

31-01 P T

Interested Persons

1. Interested Persons

Interested persons who may demand a trial for invalidation (the Patent Act Articles 123(2), 125-2(2), the Trademark Act Article 46(2)) are those who directly receive or are possible to receive legal interests or are directly affected by or possible to be affected by legal status for the right in the presence of the patent (trademark) right.

It should be determined individually and specifically based on details of the right, business of a demandant, etc., whether a demandee is permitted as an interested person or not. It should not be determined as a general ability to perform procedures apart from an individual case.

2. Description of Interests in Written Demand for Trial

It is not necessary for a demandant to describe an interest in a written demand for an invalidation trial. In addition, it is not necessary for a panel to require an amendment even if the written demand includes no description of interests.

Note that, a section describing an interest is not provided in a form of a written demand for a trial (Enforcement Regulations of the Patent Act Article 46(1) Form 62, Enforcement Regulations of the Trademark Act Article 14 Form 15).

3. Proceedings for Interests

A. In a case where a demandee contests for an interest and it is apparent for a panel that a demandant has an interest, a panel shall proceed the proceedings

without asking the demandant for any explanations.

B. In a case where a demandee contests for an interest and it is not apparent whether a demandant has an interest, a panel shall request the demandant an explanation. For example, a demandee served a demandant a written reply stating that he/she would contest for an interest and would ask a demandant for submitting a written refutation. The panel, in addition, if there is still doubt about the interest even considering the statement of the demandee, the panel shall proceed with an examination on the interest *ex officio* using an inquiry, etc.

C. In a case where a demandee does not contest for an interest, a panel shall proceed with the proceedings without asking the demandant for any explanation. However, it is apparent for the panel that a demandant does not have any interest, a panel shall ask the demandant for explanation similar to B.

(Reference)

When it is required a demandant to have an interest, an interest shall not be examined since it does not become any problem unless otherwise the other party has a particular dispute. This is from the background that the law was revised in 1959 for improving the conditions (Notes 1. ~2.) that a lot of time and efforts used to spend unnecessarily for the examination on whether to have an interest although said interest is a matter to be examined *ex officio*, thereby preventing from entering the proceedings of the case.

Note 1. The JPO ed., Feb 1957, "Industrial Property Rights System Revision Council Report Manual" Japan Institute of Invention and Innovation, pp115-116.

Note 2. The 31st Session of the Diet the House of Representatives Commerce and Industry Committee Minutes No. 37

4. Handling of the Case Where It Is Not Recognized as Having an Interest

As a result of the proceedings, when it is not recognized as having an interest in requesting a trial, said request for trial is deemed illegal due to lack of eligibility as a demandant, the request for trial shall be dismissed by a trial decision (the Patent Act Article 135, the Trademark Act Articles 56(1), 68(4)).

5. Base Point in Time for Determination of Interest

A base point in time shall be at the time of a trial decision.

(Court Cases)

“In case of demanding for a trial for invalidation of trademark registration under the provision of the Trademark Act Article 46, it should be interpreted that it is necessary that a demandant has a legal interest for demanding a trial. An interest of demand for an invalidation trial takes a demand for trial as legal and is a requirement to be met for obtaining a trial decision on whether a demand is correct or not. Therefore, the interest shall be determined at the time of a trial decision as a base point in time and thus is required to exist at the time of the trial decision, and it should be said this would be enough for an interest” (1989 (Gyo-Ke) 65, Judgment of the Tokyo High Court, Oct 19, 1989).

Regarding whether there is an interest for a demand for trial of confirming the scope of the patent right, . . . even if a demand for trial has no interest at the time of demanding but has an interest by the time of a trial decision, a demand for trial shall not be dismissed, and it is reasonable to understand a trial decision should be made on the scope of the patent right” (1961 (O) 465, Judgment of 2nd Petty Bench of the Supreme Court, Dec 7, 1962).

6. Description of Interest in Trial Decision

When a demandee has no dispute on the interest, it is not necessary to

describe the determination on the interest in a reason for a trial decision.

(Revised Feb 2015)