

Trademark Manual

Office of Trademarks, Industrial Designs, and
Geographical Indications of the Brazilian National
Institute of Industrial Property – INPI

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Chapter 4 Formal Requirements Examination

THIS TEXT DOES NOT REPLACE THE ONE PUBLISHED IN INPI'S PORTAL

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4 Formal requirements examination

4.1 What is the formal requirements examination?

The formal requirements examination is the stage in which the formal conditions necessary to the processing of the application are verified. In case such conditions are satisfied, the application is published in the *Revista da Propriedade Industrial* – RPI (INPI's Gazette). All interested parties will become aware that the application has been filed, and on this date the sixty (60)-day period for third parties to file oppositions starts to count, as provided for in art. 158 of the Brazilian IP Law.

During formal requirements examination, it is verified whether there are discrepancies in the data provided by the applicant of the application regarding the trademark and its type, priority, representative, declared activity, as well as other documents attached by the applicant.

The main purpose of this stage is to ensure that the application is published correctly in INPI's Gazette, and that the trademark has been duly filed as applied for in INPI's trademark database. This enables third parties to obtain clear and correct information about all processes filed, so that, if they wish to, they may file an opposition.

The corrections made in the formal requirements examination stage, especially regarding the verbal element and the trademark type, contribute to a consistent database, which ensures more reliability in prior rights searches carried out in INPI's portal or carried out during substantive examination.

4.2 Formal requirements examination procedures

The formal requirements examination comprises verification of data and documents included in the application, in order to check their compliance. During this stage, the items below are evaluated, pursuant to the instructions presented:

4.2.1 File Data

The application number, date and time included in the form are not compared to those indicated in the examination system, as such data is automatically migrated from the file into the application or petition.

4.2.2 Applicant Information

The name/corporate name and address included in the form are not compared to those indicated in the examination system, as such data is automatically migrated from the Brazilian Federal Revenue collection slip (GRU) generated for the application or petition.

4.2.3 Representative Information

In case of an application filed electronically, the representative information present in the form is not compared to the information in the system, as the data in the application filed electronically is automatically transferred to the examination platform.

In case of applications filed in paper form, the representative information present in the form is compared to the information in the system, as an error or omission of data may occur.

4.2.4 Trademark Data

Type

At the time of application filing, the users must determine whether the sign to be filed is an application of a **figurative, combined, three-dimensional, or word** mark.

Hence, if there are discrepancies between the sign requested and the type indicated by the applicant, the image of the trademark always prevails, and the necessary corrections must be made in the system, so that the application is published without inconsistencies.

The following changes may occur:

- a) **The applicant filed a combined mark, but declared that it is figurative:** the type is changed to “combined”, and the field “*Elemento nominativo da marca*” (verbal element of the mark) in the system is filled out.
- b) **The applicant filed a figurative mark, but declared that it is combined:** the type is changed to “figurative”, and the data in the field “*Elemento nominativo da marca*” (verbal element of the mark) in the system is excluded.

Nature

In case of an application filed electronically, the information on the trademark nature present in the form is not compared to the information in the system, as the data in the application filed electronically is automatically transferred to the examination platform.

In case of applications filed in paper form, the trademark nature present in the form is compared to the one in the system, as an error or omission of data may occur.

In product or service trademark applications filed incorrectly as collective mark or certification mark, the user may request correction of the trademark nature through the petition for *Correção de dados no processo devido à falha do interessado* (Correction of data in the process due to the interested party's failure) (code 378).

Word Mark or Word Element of the Combined Mark or Three-dimensional Mark

It is verified whether the verbal element included in the image of the combined mark or three-dimensional mark corresponds exactly to what has been declared in the field *elemento nominativo da marca ou parte nominativa da marca mista ou tridimensional* (verbal element of the mark or word element of the combined mark or three-dimensional mark).

In case of discrepancies, whatever is included in the image of the mark prevails, and the necessary corrections are promoted in the examination platform, so that the application is published with no inconsistencies.

Image of the mark

During the formal requirements examination, the following requirements are analyzed with respect to the image of the mark:

- c) Image sharpness issues;
- d) Presentation of duplicates or variations of the mark;
- e) Erasures in the image of the mark.

If the image of the mark incurs any of the abovementioned circumstances, the application shall be subject to formal requirements amendments.

In case of applications filed in paper form, before demanding legibility amendments to the image, the hard copy of the application shall be requested to verify potential scanning flaws.

Regarding item “b” above, the amendment shall be deemed as complied with if the applicant informs the wish to proceed with the sign as filed. However, if during substantive examination it is identified that the sign is composed of variations of a trademark, the application shall be rejected based on art. 155 of the Brazilian IP Law. Finally, it is highlighted that in case of a procedure of cancellation due to non-use, the holder shall present proof of use of the trademark as granted.

Classification of figurative elements

During the formal requirements examination, the figurative element is not reclassified. The Office will only proceed with the classification of figurative elements in case of combined or figurative trademark applications which were not classified by the applicant.

Non-filling of this field is not a reason for formal requirements amendments.

4.2.5 Nice Classification

In the applications filed in paper form, it is verified whether the number of the Nice classification (international classification of goods and services) included in the system corresponds to the one in the form filed by the applicant.

Information included in the form filed by the applicant prevails when compared to information included in the examination platform. In case of inconsistencies, the due changes are promoted, considering that the pieces of information in the system are the ones to be published in *Revista da Propriedade Industrial – RPI* (INPI's Gazette).

4.2.6 Classification of Goods and Services

For applications filed in paper form, data on the specification of goods and services included in the form is compared to data in the examination system in order to identify a potential error in data entry.

4.2.7 Priority

It will be verified whether data on priority and data on the trademark correspond to data in the priority documents attached, if those have been filed with the application.

In the event of occasional discrepancies between data on priority in the form (number, country, and date) and data included in the documents, data in the priority documents shall prevail, and any corrections required will be made in the system.

In the event of discrepancies between data on priority in the form (number, country, and date) and data included in the documents, including trademark discrepancies, an amendment will be required of the applicant, so as to clarify the situation.

If the priority document is not filed with the application, it shall be considered that the data on priority informed in the form is correct.

4.2.8 Documents Attached

It will be verified whether the documents attached are legible and whether the documents that the user declared in the form are actually attached to the application.

The documents must be clear and without erasures, under penalty of demanding formal requirements amendments. In case of applications filed in paper form, before demanding legibility amendments to the image, the hard copy of the application will be required, so that any inaccuracy in the digitalization is verified.

It is worth mentioning that the so-called "clean corrections", markings made in order to limit the scope of the powers granted by the power of attorney, are not subject to formal requirements amendments.

In case the priority documents are filed and do not meet the formal requirements highlighted above, they will be subject to formal requirements amendments.

If the power of attorney is filed upon application, the presence of the following data will be verified:

- f) Information on the grantor(s) and on the grantee of the power of attorney;
- g) Execution date;
- h) Signature(s);
- i) Granting of powers for representation with INPI;
- j) Data in the power of attorney is consistent with the data in the application/petition (the power of attorney refers to the trademark that has been requested/the grantor(s) is(are) the applicant(s) of the application/petition);
- k) Granting of powers to receive summonses (art. 217 of the Brazilian IP Law), in case the grantor is domiciled abroad.

For applications of trademarks in a co-ownership regime, if the application has been filed by a single representative, it will be verified whether the grantee has powers to represent all applicants, and the power of attorney must be signed by all grantors.

When the filing has not been made by a single representative, the existence of documents where all applicants authorize the filing of such trademark will be verified. In this authorization, if any applicant is represented by an attorney, the respective power of attorney will be verified, according to the criteria specified above.

In case of any absence or discrepancy related to such data, formal requirement amendments will be demanded, pursuant to Art. 2 of INPI/PR Resolution No. 88/2013. If the applicant invokes, in a response, the term for submission of a power of attorney provided for in paragraph 2 of art. 216 of the Brazilian IP Law (60 days of the application), the amendment will be deemed satisfied, but the application will only be published after such term has elapsed.

Additional information on the examination of the power of attorney may be obtained in item **5.6.1 Power of Attorney**.

4.2.9 Declaration of Activity

This field is exclusive to applications in paper form, considering that in the electronic form the applicant declares, under penalty of law, that he develops an activity compatible with the products or services claimed. This field must be filled out, mandatorily. Failure to fill out the declaration of activity and the absence of a document attached to the application containing the applicant's activity entails formal requirements amendments.

If there is a document attached to the application containing the applicant's activity, even if it has not been filled out in the form, the formal requirement examination must continue, and it is highlighted that, although the field has not been filled out, there is a document evidencing the activity attached to the application.

The submission of any petitions, within the legal term for practicing the acts to which they refer, containing the applicant's activity, eliminates the need for a formal requirement amendment, and the reason why amendments have not been required is registered in the decision.

When the document attached is mentioned in such field, it is necessary to verify whether that document is in the application and if it is legible. The absence of the document indicated entails a formal requirement amendment.

4.2.10 Signature and identification of the application

This field is exclusive for applications in paper form, which must be identified and signed. If the application is not signed and identified, an amendment shall be demanded.

If the application is signed but not identified, but it is possible to identify the signatory in the documents attached, the formal requirements examination may continue.

If the application is signed but not identified, and it is not possible to identify the signatory in the documents attached, an amendment shall be demanded.

If a power of attorney has been submitted and the application has been signed by the representative, the representative's name shall be included in the bibliographic data in the system.

4.2.11 Examination of formal requirement compliance

Aiming at taking advantage of the party's act, any type of petition may be accepted in response to the formal requirements amendment, as long as it is filed within the term. Upon receiving the applicant's response, it will be verified whether the amendment has been complied with within the legal term and if it has been satisfied.

If the response was received in due term, but it was not satisfactory, a new formal requirements amendment may be made. The applications whose formal requirements amendments are not met within the legal term are deemed non-existent under article 157 of the Brazilian IP Law.

4.3 Applicable decisions

Formal requirements amendments

If any irregularity is identified during the formal requirements examination, amendments shall be required of the applicant, which must make such amendments within five (5) consecutive days of the first subsequent business day

on the date of publication of the amendment. After complying with the amendments, the application is published in INPI's Gazette for any responses from third parties.

How to request the service	
Service	<i>Cumprimento de exigência decorrente de exame formal em pedido de registro</i> (Provision of amendments arising from formal requirements examination in an application)
Code	338
Additional Information	3.6.1 Petitions related to the provision of amendments 3.9 Next steps of the application Schedule of Fees

Application approved for publication

The applications with no defects or inconsistencies and whose typing and scanning are correct will be published in *Revista da Propriedade Industrial – RPI* (INPI's Gazette) and there shall be a sixty (60)-day period for filing of oppositions.

Application deemed non-existent

The applications for trademark registration may be deemed non-existent for the reasons below:

- Lack of payment of fees;
- Payment of the fee after submission of the electronic form;
- Lack of response to the formal requirements amendments within the legal term;
- Lack of response to the payment requirement.

Non-acceptance of petitions

The decision of non-acceptance of petitions applies to the requests for compliance with the formal requirements amendments filed after the legal term, except for the event of time limit extension.

Annulment of decisions

The annulment of a decision will occur in case of mistaken publication of a decision which is not appropriate for the application or petition at stake, as in the events below:

- The application should not be published for opposition, but should have been subject to amendments.

- The type of formal requirement amendment chosen is not applicable to the application/petition.

For the events in which the application is published with an error, differing from what has been requested by the applicant, the application will be republished.

4.4 General remarks

The applications that reach the formal requirements examination have already been through the stage of payment confirmation, and the formal requirements examination is responsible for the assessment of the formal aspects previously highlighted.

The following situations do not entail formal requirements amendments:

- Lack of submission of the Brazilian Federal Revenue collection slip (GRU);
- Lack of filling of the field *Registro na Junta ou cartório* (Registration with the Commercial Registry or registry office);
- Lack of filling of the field *Local/Data* (Place/Date), considering that the application has a file number with date and time;
- Lack of or mistake in filling the field *Dados do documento de arrecadação* (Data of the collection slip), considering that the GRU used for the application is linked to the application number assigned.