

<Relevant Provisions>

Patent Act

(Priority claim based on patent application, etc.)

Article 41

A person requesting the grant of a patent may make a priority claim for an invention claimed in the patent application, based on an invention disclosed in the description or scope of claims for a patent or utility model registration, or drawings (in the case where the earlier application was a foreign language written application, foreign language documents) originally attached to the request of an earlier application filed for a patent or utility model registration which said person has the right to obtain (hereinafter referred to as "earlier application"), except in the following cases:(omitted)

- (i) where said patent application is not filed within one year from the date of the filing of the earlier application (except in the case where there is a legitimate reason for the applicant having failed to file said patent application within one year from the date of the filing of the earlier application, and said patent application is filed within the period specified in the Ordinance of the Ministry of Economy, Trade and Industry);
- (ii) where the earlier application is a new divisional patent application extracted from a patent application ..., a patent application converted from a patent application ... or a patent application based on a utility model registration ..., or a new divisional utility model registration application extracted from a utility model registration application ... or a utility model registration application converted from a utility model registration application ...;
- (iii) where at the time of the filing of said patent application, the earlier application had been waived, withdrawn or dismissed;
- (iv) where, at the time of the filing of said patent application, the examiner's decision or the trial decision on the earlier application had become final and binding; and
- (v) where, at the time of the filing of said patent application, the registration establishing a utility model right under Article 14(2) of the Utility Model Act with respect to the earlier application had been effected.

(2) For those of the inventions claimed in a patent application claiming a right of priority under the preceding paragraph which are stated in the description, scope of claims for a patent or utility model registration or drawings (in the case where the earlier application was a foreign language written application, foreign language documents) originally attached to the request of the earlier application on which the priority claim is based ..., said patent application shall be deemed to have been filed at the time when the earlier application was filed, for the purpose of the application of Article 29, the main clause of Article 29-2, Articles 30(1) and (2), 39(1) to (4), 69(2)(ii), 72, 79, 81, 82(1), 104 (...) and 126(7) ...

(3) Among inventions disclosed in the description, scope of claims or drawings (in the case of a foreign language written application, foreign language documents) originally attached to the application in a patent application containing a priority claim under paragraph (1), for those that are stated in the description, scope of claims for a

patent or utility model registration or drawings (pe of claims or drawings (in the case of a foreign language writt Utility Model pertaining to the earlier application shall be deemed to have been effected or issued at the time when the patent gazette containing patent or the laying open of application pertaining to the said patent application was issued or effected, and the main clause of Article 29-2 of the patent Act or Article 3-2 of the Utility Model Act shall apply.

(4) (Omitted)

(Procedures for a priority claim under the Paris Convention)

Article 43(1)

A person desiring to take advantage of the priority under Article 4.D(1) of the Paris Convention regarding a patent application shall submit to the Commissioner of the Patent Office a document stating the same, and specify the country of the Union of the Paris Convention in which the application was first filed, deemed to have been first filed under C(4) of said Article, or recognized to have been first filed under A(2) of said Article, and the date of filing of said application within the period prescribed in the Ordinance of the Ministry of Economy, Trade and Industry.

(2) A person who has made a declaration of priority under the preceding paragraph shall submit to the Commissioner of the Patent Office a certificate showing the date of filing from the country of the Union of the Paris Convention in which the application was first made, or deemed to have been first made under Article 4.C(4) of the Paris Convention, or recognized to have been first made under A(2) of said Article, as well as certified copies of those equivalent to the description, scope of claims for patent or utility model registration, and drawings submitted at the time of the filing of the application, or any bulletin or certificate equivalent thereto issued by the government of said country, within one year and four months from the earliest of the following dates:

- (i) the date of filing which was first made, deemed to have been first made under Article 4.C(4) of the Paris Convention, or recognized to have been first made under A(2) of said Article;
- (ii) where such patent application contains a priority claim under Article 41(1), the date of filing of the application on which said priority claim is based; or
- (iii) where such patent application contains other priority claims under 43(1) or 44 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 43-3(3)) or 43-3(1) or (2), the date of filing of the application on which said priority claim is based.

(3) A person who has made a declaration of priority under paragraph (1) shall, in addition to the documents as provided in the preceding paragraph, submit to the Commissioner of the Patent Office a document specifying the filing number of the application which was first filed, deemed to have been first filed under Article 4.C(4) of the Paris Convention, or recognized to have been first filed under A(2) of said Article; provided, however, that where such filing number is not available to the person prior to the submission of the documents as provided in said paragraph, in lieu of said document, a document specifying the reason thereof shall be submitted and

the document specifying such filing number shall be submitted without delay when such number becomes available to said person.

(4) Where a person who has made a declaration of priority under paragraph (1) fails to submit the documents specified in paragraph (2) within the time limit provided therein, said priority claim shall lose its effect.

(5) In relation to the application of the preceding two paragraphs, in the case of prescribing Ordinance of the Ministry of Economy, Trade and Industry that a conversion of matters stated in the documents provided in paragraph (2) is allowed between the government of a country of the Union of the Paris Convention or an international organization relating to industrial property through an electromagnetic device (a device that is not perceivable by human senses including electronic and magnetic devices), where a person who having made a declaration of a priority claim provided in paragraph (2) submit to the Commissioner of the Patent Office the document stating the matters prescribed in Ordinate of the Ministry of Economy, Trade and Industry as a required matter for which the other matters including its filing number is converted, the documents as provided in paragraph (2) shall be deemed to have been submitted.

(6) Where a document under paragraph (2) or a document under the preceding paragraph have not been submitted within the time limit under paragraph (2), the Commissioner of the Patent Office shall notify a person who has made a priority claim under paragraph (1) thereof.

(7) A person who has received a notice provided under the preceding paragraph may submit a document under paragraph (2) or a document under paragraph (5) to the Commissioner of the Patent Office only within the time limit as provided in Ordinance of the Ministry of Economy, Trade and Industry.

(8) Notwithstanding the preceding paragraph, where, due to reasons beyond the control of a person who has received a notice provided under paragraph (6), the person is unable to submit the documents as provided in paragraph (2) or the document as provided in paragraph (5) within the time limit provided under the preceding paragraph, the person may submit to the Commissioner of the Patent Office the documents or the document within the time limit as provided in Ordinance of the Ministry of Economy, Trade and Industry.

(9) Where the documents specified in paragraph (2) or the document specified in paragraph (5) are submitted under paragraph (7) or the preceding paragraph, paragraph (4) shall not apply.

(Priority claims recognized under the Paris Convention)

Article 43-2(1)

Although a person intended to declare a priority under Article 4.D(1) of the Paris Convention regarding a patent application, where the person was unable to file the patent application with the priority claim within the period of priority prescribed in the same article C.(1) (hereinafter, referred to as "a period of priority"), there is a

reasonable ground for failing to file the patent application, and the person filed the patent application within the period prescribed in the Ordinance of the Ministry of Economy, Trade and Industry, the person may declare a priority claim regarding the patent application recognized under the same article of the Paris Convention even after the lapse of the period of priority.

(2) The preceding paragraph shall apply mutatis mutandis to the case where a priority claim is declared under the preceding paragraph.

Article 43-3(1)

A priority claim may be declared in a patent application under Article 4 of the Paris Convention, where the priority claim is based on an application filed by a person specified in the left-hand column of the following table in a country specified in the corresponding right-hand column.

<p>Japanese nationals or nationals of a country of the Union of the Paris Convention (including nationals deemed to be the nationals of the country of the Union in accordance with Article 3 of the Paris Convention - hereinafter the same shall apply in the following paragraph).</p>	<p>Member of the World Trade Organization</p>
<p>Nationals of a Member of the World Trade Organization (meaning the nationals of Members provided for in paragraph (3) of Article 1 of the Annex 1C to the Marrakesh Agreement – hereinafter the same shall apply in the following paragraph).</p>	<p>Country of the Union of the Paris Convention or Member of the World Trade Organization</p>

(2) A national of a country that is neither a country of the Union of the Paris Convention nor a member of the World Trade Organization (limited to the countries that allows Japanese nationals to declare a priority under the same conditions as in Japan and limited to the country designated by the Commissioner of the Patent Office, hereinafter referred to as a "specified country" in this paragraph), a Japanese national, a national of a country of the Union of the Paris Convention or a national of a member of the World Trade Organization may declare a priority claim in the patent application based on the application filed in the specified country under Article 4 of the Paris Convention.

(3) The preceding two articles shall apply mutatis mutandis to the case where a priority claim is declared under the preceding two paragraphs.

Paris Convention
Article 4

A(1) Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.

(2) Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.

(3) The term “regular national filing” means any filing that is adequate to establish the date on which the application was filed in the country concerned, regardless of the subsequent fate of the application.

B Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, such acts cannot give rise to any third-party right or any right of personal possession.

Rights acquired by third parties before the date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each country of the Union.

C(1) The periods of priority referred to above shall be twelve months for patents and utility models, and six months for industrial designs and trademarks.

(2) These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period.

(3) If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day.

(4) A subsequent application concerning the same subject as a previous first application within the meaning of paragraph (2), above, filed in the same country of the Union shall be considered the first application, of which the filing date shall be the starting point of the period of priority, if, at the time of filing the subsequent application, said previous application has been withdrawn, abandoned, or refused, without having been laid open to public inspection and without leaving any rights outstanding, and if it has not yet served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

D(1) Any person desiring to take advantage of the priority of a previous filing shall be required to make a declaration indicating the date of such filing and the country in which it was made. Each country shall determine the latest date on which such declaration must be made.

(2) These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating thereto.

(3) The countries of the Union may require any person making a declaration of priority to produce a copy of the application (description, drawings, etc.) previously filed. The copy, certified as correct by the authority which received such application, shall not require any authentication, and may in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation.

(4) No other formalities may be required for the declaration of priority at the time of filing the application. Each country of the Union shall determine the consequences of failure to comply with the formalities prescribed by this Article, but such consequences shall in no case go beyond the loss of the right of priority.

(5) Subsequently, further proof may be required.

Any person who avails himself of the priority of a previous application shall be required to specify the number of that application; this number shall be published as provided for by paragraph (2), above.

E(1) Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be the same as that fixed for industrial designs.

(2) Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and vice versa.

F No country of the Union may refuse a priority or a patent application on the ground that the applicant claims multiple priorities, even if they originate in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the application or applications whose priority is claimed, provided that, in both cases, there is unity of invention within the meaning of the law of the country.

With respect to the elements not included in the application or applications whose priority is claimed, the filing of the subsequent application shall give rise to a right of priority under ordinary conditions.

G(1) If the examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.

(2) The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized.

H Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

(omitted)