

23—08 P U D T
With or Without an Agent and
Trial and Appeal Proceedings

1. When There Is an Agent

(1) To confirm whether there is a written document certifying authority of representation (hereinafter, referred to as a “document”) (Enforcement Regulations of the Patent Act Article 4-3, Enforcement regulations of the Utility Model Act Article 23, Enforcement Regulations of the Design Act Article 19(1), Enforcement Regulations of the Trademark Act Article 22), and order amendment if the document is not appropriate or the document is not attached (the Patent Act Articles 17(3), 133(2), the Utility Model Act Articles 2-2(4), 41, the Design Act Articles 52, 68(2), the Trademark Act Articles 56(1), 68(4), 77(2)).

(2) A legal agent, in case there is a voluntary agent or a supervisor of guardian, becomes unauthorized agent if the document is not appropriate regardless of amendment (→ 23-07).

(3) Capacity to act (→ 23-00) of agent or capacity to be delegated of agent is not often searched, but only when there is a dispute (allegation and evidence) between the parties and an existence of capacity is contested, the capacity should be searched by ex officio for determination.

2. When There Is No Agent Undertaking Necessary Procedures

(1) In case of a person not domiciled or resident (or an establishment in case of a legal entity) within Japan (an overseas resident)

A. When an overseas resident performs a procedure without a patent administrator (→ 23-04), said procedure is deemed inappropriate and thus dismissed (the Patent Act Articles 18-2, 133-2, 135, the Utility Model Act

Article 41, the Design Act Articles 52, 68(2), the Trademark Act Articles 56(1), 68(4), 77(2)).

B. When a demandee is an overseas resident

(A) By the time documents related to a trial (an opposition to grant of patent, an opposition to registration of trademark) are served (dispatched), when a written power of attorney has been already submitted for the patent

(the Patent Act Articles 7(2), 133(2), Enforcement Regulation of the Patent Act Article 6, the Utility Model Act Articles 2-5(2), 41, Enforcement Regulation of the Utility Model Act Article 23(1), the Design Act Articles 52, 68(2), Enforcement Regulation of the Design Act Article 19(1), the Trademark Act Articles 56(1), 68(4), 77(2), Enforcement Regulation of the Trademark Act Article 22(1)).

C. Even when a legal agent undertakes a procedure, if there is a supervisor of guardian, submission of a letter of consent of a supervisor of guardian shall be ordered (the Patent Act Articles 7(3), 133(2), Enforcement Regulation of the Patent Act Article 6, the Utility Model Act Articles 2-5(2), 41, Enforcement Regulation of the Utility Model Act Article 23(1), the Design Act Articles 52, 68(2), Enforcement Regulation of the Design Act Article 19(1), the Trademark Act Articles 56(1), 68(4), 77(2), Enforcement Regulation of the Trademark Act Article 22(1)).

D. When not responding to the order of A ~ C, the procedure shall be dismissed by decision (the Patent Act Article 133(3), the Utility Model Act Article 41, the Design Act Articles 52, the Trademark Act Articles 56(1), 68(4), 77(2)).

(Revised Feb 2015)