Part VIII Amendment of Statement in the Application/Drawings, etc.

Chapter I Amendment

81 Relevant provisions

Design Act

Article 60-24 A person undertaking a procedure with regard to an application for design registration, a request or any other procedures relating to design registration, may make amendments only while the case is pending in examination, trial or retrial.

Article 68

(Paragraphs (1) and (3) onward omitted)

(2) Article 6 to 9, 11 to 16, 17(3) and 17(4), 18 to 24 and 194 (Procedures) of the Patent Act shall apply mutatis mutandis to an application for design registration, a request, or any other procedures relating to design registration. In this case, the term "trial against an examiner's decision of refusal" in Article 9 of the Patent Act shall be deemed to be replaced with "trial against an examiner's decision of refusal or trial against examiner's ruling dismissing an amendment" and the term "trial against an examiner's decision of refusal" in Article 14 of the Patent Act shall be deemed to be replaced with "trial against an examiner's decision of refusal or trial against examiner's ruling dismissing an amendment."

Patent Act

Article 17

(Paragraphs (1) and (2) omitted)

(3) The Commissioner of the Patent Office may require an applicant to amend a procedure, designating an adequate time limit, in the following cases:

(i) where the procedures do not comply with paragraphs (1) to (3) of Article 7 or Article 9;

(ii) where the procedures do not comply with the formal requirements prescribed by this Act or an order thereunder; and

(iii) where the fees relating to the procedures payable under paragraphs (1) to (3) of Article 195 are not paid.

(4) For any amendment of procedures (except in the case of the payment of fees), written amendment shall be submitted in writing, except for cases provided by Article 17-2(2).
81.1 Amendment

Amendment refers to a procedural act which an applicant voluntarily performs or performs based on an order issued by the Commissioner of the Patent Office or the chief administrative judge to correct or supplement the filing documents, etc. after the filing so as to remedy improper descriptions, where documents, etc. relating to the filing contain any improper descriptions such as an error or ambiguous statement in light of law or the prescribed forms.

Amendment is a procedural act that has been admitted under law for applicants within certain limitations, for the purpose of achieving smooth implementation of procedures under the first-to-file system. If an applicant submits a legitimate written amendment of proceedings (Article 17(4) of the Patent Act as applied mutatis mutandis pursuant to Article 68(2) of the Design Act), the documents, etc. will be treated as having been submitted in the amended state when originally filed.

However, due to such effect of amendment, if the contents that were described when originally filed could be freely amended, it would run contrary to the purport of the first-to-file system, and would give unexpected disadvantage to third parties, so limitations are imposed on the contents of and period for amendment.

81.1.1 Limitation on the contents of amendment

Since amendment should only be made to correct or supplement any error or ambiguous statement in the documents, etc. as originally filed, amendment made to the statement in the application or any drawings, etc. attached to the application must not change the gist thereof.

81.1.2 Limitation on the period for amendment

A person undertaking a procedure with regard to an application for design registration, a request or any other procedures relating to design registration may make amendments only while the case is pending in examination, trial or retrial.