

23—02 P U D T

Voluntary Agent (Attorney)

1. Significance

A voluntary agent becomes receiving the confidence of a principal, namely, becomes based on the will of the principal.

Therefore, a voluntary agent includes an agent under an agreement of business affairs (for example, a partnership agreement, an employment agreement) as well as an “attorney (privately appointed agent)”.

It is understood that a patent administrator (→23-04) and an authorized agent (→23-03) are also included in a voluntary agent, but an attorney (privately appointed agent) will be discussed in this section (23-02).

2. Authority of Representation

(1) Occurrence

Authority of representation occurs when a principal grants the authority to others.

(2) Extinction

It is natural that authority of representation is extinct when the principal is dismissed. However, authority of representation is not extinct due to, different from reasons for extinction of authority of representation regulated under the Civil Code (Civil Code Article 111(1)), death of the principal or extinct by merger of the corporation that is the principal, or termination of duties of trust of a trustee who is the principal, or death of a legal agency, or change or extinction of the authority of representation of the legal agency (Patent Act Article 11, Utility Model Act Article 2-5(2), Design Act Article 68(2), Trademark Act Article 77(2)).

When keeping the principle of the Civil Code Article 111, a procedure which was made by an agent who has not known the death of the principal becomes

invalid and urgent procedures will not be possible to be performed by an agent. These cause unforeseen damages to a successor of the principal, and also an obstacle in progress of various procedures of examinations or trials.

Therefore, the Industrial Property Law makes provisions to stipulate non-extinction of authority of representation (Patent Act Article 11, Utility Model Act Article 2-5(2), Design Act Article 68(2), Trademark Act Article 77(2)).

(3) Scope

Authority of representation delegated by a person domiciled or resident (in the case of a corporation, establishment) in Japan for applications, demands/requests, or other procedures before the Japan Patent Office shall not include the following procedures unless expressly so empowered: conversion, abandonment or withdrawal of an application; withdrawal of an application for registration of extension of the duration of the patent right; withdrawal of a request, demand or motion; claiming a priority based on a patent application, etc. (Patent Act Article 41(1), claiming a domestic priority) or the withdrawal; filing a patent application based on a utility model registration (Patent Act Article 46-2(1)); filing a request for publication before examination of an application; abandonment of a patent right; or filing a request for an appeal against examiner's decision of refusal (Patent Act Article 121(1), Design Act Article 46(1), Trademark Act Articles 44(1), 68(4)), or filing a request for an appeal against examiner's decision to dismiss amendment of design/trademark registration (Design Act Article 47(1), Trademark Act Articles 45(1)), 68(4)), or appointment of sub agent (→ 23-08) (Patent Act Article 9, Utility Model Act Article 2-5(2), Design Act Article 68(2), Trademark Act Article 77(2)).

It has to be said that an act of agent after the death of the principal is on behalf of a successor of the right.

3. Authority to Appoint Sub Agent (Executor's Right to Appoint Sub Agent)

A designated executor has a right to appoint a sub agent as a voluntary

agent of a testator (→ 23-05 1.(2)) (Civil Code Article 1016).

(Revised March 2012)