

**37-02 P U D T****Inquiry****1. Inquiry**

A chief administrative judge may inquire parties and intervenors orally or in writing regardless of a type of trial/appeal (an appeal against an examiner's decision of refusal, a trial for invalidation, etc.) and a method of proceedings (documentary or oral proceedings) (Patent Act Article 134(4), Utility Model Act Article 39(4), Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

(1) In formality examination for a written demand/request, an inquiry may be conducted for confirmation of an intention of procedures of a party (→ 21-02).

(2) An inquiry may be filed when it is necessary to clarify a statement of parties, etc., for example, when there is a doubt whether an amendment or correction is legal, when it clarifies a ground for statement, when it is confirmed a technical common knowledge/a well-known art.

(3) In an appeal against an examiner's decision of refusal for patent, when an amendment is filed with a request for appeal, reconsideration by an examiner before appeal (Patent Act Article 162) is to be examined, a report of results of examination (Patent Act Article 164(3)) including legality of the amendment, patentability of the invention, etc. except when a patent is granted. When it is found necessary for a panel to request a view of an appellant based on the report, an inquiry may be conducted using the report.

**2. Format of Inquiry**

When an inquiry is conducted in writing, a written inquiry (Form 1) under the name of a chief administrative judge is used.

An inquiry may be conducted for “matters related to a trial/appeal”, therefore, an inquiry may be conducted orally or in writing on a date other than the oral proceeding date in a case by oral proceedings.

A TV conference system (→ 35-01 10.), a facsimile or an electric mail may be used for inquiry. In that case, an interview record or a response record is prepared.

Regarding oral proceedings, Enforcement Regulations of the Patent Act Article 52-2(1) provides that a chief administrative judge may question to a party or an intervenor or encourages a party or an intervenor to prove facts and legal matters for clarifying the case, and Enforcement Regulations of the Patent Act Article 52-2(1) provides that associate judges may take measures prescribed in the preceding paragraph with notification to a chief administrative judge.

### 3. Handling a Case Where a Party Does Not Respond to Inquiry

When a party, etc. does not respond to an inquiry, the proceedings of a trial/appeal shall be continued. A trial decision to dismiss or a decision to dismiss shall not be rendered, or an unfavorable conclusion against a party, etc. shall not be drawn, on the ground that a party, etc. does not give a response to an inquiry.

### 4. Inquiry on Refusal to Testify

Code of Civil Procedure Article 199(1) provides “Except in the case as referred to in Article 197, paragraph (1), item (i), the court in charge of the case hears the parties and reaches a judicial decision, in the form of a ruling, on the propriety of the refusal to testify” and this article shall apply mutatis mutandis to Patent Act Article 151 (Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)). Therefore, refusal to testify may be inquired in an examination of witness of a trial/appeal.

(Reference)

Inquiry of opposition to grant of patent (→67-05 5.(2))

Inquiry of opposition to registration of trademark (→66-04 4.(3))

(Revised Dec. 2020)

Form 1

## Inquiry

Request for appeal	Appeal 20xx-123456
(Patent Application No.)	(Patent Application No. 20xx-123456)
Draft date	M/D/Y
Chief Administrative Judge, JPO	
Appellant	
Agent	

Regarding this appeal case, a written reply to the following point (a petition in line with the following purpose) is submitted within xx days from the date on which this inquiry was dispatched.

Note

(Remarks)

If you do not intend to continue an appeal, withdraw a request for appeal without delay.

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In a case of withdrawal of the request for appeal, please notify a chief administrative judge or administrative judge listed at the end of the inquiry to that effect as far in advance as possible.

If you have any question, please contact us at the following:

The XXth Board, Trial and Appeal Department, Administrative Judge XXX  
Tel:03(3581)1101 Extension xxxx Facsimile 03(xxxx)xxxx