

26-04 P U D T

Resumption of Procedures

1. Death of a Party Concerned

(1) When an agent is not appointed

Procedures shall be suspended until resumption is completed (→26-01). When a fact of the death is not confirmed, administrative procedures for resumption are as follows:

A. Even if death of a party concerned may be presumed, but cannot be confirmed as indicated in the below, a chief administrative judge requests a local government for a copy of family register and an attachment of a family register using a written commission of an attached Form 1.

(A) When a mail served by the JPO is returned to the JPO as undeliverable due to death of a recipient (Appeal trial 2837, 1955)

(B) When a relative, etc. of a party concerned notifies death of the party concerned by a written statement, etc., however, materials evidencing the notice are not attached with the written statement (Appeal trials 618, 619, 1953)

B. When resumption of procedures is deemed necessary due to death of a party concerned, the Commissioner of the JPO or administrative judges (a panel) shall order resumption of the procedures by a written order of resumption of procedures using Form 2 to an heir who was confirmed according to A. upon designating an adequate time limit by request of the other party or ex officio (Patent Act Article 23(1), Utility Model Act Article 2-5(2), Design Act Article 68(2), Trademark Act Article 77(2)).

C. When there is no resumption within the time limit designated in B., the Commissioner of the JPO or administrative judges (a panel) may consider resumption has been made on the day when the time limit has lapsed (Patent Act Article 23(2), Utility Model Act Article 2-5(2), Design Act Article 68(2),

Trademark Act Article 77(2)).

D. When the Commissioner of the JPO or a chief administrative judge may consider resumption has been made according to C, the Commissioner of the JPO or a chief administrative judge shall notify a party concerned to that effect by a notice of continuation of procedures using Form 3 (Patent Act Article 23(3), Utility Model Act Article 2-5(2), Design Act Article 68(2), Trademark Act Article 77(2)).

(2) Examples of resumption of procedures

A. An administrative judge who hears of death of a right holder A of an invalidation trial shall commission a municipal office M to send a copy of family register for confirming the death and the heir using Form 1.

B. After confirming the death by a copy of family register, the JPO orders all 6 people who are believed to be an heir to resume the trial procedures by specifying the time limit of 30 days using Form 2.

C. The JPO orders to submit a document proving renouncement of the inheritance of A stating the address and name of all 6 heirs and affixing a seal of all heirs since they have renounced the inheritance of A.

D. There is submission of a renouncement of the inheritance stating that all rights arising from the patent has been renounced, however, the following measure is taken for confirming the effect on the Civil Code.

E. Due to the death (with date) of the patentee A (with address), the JPO commissions a family court M to inform the JPO upon searching whether the heirs accept or renounces the inheritance pursuant to Civil Code Articles 915, 938 within 3 months from the date on which the heirs have known their inheritance.

F. The JPO receives a reply from the family court M that there is no statement on renunciation of the inheritance or qualified acceptance, therefore, there is no reasons for considering there was no inheritance. It is found that later in that trial decision “the inheritance of the patent right has been once done,

then all rights arising from these patent rights in each item were renounced”.

(3) When an agent is appointed (→26-01 3. (1))

Since the authority of representation is not extinguished even the party concerned is deceased (Patent Act Article 11, Utility Model Act Article 2-5(2), Design Act Article 68(2), Trademark Act Article 77(2)), the procedures shall not be suspended by application of the Code of Civil Procedure Article 124(2) as applied *mutatis mutandis* pursuant to the Patent Act Article 24 (Utility Model Act Article 2-5(2), Design Act Article 68(2), Trademark Act Article 77(2)), but note the following points:

A. The procedures shall be suspended when the authority of representation for litigation is lost due to resignation, death of an agent, or other reasons, or when matters within the authority of representation originally given to the agent have been completed.

For example, the authority of representation of the agent is in principle made at each instance (Principle of Appointment of Agent at Instance). The procedures shall be suspended after service of a transcript of a trial decision even there is an agent, except a case where there is the authority of representation for an upper instance court such as there is a special authorization to file a litigation rescinding a trial decision ((1972 (Gyo-Ke) 12) Judgment of the Tokyo High Court, June 29, 1973), ((1967 (Gyo-So) 1) Judgment of the Tokyo High Court, November 21, 1967).

B. If replacement of a party concerned is occurred due to a reason for suspension, an agent shall undertake the trial procedures for a new party concerned. At this time, however, a trial may continue under the name of the previous party concerned and continuation of the proceedings is not prevented from the progress without clarifying who a successor is at that time.

C. Regarding a trial decision made under the name of the deceased person, the decision is valid for a successor that is different from the case where the deceased person was a party concerned from the beginning.

In a case where a party concerned is deceased, etc., the successor submits a power of attorney under his/her name again, eligibility of the succession shall be searched. If the succession considers eligible, a trial decision made under the successor's name shall not be prevented. Even if a trial decision is made under the name of the person who is not eligible for succession, the trial decision is also valid as made for a true successor.

2. Bankruptcy, etc. of Corporation That Is a Party Concerned

(1) Procedures which are suspended due to a decision of commencement of bankruptcy procedures (Bankruptcy Act Article 30(1)), a decision of commencement of rehabilitation procedures (Corporate Reorganization Act Article 41(1)), or an administration order (Civil Rehabilitation Act Article 64(1)) to a party concerned (Bankruptcy Act Article 44(1) as applied mutatis mutandis pursuant to Article 46 of the same Act, Corporate Reorganization Act Article 52(1) as applied mutatis mutandis pursuant to Article 53 of the same Act, Civil rehabilitation Act Article 67(2) as applied mutatis mutandis pursuant to Article 69 of the same Act) may be resumed by a trustee, etc. (Bankruptcy Act Article 44(2) as applied mutatis mutandis pursuant to Article 46 of the same Act, Corporate Reorganization Act Article 52(2) as applied mutatis mutandis pursuant to Article 53 of the same Act, Civil rehabilitation Act Article 67(3) as applied mutatis mutandis pursuant to Article 69 of the same Act).

(2) When bankruptcy procedures or rehabilitation procedures are completed or a decision of cancellation of an administration order is concluded before the resumption of item (1), a party concerned who is a bankrupt, etc. shall automatically resume the procedures (Bankruptcy Act Article 44(6) as applied mutatis mutandis pursuant to Article 46 of the same Act, Corporate Reorganization Act Article 52(6) as applied mutatis mutandis pursuant to Article 53 of the same Act, Civil rehabilitation Act Article 68(4)(1) as

applied mutatis mutandis pursuant to Article 69 of the same Act).

(3) After the resumption of item (1), when the procedures are suspended due to completion of bankruptcy procedures or rehabilitation procedures or finalization of a decision of cancellation of an administration order, a party concerned who is a bankrupt, etc. shall resume the procedures (Bankruptcy Act Article 44(5) as applied mutatis mutandis pursuant to Article 46 of the same Act, Corporate Reorganization Act Article 52(5) as applied mutatis mutandis pursuant to Article 53 of the same Act, Civil rehabilitation Act Article 68(5)(3) as applied mutatis mutandis pursuant to Article 69 of the same Act).

(Revised December 2023)

Form 1 (No. 1)

Commission

M/D/Y

To Head of municipality

Chief Administrative Judge, JPO

For the appeal case FUFUKU 20XX-OOOOOO (Patent Application No. 20YY-△△△△△△) , the JPO will ask you to send each one copy of family register and a supplementary of family register of the following person who is an appellant to confirm a fact of decease and an heir of said person (Family Register Act Article 10-2(2)).

Address

Name

Form 1 (No. 2)

Commission

M/D/Y

To Head of municipality

Chief Administrative Judge, JPO

For the invalidation trial case MUKOU 20XX-800000 (Patent Registration No. OOOOOOOO) where, the JPO will ask you to send a copy of residence record, or a copy of deleted residence record if moving out of the following person who is a registered right holder to confirm his/her whereabouts (Act of the Basic Resident Registers Article 12-2(1)).

Address

Name

Form 2

Dispatch No.123456 1/E

Dispatch Date M/D/Y

Order of Resumption of Procedures

M/D/Y

Chief Administrative Judge, JPO

Appeal No. FUFUKU 20XX-000000

(Patent Application No.) (Patent Application No. 20YY-△△△△△△)

Heir presumptive Mr./Ms. ○○○○

For this appeal case, as a result of ex-officio search by the JPO, it is found that Mr./Ms. ○○○○ who is an appellant, is deceased on (month/day/year).

You are recognized as the first rank presumptive (joint) heir(s), therefore, resumption of the appeal procedures must be made within 60 days from the date on which this notice was dispatched.

If you fail to do so within the designated time limit, the appeal procedures shall be continued upon assuming that there was resumption under the provision of the Patent Act Article 23 (2).

Other first rank presumptive heirs ○○○○

○○○○

(Utility Model) The Patent Act Article 23(2) shall apply mutatis mutandis to the Utility Model Act Article 55(2) before the revision of 1993.

(Design) The Patent Act Article 23(2) shall apply mutatis mutandis to the Design Act Article 68(2).

(Trademark) The Patent Act Article 23(2) shall apply mutatis mutandis to the Trademark Act Article 77(2).

Please contact below if any query:

The OOrth Trial and Appeal Division

Tel: 03(3581)1101 Extension XXXX Fax: ()

Form 3

Dispatch No. 123456 1/E

Dispatch Date M/D/Y

Notice of Continuation of Procedures

M/D/Y

Chief Administrative Judge, JPO

Appeal No. FUFUKU 20XX-000000

(Patent Application No.) (Patent Application No. 20YY-△△△△△△)

Heir Mr./Ms. ○○○○

For this appeal case, since Mr./Ms. ○○○○ who is an appellant is deceased (month/day/year), we have asked you to resume the appeal procedures. However, there was no petition filed for resumption within the designated time period. Therefore, the appeal procedures shall be continued upon assuming that there was resumption under the provision of the Patent Act Article 23 (2).

(Utility Model) The Patent Act Article 23(2) shall apply mutatis mutandis to the Utility Model Act Article 55(2) before the revision of 1993.

(Design) The Patent Act Article 23(2) shall apply mutatis mutandis to the Design Act Article 68(2).

(Trademark) The Patent Act Article 23(2) shall apply mutatis mutandis to the Trademark Act Article 77(2).

Please contact below if any query:

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