

7. Hantei (Advisory Opinions on the Scope of a Right)

<<Subject of Hantei>>

Q1: Is it possible to request Hantei on whether facts indicated regarding a specific right constitute grounds for invalidation?

A1: Since whether or not grounds for invalidation exist is determined in a trial for invalidation, it is not possible to request a judgement on the validity or invalidity of rights through the Hantei system. The Hantei system of the JPO is a system by which a right holder requests judgements on whether the items in question (suspected infringing items, licensed items - customarily termed “article A (article in dispute)”) fall under the scope of his or her patent or other such rights, or by which a person who is not a right holder requests judgements on whether items in question (suspected infringing items, licensed items) fall outside of the scope of the right holder's rights. Unlike trial/appeal decisions, the legal nature of Hantei is an expression of opinion by the JPO, and thus is not legally binding. As such, it is not possible to file an objection to the Hantei results

<<“Grounds for request” in a request for Hantei>>

Q2: To what degree is an explanation of the item in question (“article A”) required when filing a request for Hantei? Do I have to gather materials for the judgment myself, or will the JPO gather materials?

A2: In a request for Hantei, an explanation of the item in question (represented by “イ”) is required as "grounds for request." Since the JPO does not gather materials for making the judgment, when the item in question is not sufficiently identified in the "grounds for request," a Hantei trial examination cannot be performed and the decision will be made to dismiss the request. Therefore, please include as much detail as possible in the Written Request for Hantei.

Click [here](#) to visit the JPO website for more information on writing the Advisory Opinion Request.