

45-20 P D T**Clause Example of Dismissal of Trial/Appeal Decisions**

1. Lapse of Period for Filing a Request

When a request for an ex parte appeal shall be dismissed (Patent Act Article 135, Design Act Article 52, Trademark Act Article 56(1)) due to non-observance of a term for requesting an appeal (Patent Act Article 121, Design Act Articles 46, 47, Trademark Act Articles 44, 45), a reason for the appeal decision of dismissal may be described as the following clause example.

(Clause example)

Reason

A decision of final rejection was made on (M/D/Y) against the patent application (filing date (M/D/Y), and a certified copy of the decision was served on (M/D/Y) to the applicant (or an agent of the applicant) by the electronic data processing system who is an appellant of this appeal case.

(Note)

A request for an appeal against an examiner's decision of refusal shall be filed within 3 months from a date on which a certified copy of a decision of final rejection was served by (M/D/Y) (according to a calculation of the term under the provision of Patent Act Article 3) under the provision of Patent Act Article 121. However, a request for the appeal of the case was filed on (M/D/Y) and thus this is an unlawful request filed after the statutory period has been passed, and such defect may not be amended. Therefore, the request for an appeal of the case shall be dismissed under the provision of Patent Act Article 135.

Consequently, the appeal decision is rendered according to the conclusion.

(Note)

When a certified copy is served by mail, the above clause is replaced after “~, and a certified copy of the decision” with “was served on (M/D/Y) to an applicant (or an agent of the applicant) who is an appellant of the appeal case, that is apparent from a mail delivery certificate.”.

2. Clause Example of Appeal Decision to Dismiss a Request for Appeal Filed by Some of the Joint Applicants

For an appeal against an examiner’s decision of refusal (a decision of a dismissal of amendment of a design or a trademark registration application), when a request for appeal which is filed by some of the joint applicants shall be dismissed (→22-01 3., 22-03 3. (1)), a reason for an appeal decision may be described as the following clause example.

A chief administrative judge shall order an amendment when it is presumed that an intention that an appeal is in effect a joint appeal is expressed, for example, if an agent states appellants partially in the request by mistake even though all members of joint applicants entrust a request for an appeal to the agent. In that case, a request for appeal may not be dismissed under the provision of Patent Act Article 135 (→23-02 3.(1) B d).

(Clause Example)

Reason

This appeal case is an appeal against an examiner’s decision of refusal for a patent application of which the right to be patented is jointly owned by (A) and (B). The request should have been filed under the names of all members of the co-owner; but it was filed only with a part of the members. Therefore, it is an unlawful request, and such defect may not be amended.

(Note)

Accordingly, the request for an appeal of the case shall be dismissed under the provision of Patent Act Article 135.

(Note)

After filing a request for an appeal, an appellant is changed, and when it is recognized that such change alters a gist of the request (→30-01). The following clause shall be inserted after the last sentence “and such defect may not be amended.”: “an amendment to change an appellant by a written amendment filed on (D/M/Y) violates the provision of Patent Act Article 131-2(1) due to alteration of a gist of the request.”

3. Clause Example of Trial Decision to Dismiss a Demand for Trial in Which Some of the Joint Owners of the Patent Right Claiming as a Demande

For an invalidation trial on a patent right which is jointly owned, when a demand for trial with some of the co-owners claiming as a demandee shall be dismissed by trial decision (→22-02 3.(2)), a reason for the trial decision may be described as the following clause example. (Note 1)

(Clause Example)

Reason

A trial of the case is an invalidation trial for a patent of which the right jointly owned by (A) and (B). When a trial is demanded, all members of the joint owners of the patent should have claimed as a demandee under the provision of Patent Act Article 132(2), but the case was filed claiming only (A) as a demandee who is one of the joint owners. Therefore, it is an unlawful demand, and such defect may not be amended (Note 2).

Therefore, a demand for a trial of the case shall be dismissed under the

provision of Patent Act Article 135.

Consequently, a trial decision is rendered according to the conclusion.

(Note 1) For a trial for rescinding a trademark registration, when a demand for a trial shall be dismissed by trial decision due to claiming only some of the joint owners of the trademark as a demandee, a reason for the decision may be described in the same purport as the clause example.

(Note 2) After filing a demand for trial, a demandant is changed, and when it is recognized that such change alters a gist of the demand (→30-01), the following clause shall be inserted after the last sentence “and such defect may not be amended.”: “An amendment to change a demandee by a written amendment filed on (D/M/Y) violates the provision of Patent Act Article 131-2(1) due to alteration of a gist of the demand.”

4. Clause Example of Trial Decision to Dismiss a Demand for Trial in Which a Demandee Is Not a Patentee

For an invalidation trial, a demand for trial in which a demandee is not a patentee shall be dismissed (→22-01 7., 22-02), a reason for a trial decision may be described as the following clause example (Note 1) .

(Clause Example)

Reason

A trial of the case is an invalidation trial for patent in which a patentee is (A). A trial shall be demanded with a patentee claiming as a demandee, however, the demand for the trial has been filed with (B) who is not a patentee claiming as a demandee, therefore, it is an unlawful demand, and such defect may not be amended (Note 2).

Therefore, a demand for a trial of the case shall be dismissed under the

provision of Patent Act Article 135.

Consequently, a trial decision is rendered according to the conclusion.

(Note 1) For a trial for rescinding a trademark registration, when a demand for a trial shall be dismissed by trial decision due to claiming a person who is not a patentee as a demandee, a reason for the decision may be described in the same purport as the clause example.

(Note 2) After filing a request for trial, a demandant is changed, and when it is recognized that such change alters a gist of the demand (→30-01), the following clause shall be inserted after the last sentence “and such defect may not be amended.”: “An amendment to change a demandee by a written amendment filed on (D/M/Y) violates the provision of Patent Act Article 131-2(1) due to alteration of a gist of the demand.”

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