

54-05.1 P

Amendment Changing the Gist of Written Request for the Trial for Correction

1. Outline

Any amendment to a written request for a trial shall not change the gist thereof (the Patent Act Article 131-2 (1)). A change in the gist refers to a case wherein the identity or scope of the “statement for a trial” on which the request is based, is changed by amending the description of the purport of the request (the correction item) among items described in the written request for the trial (→30-01).

2. Types of Amendment and the Method of Determining Change in the Gist

The purport of the Patent Act Article 131-2 defining change in the gist of a written request for a trial is to prevent a delay in proceedings due to expansion or change of subject of proceedings.

(1) Change by addition

If a change by addition (addition of a correction item) is made in the purport of the request, for example, correction items A (restriction) and B (clarification of an ambiguous description) with item A, item B, and item C (correction of errors), the change by addition is deemed to change the gist of the written request for the trial.

On the contrary, an amendment to add a correction item of deleting a claim, which is to understand that such an amendment deletes the subject of proceedings, or an amendment to add only a correction item of dissolving a citation relation between claims, is not deemed to change the gist of the written request for the trial because no expansion or change of subject of proceedings is caused.

(2) Change by replacement

A reciprocal change in the purport of the request, for instance, replacing correction item A with correction item B, shall fall under a new request in place of the original request; therefore, it is deemed to change the gist thereof.

However, an amendment to change a correction item concerning a claim into the correction item that would delete the claim, and the correction item that the description, claims, or drawings ensures to be consistent with the amendment of deleting the claim, are not deemed to change the gist of the written request for the trial because no expansion or change of the subject of proceedings is caused.

(3) Change by restriction

If a restriction change is made in the purport of the request, for example, replacing correction items A (restriction) and B (errors), only with correction item A (restriction), this action is not deemed to change the gist thereof, in general.

(Revised Jun.2019)