

NEW RULES FOR LEGAL REPRESENTATIVES



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Article 181 of the Mexican Law of Industrial Property (MLIP) establishes that when a trademark application is filed by a legal representative, the legal capacity of the latter must be proved through a power of attorney signed by the applicant.

Recently, an amendment to Article 181 was enacted, allowing the possibility of filing a trademark application without a power of attorney. The only requirement is a statement under oath by the person filing the application that they are the legal representative of the applicant.

The rationale for the amendment is that, under the MLIP, the validity of a trademark registration cannot be challenged on the grounds that the legal capacity of a representative was not properly proven. Therefore, it doesn't make sense to prevent someone from filing a trademark application on behalf of a third party in a *bona fide* manner, by stating under oath that they are its legal representative.

The amendment will also speed up the filing process by removing the need to obtain a power of attorney. This will particularly benefit foreign applicants, since they will not need to carry out this time-consuming action that sometimes delays the filing process. Consequently, it will save the costs of late document filings.

This will also save the costs of filing responses to official actions, which only request a missing power of attorney or seek to obtain missing information from an incomplete power of attorney filed as a formal filing requirement. This should also contribute to a better and faster examination of a trademark application at the trademark office.

Though these are clear benefits to the amendment, there is also a downside that could have been foreseen.

The amendment states that only one person can represent the applicant by taking an oath. Thus, the person who signs the application papers and states under oath that they are the legal representative will be the only legal representative under oath, and therefore, the only one allowed to sign further writs during prosecution and any other writs after registration is achieved. This means that any other person who needs to sign as a legal representative of the applicant apart from the one who signed the application papers in the beginning would need to prove their legal capacity with a power of attorney.

Under the above scenario, if the person who signed the application papers as the legal representative under oath could not sign any writ for any reason by a given deadline, another person would be required to do it and to prove their legal capacity through a power of attorney. This would lead to the exact situation the amendment is designed to prevent.

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Therefore, while the amendment provides certain benefits, it is our opinion that it should be revised to allow more than one person to be able to state under oath that they are the legal representative of an applicant.

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