

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

Section 5 Decision

1. Overview

If no reasons for refusal are found for a patent application, the examiner shall render a decision to the effect that a patent is to be granted. (Article 51).

Moreover, when determining that the notified reasons for refusal are not resolved through examination after notification of the reasons for refusal, the examiner shall render a decision of refusal (Article 49).

2. Decision to Grant Patent

(i)When finding no reasons for refusal in first examination of a patent application or (ii)when determining that the reasons for refusal are resolved in second and subsequent examination after notice of reasons for refusal and when no reasons for refusal are found, the examiner shall decide to grant a patent immediately.

3. Decision of Refusal

When deciding that the reasons for refusal are unresolved in examination after notice of reasons for refusal, the examiner shall render a decision of refusal regardless of whether or not the notice of reasons of refusal is "first" or "final." On this occasion, if necessary, the examiner shall render a decision of refusal after ruling that amendment is to be dismissed (see "Section 6 Decision of Dismissal of Amendment" for a decision of dismissal of amendment).

However, where, even when the notified reasons for refusal are unresolved, the examiner can show countermeasures available for the applicant to resolve the reasons for refusal and determine that it is likely to reach an agreement with the applicant for taking such countermeasures, the examiner shall communicate with the applicant and notify reasons for refusal if the agreement is concluded.

The notice of reasons for refusal shall be in principle taken as the "final notice of reasons for refusal" (see 3.2.1(2)(c) in "Section 3 Notice of Reasons for Refusal" 3.2.1(2)(c)).

The examiner shall pay attention to the following when rendering a decision of

refusal.

(1) The examiner shall determine (i) whether or not the notified reasons for refusal are unresolved and (ii) whether or not the notified reasons for refusal are reasonable by sufficiently reviewing allegations, such as a written opinion, and details of the written amendment.

(2) The examiner shall show all unresolved reasons for refusal in the decision of refusal. In this case, the examiner shall state concisely and clearly so that reasons for refusal pertinent to which claim are unresolved become noticeable. The examiner can make a remark on claims collectively in the decision of refusal as long as the same explanation of e.g. a comparison the claimed invention and cited invention and a determination shall apply to the claims in common.

(3) As to a matter which is rendered as a point of issue in the written opinion, the examiner's determination about the matter is clearly stated.

(4) The examiner shall make a deliberate consideration as to whether or not a decision of refusal might be a "surprise" for the applicant. The examiner shall not render an unreasonable decision of refusal while being obsessed with the notified reasons for refusal.

4. Points to note

The examiner shall not render a decision either to grant or to refuse a patent for applications that may be subject to a security designation or are in the process under a security designation pursuant to the Economic Security Promotion Act (Economic Security Promotion Act, Article 66(7)).