

25—01.2 P U D T

Designated Time Limit of Trial for Invalidation, Trial for Correction, and Trial for Rescission of Trademark Registration

For a trial for invalidation, a trial for correction, and a trial for rescission of trademark, a time limit designated by a chief administrative judge based on the provisions of laws and ministerial ordinances (the designated time limit) is determined below as the standard designated time limit.

The same applies to a retrial for a final and binding decision of a trial for invalidation, a trial for correction, and a trial for rescission of trademark.

1. Standard Designated Time Limit for Domestic Residents

(1) Standard designated time limit for an opportunity of substantial allegations and evidence

A. Opportunity for substantial allegations and evidence for a right holder

(A) After demanding a trial for invalidation and a trial for rescission of trademark registration, a legal time limit to reply (a time limit of request for correction) (the Patent Act Article 134(1), the Utility Model Act Article 39(1), the Design Act Article 52, the Trademark Act Article 56(1)) provided to a right holder for the first time shall be 60 days for patents, 30 days for utility models, or 40 days for designs and trademarks.

(B) For the second time for an opportunity to reply, there is an opportunity for legal reply when an amendment is made to change the gist of reasons for request (the Patent Act Article 134(2), the Utility Model Act Article 39(2), the Design Act Article 52), an opportunity for reply based on enforcement regulations (Enforcement Regulations of the Patent Act Article 47-2(1), Enforcement Regulations of the Utility Model Act Article 23(12), Enforcement Regulations of the Design Act Article 19(8), Enforcement Regulations of the Trademark Act Article 22(8)), or reapplication of the first

opportunity for legal reply (the Patent Act Article 134(1), the Utility Model Act Article 39(1), the Design Act Article 52, the Trademark Act Article 56(1)), and in any case of the above the time limit shall be 30 days.

(C) For an opportunity for correction against an advance notice of trial decision (the Patent Act Article 164-2(2)), a time limit provided to a right holder shall be 60 days.

B. Opportunity for substantial allegations and evidence for a demandant of trial for invalidation and a demandant for a trial for rescission of trademark registration

(A) A time limit for responding to a written refutation for a demandant of a trial for invalidation and a demandant of a trial for rescission of trademark registration against the written reply of the right holder shall be 30 days (Enforcement Regulations of the Patent Act Article 47-3(1), Enforcement Regulations of the Utility Model Act Article 23(12), Enforcement Regulations of the Design Act Article 19(8), Enforcement Regulations of the Trademark Act Article 22(6)).

C. A time limit for responding to a notice of results of ex officio proceedings

(A) 30 days for the following procedures: a time limit for filing a statement in responding to a notice of results of ex officio proceedings by a right holder (the Patent Act Article 153(2), the Utility Model Act Article 41, the Design Act Article 52, the Trademark Act Article 56(1)); a time limit for filing a statement in response to a notice of reasons for refusal of correction in a trial correction (the Patent Act Article 134-2(5)); and a time limit for filing a statement in response to a notice of results of investigation of evidence by ex officio (the Patent Act Article 150(5), the Utility Model Act Article 41, the Design Act Article 52, the Trademark Act Article 56(1)).

(B) A time limit for responding to an inquiry in document proceedings (the Patent Act Article 134(4), the Utility Model Act Article 39(3), the Design Act Article 52, the Trademark Act Article 56(1)) shall be about 15 days as a

reference, but a chief administrative judge shall designate a response time limit deemed appropriate considering the content of an inquiry.

(2) A standard designated time limit for procedures already prepared by the right holder

A. When a decision to reverse the trial decision to maintain the patent is fixed and binding in a suit rescinding a trial decision, a designated time limit for a patentee to request correction when initiating the proceedings of a patent invalidation trial which is re-pending before the JPO (the Patent Act Article 134-3) shall be a very short time limit, such as about 10 days.

(3) A standard designated time limit for a response not directly related to substantial allegations and evidence

A. A time limit for responding to a notice of confirmation of consent for confirming a consent of a right holder with an amendment to change the gist of reasons for request made by a demandant of an invalidation trial (the Patent Act Article 131-2(2)(ii), Enforcement Regulations of the Patent Act Article 47-4(1), the Utility Model Act Article 38-2(2), Enforcement Regulations of the Utility Model Act Article 23(12), the Design Act Article 52, the Enforcement Regulations of the Design Act Article 19(8)) shall be 10 days.

B. A designated time limit of expressing a statement of the party concerned, etc. about a request for intervention (the Patent Act Article 149(2), the Utility Model Act Article 41, the Design Act Article 52, the Trademark Act Article 56(1)) shall be 15 days.

C. A time limit for responding to an order of amendment in case of a violation of formality requirements (the Patent Act Article 133(1)(2), the Utility Model Act Article 41, the Design Act Article 52, the Trademark Act Article 56(1)) shall be 10 to 20 days.

However, among violation of formality requirements, a time limit for responding to a violation of description requirements in regards to reasons for request for a trial for invalidation (the Patent Act Article 131(2), the Utility Model Act Article 38(2), the Design Act Article 52), and in regards

to the gist of request and reasons therefor for a trial for correction (the Patent Act Article 134-2(9) → Article 131(3)) shall be 30 days.

D. A time limit of filing a written explanation to a notice of reasons for dismissal (the Patent Act Article 133-2(2), the Utility Model Act Article 41, the Design Act Article 52, the Trademark Act Article 56(1)) shall be 20 days.

E. Regarding a designated time limit for succession responding to an order of succession of procedures for trials/appeals, etc. (the Patent Act Article 133-2(2), the Utility Model Act Article 41, the Design Act Article 52, the Trademark Act Article 56), and a procedure time limit regulated under other enforcement regulations (Enforcement Regulations of the Patent Act the proviso of Article 50(3), Article 50-8(1), the proviso of Article 58-2(1), Article 58-17(3), Article 60(1), etc., Enforcement Regulations of the Utility Model Act Article 23(12), Enforcement Regulations of the Design Act Article 19(8), Enforcement Regulations of the Trademark Act Article 22(8)), they shall be designated in consideration of each condition, but not uniformly determined the standard designated time limit.

(4) A standard designated time limit for those reside a remote area or an area with transportation difficulty

For a party concerned or an intervener residing a remote area or an area with transportation difficulty, a time limit shall be added for 15 days to a standard designated time limit.

2. Standard Designated Time Limit for Overseas Residents

A standard designated time limit for overseas residents indicates below, whereas a standard designated time limit for domestic residents is described in the above 1.

(1) To add 30 days to a time limit on an initial statutory response for a right holder

(2) To add 20 days to a time limit from a second response for a right holder

- (3) To add 30 days to a designated time limit on a request for correction of a right holder against an advance notice of trial decision
- (4) To add 20 days to a time limit for filing a refutation of a demandant of a trial for invalidation and a demandant of a trial for rescission of trademark registration
- (5) To add 20 days to a time limit for responding to a notice of results of ex officio proceedings
- (6) To add 10 days to a time limit for replying an inquiry
- (7) There is no difference for the procedures already prepared by a right holder
- (8) A response time limit on procedures not directly related to allegations and evidence makes basically no difference, but adds 10 days for a statement of opinions to a request for intervention and for a response to an inappropriate power of attorney.

3. Designation of Time Limit Different from Standard Designated Time Limit

(1) Designation of a time limit shorter than the standard designated time limit

For the following cases, a chief administrative judge may designate a time limit shorter than the standard designated time limit stated in the above, considering the individual circumstance (Common to all laws, but the designated time limit may be extended after the designation by ex officio or by request of a person who performs procedures).

A concept of designating a time limit particularly shorter than the standard designated time limit for a specific case applies the same way to a domestic resident and an overseas resident.

A. When a person performs a procedure consents to a time limit shorter than the standard designated time limit

B. When a party concerned is deemed to be able to handle in a time limit shorter than the standard designated time limit in view of the details and nature of a case.

C. When a time limit on submission of allegations and evidence is designated in the situation where the case is considerably ripe and it is unlikely that a party concerned prepares a new allegations and evidence.

D. When a particular prompt proceedings are required

E. In an infringement lawsuit between parties of the trial, when it is recognized that parties concerned are possible to prepare in a short time limit because allegations and evidence over the defense of patent invalidity based on the grounds for invalidation alleged in the trial have been already done.

F. In an invalidation trial of which examination is resumed due to a final and binding court decision rescinding the trial decision to invalidate the patent or design and to rescind the trademark registration, when an opportunity of submission of a written refutation is given to a demandant of invalidation trial.

(2) Designation of time limit longer than the standard designated time limit

If most of working days are spoiled due to Government Holidays such as year-end and New Year holidays, or Golden Week holidays in the middle of the response time limit when applied the standard designated time limit, a chief administrative judge may designate a response time limit extended to the standard designated time limit for a time limit corresponding to the number of spoiled days (When Government Holidays fall into the end of the time limit, not in the middle, the time limit is rather extended substantially and therefore an extension is not made).

4. Extension by request or by ex officio of the time limit which has been already designated (→ 25-04)

(Revised Feb 2015)