

**51-20 P****Handling of Prohibition of Double Jeopardy  
in a Request for Correction**

When a trial decision to admit the correction (the Patent Act Article 134(2)) requested during the procedure of the trial for invalidation is finalized (In the case a registration of a final trial decision is made on or before March 31, 2012, “When a final trial decision for a trial for invalidation is registered”), and regarding the judgment of the appropriateness of the correction, the prohibition of double jeopardy (the Patent Act Article 167; the Utility Model Act Article 41) is applied. The party and intervenor of the previous trial for invalidation (if the registration of the final trial decision is on or before March 31, 2012; “Anyone”) may not request a trial for invalidation (the Patent Act Article 123(1)8) insisting that the correction is inappropriate as per the same facts and the same evidence. If such a request is made, it is to be dismissed by a trial decision.

(1) According to the Patent Act Article 167, the prohibition of double jeopardy is applied to the trial decision of the trial for patent invalidation or of the trial for invalidation for the term extension registration.

(2) When the trial decision to maintain the right is finalized, allowing the correction requested during the procedure of the trial for patent invalidation, as proceedings that are substantially equivalent to the case—wherein a trial for invalidation has been made because of an improper correction—is being conducted, with regard to the facts and evidence adopted as the basis for allowing the said correction—as described in the above trial decision—it is reasonable to consider that the doctrine of prohibiting double jeopardy is applied. Therefore, it shall not be possible to request a trial for invalidation on the grounds of unlawful correction, with said facts and evidence. If such a request is made, it is to be dismissed by the trial decision.

(3) Additionally, the application of prohibition of double jeopardy (the Patent Act

Article 167) disallows the trials for patent invalidation or the trials for invalidation for the term extension registration. Therefore, when the trial decision to maintain the right without allowing the correction is finalized, in the subsequent trial for correction, prohibition of double jeopardy is not applied to request the correction of the same content in the form of refuting the same facts and evidences adopted in the trial decision.

(4) Moreover, because the request is for a trial but not for correction that is prohibited by the application of the prohibition of double jeopardy, when a trial decision to maintain the right without allowing a correction is finalized, in the subsequent corrections during the procedures of other trials for invalidation, the prohibition of double jeopardy is not applied to the request for the correction of the same content in the form of refuting the same facts and evidences adopted in the trial decision.

(Revised June 2019)