

26-04 P U D T

Resumption of Procedures

1. Death of a Party Concerned

(1) In case where an agent is not appointed

Procedures shall be suspended until resumption is completed (→26-01). A clerical work in case where a fact of the death is not confirmed and for resumption of procedures are as follows:

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

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

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

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

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

Trademark Act Article 77(2)).

D. Commissioner of the JPO or administrative judges (a panel) shall dispatch a notice of continuation of procedures to a party concerned if the resumption is considered to be made according to C. (the Patent Act Article 23(3), the Utility Model Act Article 2-5(2), the Design Act Article 68(2), the Trademark Act Article 77(2)).

(2) Examples of resumption of procedures

A. An administrative judge who hears of the 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 an inheritor using Form I.

B. After confirming the death by a copy of family register, the JPO orders all 6 people who supposed to be an inheritor 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 inheritance of A stating an address and name, and affixing a seal of all 6 inheritors since all inheritors have renounced the inheritance of A.

D. There is submission of a renouncement of 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 a patentee A (with address), the JPO commissions a family court M to inform the JPO upon searching whether an inheritor accepts or renounces the inheritance pursuant to Civil Code Articles 915, 938 within 3 months from the date on which an inheritor has known his/her inheritance.

F. The JPO receives a reply from a family court M that there is no declaration on renunciation of the inheritance or qualified acceptance, therefore, there is no reasons for considering no inheritance. It is found that in the trial decision “the inheritance of the patent right is once inherited, then all rights arising from the patent of each item are renounced”.

(3) In case where an agent is appointed (→26-01 3.(1))

Since the authority of representation is not extinguished even the party concerned is deceased (the Patent Act Article 11, the Utility Model Act Article 2-5(2), the Design Act Article 68(2), the Trademark Act Article 77(2)), the Patent Act Article 24 (the Utility Model Act Article 2-5(2), the Design Act Article 68(2), the Trademark Act Article 77(2)) shall apply to mutatis mutandis to Code of Civil Procedure Article 124(2) and by applying Code of Civil Procedure Article 124(2), the procedures shall not be suspended, 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 notice for entrusted items of a special authorization for a litigation rescinding a trial decision (1972 (Gyo-Ke) No. 12, Judgment of the Tokyo High Court, June 29, 1973), (1967 (Gyo-So) No. 1, Judgment of the Tokyo High Court, Nov 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. A trial decision made under the name of the deceased person, the trial decision is valid for a successor different from the case where the deceased is a party concern from the beginning.

In 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 not eligible for succession, the trial decision is also valid as made for a true successor.

2. Bankruptcy, etc. of Corporation Who 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)) for a party concerned may be resumed by a trustee, etc. (Bankruptcy Act Article 46 shall apply mutatis mutandis to 44(1) of the same Act, Corporate Reorganization Act Article 53 shall apply mutatis mutandis to Article 52(1) of the same Act, Civil rehabilitation Act Article 69 shall apply mutatis mutandis to Article 67(3) of the same Act).

(2) When bankruptcy procedures or rehabilitation procedures are completed, or a decision of cancellation of an administration order is finalized before the resumption of (1), a party concerned who is a bankrupt, etc. shall automatically resume the procedures (Bankruptcy Act Article 46 shall apply mutatis mutandis to 44(6) of the same Act, Corporate Reorganization Act Article 53 shall apply mutatis mutandis to Article 52(6) of the same Act, Civil rehabilitation Act Article 69 shall apply mutatis mutandis to Article 68(4)(1) of the same Act).

(3) After the resumption of (1), the procedures which 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 46 shall apply mutatis mutandis to 44(5) of the same Act,

Corporate Reorganization Act Article 53 shall apply mutatis mutandis to Article 52(5) of the same Act, Civil rehabilitation Act Article 69 shall apply mutatis mutandis to Article 68(5)(3) of the same Act).

(Revised June 2019)

Form 1 (No. 1)

Commission

M/D/Y

To Head of municipality

Chief Administrative Judge, the JPO

For the case FUFUKU 20XX-OOOOOO (Patent Application No. 20YY-△△△△△△) , we 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, the JPO

For the invalidation trial case MUKOU 20XX-800000 (Patent Registration No. OOOOOOO) , we 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 (Family Register Act Article 10-2(2)).

Address

Name

Dispatch No.123456 1/E

Dispatch Date M/D/Y

Order of Resumption of Procedures

M/D/Y

Chief Administrative Judge, the JPO

Trial No. FUFUKU 20XX-000000

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

Heir presumptive Mr./Ms. ○○○○

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

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

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

Please contact below if any query:

The ○○th Board of Trial and Appeal

Tel: 03(3581)1101 Extension XXXX Fa x : 03(3501)XXXX

Form 3

Dispatch No. 123456 1/E

Dispatch Date M/D/Y

Notice of Continuation of Procedures

M/D/Y

Chief Administrative Judge, the JPO

Appeal No. FUFUKU 20XX-000000
 (Patent Application No.) (Patent Application No. 20YY-△△△△△△)
 Heir Mr./Ms. ○○○○

For this trial case, since Mr./Ms. ○○○○ who is an appellant is deceased (month/day/year), we ordered 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) Utility Model Act Article 55(2) before the revision of 1993 shall apply mutatis mutandis to Patent Act Article 23(2).

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

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

Please contact below if any query:

The ○○th Board of Trial and Appeal

Tel: 03(3581)1101 Extension XXXX Fa x : 03(3501)XXXX