35-00 P U D T
Examination of Evidence in General

1. Principle of Directness and Principle of Indirectness

In the examination of evidence, a principle of directness refers to a situation where a panel to be made a trial decision examines evidence by their own, and a principle of indirectness refers to a situation where an administrative judge who is a part of the members of the panel (an authorized administrative judge) or an administrative judge who is not a member of the panel (a commissioned administrative judge) or an institution other than a panel examines evidence and a panel forms the conclusion based on the results of their report. In the former principle, a panel directly accesses evidence so that it is possible to form a fresh and accurate conclusion, whereas in the latter, a panel does not have an opportunity to directly access evidence, therefore, the former is considered superior to the latter.

Code of Civil Procedure is in principle adopts the principle of directness (Code of Civil Procedure Article 249(1)). As an exception, it is permitted an examination of evidence by an authorized administrative judge or a commissioned judge (Code of Civil Procedure Articles 185, 268) and the update of the prior arguments when a court judge is replaced (Code of Civil Procedure Article 249(2)) from the perspective of ensuring mobility of the proceedings and litigation economics.

The trial/appeal procedures in principle adopt the principle of directness, while an examination of evidence by an authorized administrative judge (→ 35-11) and commission to examination of witness by court (→35-03) adopt the principle of indirectness.

2. Examination of Evidence, Factual Findings

(1) For appropriate trial proceedings and its conclusion, the grounds and processes of “factual findings” (work to determine the existence of fact) shall be fair and reasonable. The evidence is required for finding a fact in principle, therefore in examination of the evidence, namely a procedure of an “examination of evidence”, it is also required to be fair and reasonable.

Factual findings using the results of illegal examination of evidence or ignoring the results of legal examination of evidence are both illegal. For the purpose of being guaranteed that there is no illegality in factual findings and enhancing the reliability on trials for parties concerned and third parties, materials for factual findings and reasoning process supported by these materials shall be clarified in a trial decision (for that reason, it is required to state “reasons” in a trial decision ((1979 (Gyo-Tsu) 134) Judgement of Supreme Court), Mar 13, 1984)).

(2) Regarding the existence of fact affecting the conclusion of proceedings, it usually happens that there is a dispute between the parties. The nature of the dispute is often rooted in the difference in evaluation of evidence such as testimony of a witness, descriptions in a document or an object to be examined.

Evaluation of evidence shall be finally determined by a panel. A panel shall not be wrongly influenced by the statement of the parties and shall understand and perceive testimony of witness, descriptions of documents, or objects to be examined to find a fact based on its freedom of personal conviction. However, it is needless to say that the evaluation of evidence should be along with the social common sense and experiences, and the technical common sense.

3. Clear Distinction Between Factual Findings and Legal Evaluation

(1) Trial proceedings follow the process below.

① Establishing an existence of concrete fact based on “evidence” submitted

for a trial (factual findings).

② Determining whether the concrete fact whose existence are established satisfy with the legal requirements regulated under the provisions of the Patent Act (Utility Model Act, Design Act, Trademark Act) (legal evaluation).

③ Leading conclusion of a certain administrative disposition (legal effect)

As such, the “existence of concrete fact (①)” and “whether they satisfy with the legal requirements (②)” are different issues. “Examination of evidence” is made to find the “existence of concrete fact (①)”.

(2) However, a request for examination of evidence by a party concerned is not sometimes distinguished “a fact to be proved” from “statements of legal effects”.

For example, a request for examination of evidence such that a “fact that the present invention is publicly implemented will be proved by testimony of a witness A” is legally inappropriate in that a “fact” of “publicly implemented” which is not a concrete fact, but legal requirements will be proved.

Administrative judges should, without being tossed about by such a request, understand what should be proved by a witness A is, for example “the fact a product XX is sold to B on (D/M/Y)”, but “whether or not the sales fall under ‘publicly implemented’” should be interpreted (determined) by the administrative judges from the results of the factual findings. The administrative judges make parties concerned be clear what is the concrete fact to be proved by an examination of evidence and make the parties concerned clearly distinguish them from statements of legal evaluation.

(3) As described, parties concerned shall state after distinguishing the following two: ① proving the existence of the concrete fact based on the evidence and ②the fact falls under the constituent features regulated by law (or vice versa, it does not fall under the constituent features). But, as described above, since evaluation of evidence and factual findings (①) are

to be determined by a free conviction of a panel, legal evaluation of said fact (②) is also a panel's exclusive prerogative and the panel shall not receive an undue influence on the statement of parties concerned in any determination.

4. Multiple Means of Proof and Factual Findings

(1) Regarding multiple evidence is submitted for one concrete fact, and sometimes they are all examined. In this case, a panel shall conduct the consistent factual findings based on the multiple evidential materials obtained from the examination of evidence. In particular, when an examination of evidence is conducted on means of proof submitted by a party concerned who is responsible to prove a certain fact (evidence, Hon-sho) and means of proof denying the fact submitted by the other party (counter evidence, Han-sho), for establishing conviction of the administrative judges, it has become issues that a relationship between a fact shown by each evidence and possibility of the existence of counter fact shown by Han-sho.

(2) It should not determine a "fact is not acknowledged" immediately by the possibility of existence of counter fact. Even if there is a slight opportunity of existence of counter fact, when a panel has confident that there exists a fact to be proved to the extent that "the ordinary person" considers no reasonable doubt, as a result of examining all evidence comprehensively and reviewing the counter fact in light of empirical doctrine, the panel considers a "fact may be acknowledged" and makes a trial decision accordingly.

(Revised Oct. 2015)