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Procedure of Trial for Rescission Proceedings

1. Oral Proceedings

A trial for rescission shall be conducted by oral proceedings; provided, however, that a chief administrative judge may, upon a motion by a party concerned in the case, or ex officio, decide to conduct the trial by documentary proceedings (Trademark Act Article 56 (1) → Patent Act Article 145 (1), Trademark Act Article 68 (4) → Trademark Act Article 56 (1) → Patent Act Article 145 (1)).

After deciding to conduct the trial by documentary proceedings, the chief administrative judge may change his/her mind and decide to conduct the examination by oral proceedings again. In such a case, the notice of oral proceedings shall be transmitted.

In a trial for rescission where the adversarial system is taken, it is often the case that the reasons for requesting for a trial and the answers are unclear or complicated, and it is also often the case that parties concerned make many claims, and that the claims are disorganized. In such cases, utilizing oral proceedings has the effect of accuracy with respect to the findings, and organizing the points of dispute among the parties facilitates prompt and precise proceedings.

Accordingly, a trial for rescission is conducted by oral proceedings except for the exceptional cases, such as those described in 2. below, where documentary proceedings is appropriate.

2. Documentary Proceedings

(1) Documentary proceedings in a trial for rescission

A trial for rescission is conducted by oral proceedings in principle; however, as exceptional cases, the trial may be conducted by documentary proceedings in the following circumstances (→33-00.1).

- A. Where a request for a trial or a procedure pertaining to a request for a trial (a written request for trial) shall be dismissed
- B. When it becomes clear that neither party will dispute in court
- C. When all parties (and intervenors) have filed a motion for documentary proceedings

D. Where, in a trial for rescission of registered trademark not in use (→53-01), there is no reply from the demandee or it is clear from the evidence submitted that the request shall be approved or disapproved.

E. Other cases where it is determined that there is no need to conduct oral proceedings.

(2) Notice of documentary proceedings

Where the examination is to be conducted by documentary proceedings, the notice of documentary proceedings shall be transmitted except for the case of above (1) A (→32-01).

(Added Feb. 2015)