendment for overcoming the reasons for refusal.

## **Decision of Registration**

If it is determined that there are no reasons for refusal or the reasons for refusal are overcome by the remarks (argument) and amendment, a decision to register the trademark will be made.

## **Decision of Refusal**

However, if the remarks (argument) and the amendment do not persuade the Examiner that the reasons for refusal are overcome, and if the examiner determines that the trademark can not be registered, a decision of refusal will be made.

### **Appeal against Decision of Refusal**

If the applicant is dissatisfied with the reasons in the decision of refusal provided by the examiner, the applicant may file an appeal against the decision of refusal.

### **Appeal Examination (against the Decision of Refusal)**

An appeal examination against a decision of refusal is performed by a collegial body of three or five appeal examiners.

The decision of the appeal by the appeal examiners is referred to as an "appeal decision". When it is judged that the reasons for refusal were overcome, an appeal decision to register the trademark is issued, and when it is judged that the reasons for refusal cannot be overcome and the trademark cannot be registered, an appeal decision of refusal is issued.

### **Registration (Registration Fee Payment)**

Upon payment of the registration fee, the trademark right is deemed to be registered and the trademark right will come into force.

### **Publication in the Trademark Gazette**

The contents of the registered trademark right which has come into force will be published in the Trademark Gazette.

### **Opposition**

Any person may file an opposition against the decision to register a trademark within two months from the date of publication of the bulletin containing the trademark. The opposition is filed with the Commissioner of the JPO.

### **Appeal for Invalidation / Revocation**

Even after a trademark is registered, an interested party may file an appeal for invalidation of the trademark. Additionally, if the trademark has not been used for three or more years after registration, an appeal for revocation may be filed by any person.

### **Appeal Examination (Invalidation / Revocation)**

An appeal examination of invalidation/revocation is performed by a collegial body of three or five appeal examiners.

Invalidation: if the appeal examiners judge that there no are substantive reasons that the decision to register a trademark was made in error, they will make a decision to maintain the trademark registration. If however they judge that the decision to grant was made in error, the appeal examiners will invalidate the trademark right.

Revocation: when the holder of the trademark right cannot prove that the trademark has been used for three years or more, an appeal decision of revocation is issued, and the trademark right is revoked.

### **Intellectual Property High Court**

An applicant who is dissatisfied with an appeal decision of refusal of an appeal against a decision of refusal, or an interested party who is dissatisfied with an appeal decision of invalidation, revocation, or maintenance, may appeal to the Intellectual Property High Court.