

**57-01 P U D T****Types and Requirements of Intervention**

## 1. Types of Intervention

(1) Intervention under Patent Act Article 148(1) (Intervention as a co-demandant)

A person who may demand for a trial (an invalidation trial of patent, an invalidation trial of registration of extension of the term) under the provision of Patent Act Article 132(1) (Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)) may intervene in the subject trial as a demandant until the trial proceedings reach a conclusion (Patent Act Article 148(1), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

This is called an intervention as a co-demandant, an intervention equivalent to an intervention as a co-litigant under Code of Civil Procedure, or an intervention equivalent to an intervention as a co-party in joint litigation.

(2) Intervention under Patent Act Article 148(3) (Supporting intervention)

A person who has an interest on the results of a trial may intervene in the trial to assist one of the original parties until the proceedings reach a conclusion (Patent Act Article 148(3), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

This is called a supporting intervention or an intervention equivalent to a supporting intervention in joint litigation.

(3) Intervention under Patent Act Article 119(1) (Supporting intervention)

A person who has a right on a patent right and any other persons who have an interest on a patent right may intervene in the proceedings of an opposition to grant of patent to assist a patentee until a decision of the opposition is

rendered.

(4) Interventions under Patent Act Article 43-7(1) (Supporting intervention)

A person who has a right on a trademark right and any other persons who have an interest on a trademark right may intervene in the proceedings of an opposition to registration of trademark to assist a trademark right holder until a decision of the opposition is rendered.

## 2. Mode of Intervention

(1) Intervention under Patent Act Article 148(1) (Intervention as a co-demandant)

When an intervention under Patent Act Article 148(1) is permitted, the intervenor obtains a position as a demandant of a joint trial. A mode of trial becomes corresponding to semi-necessary joinder (Patent Act Article 132(1), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

Therefore, an intervenor receives effects of a trial decision as a demandant of a joint trial.

(2) Intervention under Patent Act Article 148(3) (Supporting intervention)

Intervention under Patent Act Article 148(3) is to intervene for assisting one of the parties. An intervention as a co-demandant in (1) may intervene only on a demandant side, while this supporting intervention allows to intervene on the side of both parties.

## 3. Requirements of Intervention

(1) Intervention under Patent Act Article 148(1) (Intervention as a co-demandant)

### A. Who may intervene

When there are two or more people who demand for an invalidation trial for patent(registration) or a trial for rescission of trademark registration for

the same patent right (a utility model right, design right, trademark right), they may jointly demand a trial (Patent Act Article 132(1), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)). They need to be qualified as demanding a trial jointly (→22-01~03, 31-00) as just described.

#### B. Same subject

The subject shall be the same.

For example, in case of a patent including two or more inventions, a subject for a trial already pending shall be related to the same invention in the same patent.

#### C. Timing of application

An application of intervention may be filed any time before the proceedings reach the conclusion.

### (2) Intervene under Patent Act Article 148 (Supporting intervention)

#### A. Person who may intervene

A person should have an interest on a result of trial (→ D.) but does not need to have eligibility for being a party.

A result of trial refers to the final results on validity or invalidity of rights but does not mean a determination shown in reasons of a trial decision or facts.

#### B. Timing of application (→ (1)C)

#### C. Interests of a supporting intervenor

(A) A supporting intervenor needs to have an interest on a result of trial (→31-00) (Patent Act Article 148(3), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4))

(B) A person who has an interest under Patent Act Article 148(3) refers to the third party who has a possibility to have a change in a legal position or a legal relationship among a petitioner, a demandant and a demandee against the patent right subject to trial depending on a result of trial.

D. When it is found a petitioner for intervention does not have any interest, it is decided not to permit the intervention.

E. A measure when any interest is not described in an application of intervention (→57-02 1.).

F. Timing of determination of interest

Eligibility for being a demandant of trial is determined when a trial decision is made. Since whether to intervene is decided before a trial decision, it is interpreted that interest of a supporting intervenor is determined at the time of the decision of intervention.

Once an intervenor is allowed to intervene and becomes an intervenor, there is no way to overturn. Therefore, an intervenor holds its position regardless of allegation of an appellant of an appeal trial. There is a trial decision for such a case. (Appeal trial No. 223, 1948, Sep 30, 1950) (In case of intervention of Patent Act Article 148(1)-Eligibility for being a demandant →57-07 2.).

(Revised Feb 2015)