

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 (Patent Act Articles 17(3), 133(2), Utility Model Act Articles 2-2(4), 41, Design Act Articles 52, 68(2), 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 (allegations and evidence) between the parties and an existence of the capacity is contested, the capacity should be searched by ex officio for determination.

2. When There Is No Agent for Undertaking Necessary Procedures

(1) In the case of a person who is not domiciled or resident in Japan (i.e. an overseas resident) (or an establishment in the case of a corporation)

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

41, Design Act Articles 52, 68(2), 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), check a power of attorney submitted during the application procedures or appeal procedures under the Patent Act Article 121(1) of the subject case, or a power of attorney attached to the notification of appointment of agent, etc. if they have been already submitted by a patentee (including a power of attorney attached to an application for transfer of registration). If it is found the power of attorney refers to the patent (utility model, design, trademark) right, the related documents shall be served (dispatched) to the latest patent administrator.

(B) When other than the above (A) or when a power of attorney has not been submitted, it should be confirmed the consent whether a patent administrator of a patent application or an appeal case under the Patent Act Article 121 (1) of the subject case, or a patent administrator of an application for transfer of registration has an intention to accept an appointment. If not accepted, the related documents shall be dispatched to the right holder and notify the right holder that the procedures thereafter must be undertaken by a patent administrator (→ 23-10).

(2) In the case of a minor, an adult ward, or a person under curatorship

A. When a minor or an adult ward performs procedures without a legal agent, order amendment to appoint a legal agent (Patent Act Articles 7(1), 133(2), Utility Model Act Articles 2-5(2), 41, Design Act Articles 52, 68(2), Trademark Act Articles 56(1), 68(4), 77(2)). However, this does not apply when a minor is capable of legally acting independently.

B. When a person under curatorship performs procedures without a consent of a curator, order submission of a letter of consent of a curator (Patent Act Articles 7(2), 133(2), Enforcement Regulation of the Patent Act Article 6,

Utility Model Act Articles 2-5(2), 41, Enforcement Regulation of the Utility Model Act Article 23(1), Design Act Articles 52, 68(2), Enforcement Regulation of the Design Act Article 19(1), 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, order submission of a letter of consent of a supervisor of guardian (Patent Act Articles 7(3), 133(2), Enforcement Regulation of the Patent Act Article 6, Utility Model Act Articles 2-5(2), 41, Enforcement Regulation of the Utility Model Act Article 23(1), Design Act Articles 52, 68(2), Enforcement Regulation of the Design Act Article 19(1), Trademark Act Articles 56(1), 68(4), 77(2), Enforcement Regulation of the Trademark Act Article 22(1)).

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

(Revised February 2015)