

2205 Determination Regarding "Impossible/Impractical Circumstances" in An Examination When a Claim Concerning an Invention of a Product Includes a Manufacturing Method for a Product

1. Basic idea

- (1) The Examiner shall determine whether there exist "impossible/impractical circumstances" on the basis of claims/proofs by the applicant. At that time, the Examiner shall also take into consideration technical knowledge in the technical field to which the invention belongs (it is necessary for the Examiner to note that even if the following types and operative examples are formally relevant, there are cases in which different determinations may be made on the basis of technical knowledge in the technical field).
- (2) Unless there is reasonable doubt regarding the content of a claim/proof by the applicant regarding the existence of "impossible/impractical circumstances" (normally, unless the Examiner indicates a concrete doubt at the time of a Notification of a Reason for Rejection or the time of a Decision of Rejection), the Examiner shall make a determination that impossible or unrealistic circumstances exist.

2. Types and operative examples corresponding to "impossible/unrealistic circumstances"

Type (i): Case in which analyzing the structure or features of an item at application time is technically impossible

Type (ii): Case in which, in view of the fact that, due to the nature of a patent application, rapidity, etc., are required, significantly excessive financial expenditure or time would be required to perform work to identify the structure or properties of the item.

Operative Example:

- Cells, etc., created by a new genetic manipulation

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3. Types and operative examples not corresponding to "impossible/unrealistic circumstances"

Type (iii): Case in which a relationship with the invention of the present application is completely undescribed

Operative Example:

- A case in which, simply, only a claim that time is required for creating the "the claims" has been made
- A case in which, simply, only a claim that performing description using a manufacturing method is easier to understand