

Note: When any ambiguity of interpretation is found in this provisional translation, the Japanese text shall prevail.

Part IX Extension of Patent Term

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9001 Handling of Relationship between Application to Register Patent Term Extension and Number of Dispositions

One application to register a patent term extension must be filed for one disposition.

(Explanation)

Article 67ter of the Patent Act provides that the application to register a patent term extension shall be refused "when the disposition ... is not deemed to have been necessary to obtain for the working of the patented invention" (item (i) of the first paragraph). In other words, Article 67ter requires that whether or not the "application to register a patent term extension" should be refused is determined depending on whether or not the "disposition" needs to be obtained.

A factor that necessitates the registration of the patent term extension is caused in relation to each disposition, and the period during which the patented invention was unable to be worked and the effect of the patent right after registration of the patent term extension are to be determined on the basis of the individual disposition. Hence, one application to register a patent term extension should, in view of its nature, be filed for one single disposition on a per-disposition basis. Also, if one application to register a patent term extension is allowed to be filed for two or more dispositions by an applicant who has obtained the two or more dispositions in an intensive manner in a certain period for one single patent right so that only he/she can enjoy the benefit of the registration of patent term extension on the basis of the two or more dispositions by one single application to register a patent term extension, such practice will lead to impermissible imbalance among applicants.

In view of the foregoing, the above rule of handling is to be complied with regarding the relationship between the application to register a patent term extension and the number of dispositions.

9002 Regarding Extended Term Where Two or More Trials Necessary for Obtaining Disposition Designated by Cabinet Order Were Conducted for One Single Disposition in Application for Registration of Patent Term Extension

"The date on which the testing necessary for obtaining the disposition commenced means" stated at 3.1.3 in "Part IX Extension of Patent Term" of the Examination Guidelines is deemed to be the day of commencement of the trial that is found in view of the patent application documents to be the first trial among the series of trials if the applicant demonstrated that, in relation to a single disposition, there had been two or more trials such that the period during which the trials were conducted can be included in the "the period during which the patented invention was unable to be worked" (see 3.1.3(1)).

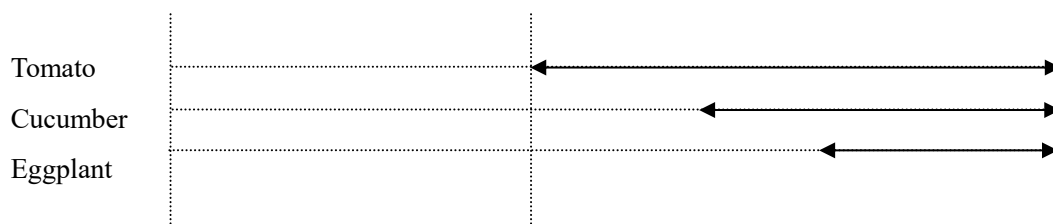
(Explanation)

- (1) The commissioned field trials for agricultural chemicals often commence on different days depending on crops and applicable diseases or insects pests, etc., and an application for registration of an agricultural chemical may be filed for the set of the results of these trials so that one registration may be established.

Example for Reference

Patented Invention: "An insecticide containing A as an active ingredient"

Registration of Establishment of Patent Right



(Note) The solid lines each indicate the period from the date of commencement of the trial against aphids with regard to a1, which is a more specific concept of the active ingredient A to the date on which the applicant is notified of the registration, or in other words, to the date on which the applicant actually learns of the registration or could have learned of it.

- (2) In the above reference example, the period from the date of commencement of the trial for the agricultural chemical with respect to tomato to the date on which the

applicant is notified of the registration, in other words, to the date before the date on which the applicant actually learns of the registration or could have learned of it corresponds to the "period during which the patented invention was unable to be worked." Thus, "the period for which the extension is requested" that does not exceed this period (which must be not more than five years) is deemed to be the extended term of the patent right.