

**21—09 P****Fees for Demand/Request for Patent Trial and Appeal**

1. Fees for a demand/request for patent trial/appeal shall be collected based on the number of claims shown below:

- (1) For an appeal against examiner's decision of refusal (the Patent Act Article 121(1)), the number of claims described in the claims (including the claims after amendment made with a demand for appeal) at the time of a demand for appeal;
- (2) For a trial for invalidation (the Patent Act Article 123(1)), the number of claims relating to a demand for trial; and
- (3) For a trial for correction (the Patent Act Article 126(1)), the number of claims relating to a demand for trial. In other words, when the entire patent right is corrected, the number of claims recorded in a patent register in demanding a trial. When a correction is made for each claim, the number of claims subject to correction (→ 38-06).

2. When the number of claims at the time of requesting an appeal increases because of the amendment made at the same time of requesting an appeal against examiner's decision of refusal, compared to the number of claims providing a basis for fees for a request for examination already paid, and thus the fees for a request for examination becomes insufficient, the shortage shall be collected.

Please note it is often unlawful to increase the number of claims by amendment in the proceedings on the merit.

3. When the number of claims increases by amendment after requesting an appeal against examiner's decision of refusal, fees for a request for appeal

and a request for examination shall be collected.

However, when the number of claims increases or decreases several times and such increase or decrease is within the fees already paid, the additional fee is not collected.

4. When fees are insufficient corresponding to the above 1.~3., an amendment of fees shall be ordered and asked additional payment.

	A person who issues an order	A person who should pay a fee	Disposal when a payment is not made
Falling under 1.(1), an amendment is made at the time of request for appeal	Commissioner of the Japan Patent Office (the Patent Act Article 17(3))	An appellant (An applicant)	Dismissal of a procedure of a request for appeal (the Patent Act Article 18(1))
Falling under 1.(1), no amendment is made at the time of request for appeal	A chief administrative judge (the Patent Act Article 133(2))	An appellant (An applicant)	Dismissal of a written request for appeal (the Patent Act Article 133(3))
Falling under 1.(2)(3)	A chief administrative judge (the Patent Act Article 133(2))	A demandant	Dismissal of a written demand for trial (the Patent Act Article 133(3))
Falling under 2.	Commissioner of	An appellant	Dismissal of a

(an order for amendment to a written amendment)	the Japan Patent Office (the Patent Act Article 17(3))	(An applicant)	written amendment (the Patent Act Article 18(1))
Falling under 3. (under a reexamination by the examiner before trial)	Commissioner of the Japan Patent Office (the Patent Act Article 17(3))	An appellant (An applicant)	Dismissal of a procedure of a request for appeal (the Patent Act Article 18(1))*
Falling under 3. (under proceedings)	A chief administrative judge (the Patent Act Article 133(2))	An appellant (An applicant)	Dismissal of a written request for appeal (the Patent Act Article 133(3))

(Note) In case of 3. in the table, an amendment of an insufficient fee shall be ordered by one notice combined with a request for examination fee and a request for appeal fee.

\*A request for examination filed by the third party (the Patent Act Article 195(3)) becomes a dismissal of the application (the Patent Act Article 18(2)).

## 5. Notes

For an appeal against examiner's decision of refusal, when the number of claims increases compared to those at the final refusal because of an amendment filed with a request for appeal and there is no shortage of the fees for a request for appeal but there is shortage of the fees for a request for examination, an amendment of the fees shall be ordered for the written amendment. If there is no additional payment, the written amendment shall be dismissed.

6. Over or error payment for fees shall be returned by a request from a person made the payment (the Patent Act Article 195(11)).

Return of over or error payment cannot be requested after one year has been passed from the date of payment (the Patent Act Article 195(12)). A request for return of fees shall be asked by submission of a written request for return of fees already paid (Enforcement Regulations of the Patent Act Article 77, Form 75).

(Revised Oct 2015)