

21—02 PUDT
Order for Amendment and Inquiry

1. As a result of examination of formalities of a written demand/request for trial/appeal, etc. according to 21-00, when a deficiency on formalities has been found, an order for amendment or an inquiry is issued in principle.

(1) Order for amendment (the Patent Act Articles 17(3) and 133(1)(2), the Utility Model Act Article 41, the Design Act Article 52, the Trademark Act Articles 56(1), 68(4))

An order for amendment is issued by Commissioner of the Japan Patent Office or a chief administrative judge. This order is issued when an amendment is ordered for a deficiency on formalities (lack of descriptions, unclearness, outstanding (shortage) of payment of fees, etc.) of a demand/request for trial/appeal, an opposition to grant of patent (an opposition to registration of trademark).

Regarding an order for amendment for an appeal against examiner's decision of refusal for a patent application, when the appeal case that a specification, claims or drawings are amended with a request for the appeal, the order is issued by Commissioner of the Japan Patent Office before releasing a reexamination by the examiner before trial, and the order is issued by a chief administrative judge after releasing a reexamination by the examiner before trial and for other cases.

(2) Inquiry (the Patent Act Articles 134(4), the Utility Model Act Article 39(4), the Design Act Articles 52, 68(2), the Trademark Act Articles 56(1), 68(4), 77(2))

An inquiry is issued by a chief administrative judge: it is issued for clarifying the facts on legal requirements of the demand, for indicating

accurately in the demand although the facts are clear, or for arising necessity to clear the facts after entering the proceedings of the merits (→ 37-02). When a deficiency is not resolved even by an inquiry, an order for amendment of (1) will be issued.

2. When a deficiency of formalities is resolved by voluntary amendment by those who perform the procedures by receiving contact from a trial clerk or an administrative judge, prior to the issue of an order for amendment or an inquiry against a deficiency of formalities, the written amendment is received and an order for amendment or an inquiry is not issued.

3. When a deficiency of formalities is apparently an error in writing or a minor mistake and ex officio correction does not change a purport of document, a trial clerk may correct the documents ex officio. In that case, a trial clerk needs to obtain a consent of those who perform the procedures in advance by telephone, facsimile, etc.

4. When an order for amendment or an inquiry is issued for a trial for invalidation, a trial for rescission, etc. and an opposition to grant of patent (an opposition to registration of trademark), a duplicate of a written demand (an opposition) is suspended from serving (dispatching) to a counterparty, and a duplicate shall be served (dispatched) after a deficiency is lawfully amended by a written amendment.

5. A panel judges a demand for trial is unlawful and an amendment thereof may not be made, said demand for trial is immediately dismissed by trial decision without an order for amendment or an inquiry (the Patent Act Article 135, →22-01 8.(2), →61-04 3., etc.).

(Revised Feb. 2015)