

21—06 PUDT
Handling of Supplement of Reasons

1. It is required for a party concern to clarify the reason for allegation in a demand for trial, retrial or advisory opinion (the Patent Act Articles 17(1), 71(3), 131(1)(2), Enforcement Regulations of the Patent Act Articles 46, 46-3, the Utility Model Act Article 38(1)(2), the Design Act Articles 25(3), 52, 60-3, Enforcement Regulations of the Design Act Articles 14, 19(8), the Trademark Act Articles 28(3), 56(1), 68(4), 68-40(1), Enforcement Regulations of the Trademark Act Articles 14, 22(6)) (→ 51-07, 58-01, 70-00).

It is required to describe a reason for request for an opposition to grant of patent (an opposition to registration of trademark) (the Patent Act Article 115(1), Enforcement of Regulations of the Patent Act Article 45-2, the Trademark Act Articles 43-4(1), 68(4), Enforcement Regulations of the Trademark Act Article 12) (→ 66-03, 67-03).

2. There is a restriction on amendment of a reason for demand according the types of trial, etc.

(1) A demand for trial/appeal for patent, design, trademark excluding a trial for invalidation

Regarding a demand for trial/appeal for patent, design or trademark, an amendment firstly requested may be amended partially or entirely and further added a new reason to the amendment until the end of the proceedings unless it changes a purport of demand (However, it is not preferable late supplement of reasons from the perspective of acceleration of the proceedings.) (the proviso to the Patent Act Article 131-2(1)(i), the Design Act Article 52, the Trademark Act Articles 56(1), 68(4)) (→ 61-04 4.).

(2) Trial for invalidation

Regarding a trial for invalidation, in principle, an amendment to change the gist of a reason for demand cannot be made (the Patent Act Article 131-2(1), the Utility Model Act Article 38-2, the Design Act Article 52, the Trademark Act Articles 56(1), 68(4)), but such amendment to change the gist of a reason for demand is sometimes approved by a chief administrative judge (the proviso to the Patent Act Article 131-2(1)(ii), the Utility Model Act Article 38-2, Supplementary Provisions of the 2011 Act on Partial Revision of the Patent Act, etc. Article 19(2) Former utility Model Act Article 41, the Design Act Article 52) (→ 30-01 1., 51-08, 51-15).

(3) Opposition to grant of patent (Opposition to registration of trademark)

It is allowed to amend (change, add, etc.) a reason for request, etc. within a period for amendment for an opposition to grant of patent (an opposition to registration of trademark) (the Patent Act Article 115(2), the Trademark Act Articles 43-4(2)(3), 68(4))(→ 66-03, 67-04).

Patent: until 6 months have been passed on which a patent gazette is issued, or a notice is notified under the Patent Act Article 120-5(1), whichever comes first

Trademark: until 30 days have been passed (extension of the term: for domestic residents (standards) 15 days, for overseas residents 60 days) after 2 months have been passed on which a trademark gazette is issued

3. When a written amendment is submitted for supplement of reasons after the end of the proceedings, it is considered whether the proceedings should be reopened under the contents of the amendment. The proceedings are reopened when necessary (→ 42-00), but when it is found to be unnecessary, the submitted amendment is continuously bound in the record.

4. A written amendment submitted after a certified copy of a trial decision is served and a written amendment submitted after the proceedings of advisory opinion is ended shall be both dismissed (the Patent Act Article 18-2, the Utility Model Act Article 2-5(2), the Design Act Article 68(2), the Trademark Act Article 77(2)).

(Revised Feb 2015)