

31-00 P U D T

Eligibility as a Demandant in a Trial for Invalidation

1. Eligibility as a Demandant in a Trial for Invalidation

A person who may demand a trial for invalidation (eligibility as a demandant) is stipulated as an “interested person” in a trial for invalidation of patent, a trial for invalidation of registration of the extension of the patent term and a trial for invalidation of trademark registration (the Patent Act Articles 123(2), 125-2(2), the Trademark Act Article 46(2)). While, a person who may demand a trial for invalidation is stipulated as “anyone” in a trial for invalidation of utility model registration and a trial for invalidation of design registration (the Utility Model Act Article 37(2), the Design Act Article 48(2)). However, it is stipulated that a person who has the right to obtain a patent, utility model registration or design registration has the eligibility as a demandant, in a trial for invalidation on the grounds of attribution of the right for a patent, utility model and design (the Patent Act Article 123(2), the Utility Model Act Article 37(2), the Design Act Article 48(2)).

2. Transition and Interpretation of Provisions of Eligibility as a Demandant

Eligibility as a demandant in a trial for invalidation has been changed as shown in Table 1. Court cases constantly required a demandant be an “interested person” even when no explicit provisions is stipulated except a patent invalidation trial, etc. after the 2003 revised law where a demandant was stipulated as “anyone”.

In the revision of the law in 2014, an opposition to grant of patent was established and eligibility as a petitioner was stipulated as “anyone”. Along

with the revision, the eligibility as a demandant in a patent invalidation trial is also confirmably stipulated as an “interested person”. It has not changed interpretation on the determination criteria and its operation regarding eligibility as a demandant from the law before revising in 2003.

Eligibility as a demandant in a trial for invalidation of registration of the extension of the patent term and a trial for invalidation of trademark registration is also confirmably stipulated as an “interested person”, along with the revision. It has not changed interpretation on the determination criteria and its operation regarding eligibility as a demandant from the law at the past, similar to a patent invalidation trial.

(Note) Eligibility for being a party concerned of a trial/appeal → 22-01 7.(2)

Table 1: Transition of eligibility as a demandant in a trial for invalidation

	1921 Law	1959 Law	1987 Law	2003 Law	2014 Law
Patent invalidation trial (Patent Act Article 123)	Interested person and examiners	No provision in the Article (Interpreted as interested person in court cases)		Anyone	Interested person
Invalidation trial of registration of extension of patent term (Patent Act Article 125-2)	/		No provision in the Article (Interpreted as interested person in court cases)		Interested person
Invalidation trial of registration of utility model (Utility Model Act Article 37)	Interested person and examiners	No provision in the Article (Interpreted as interested person in court cases)		Anyone	
Invalidation trial of registration	Interested person and examiners	No provision in the Article		Anyone	

of design (Design Act Article 37)		(Interpreted as interested person in court cases)	
Invalidation trial of registration of trademark (Trademark Act Article 37)	Interested person and examiners	No provision in the Article (Interpreted as interested person in court cases)	Interested person
(Reference) Opposition to grant of patent (Patent Act Article 113)	Whoever it is	Anyone	Anyone

(Revised Feb 2015)