

57-00 P U D T

Intervention

1. Significance of Intervention

Intervention means the third party participates trial procedures by joining one of the parties of the trial during the pendency of the trial.

A solution of dispute by a trial such as an invalidation trial is generally made between parties of the trial, thus it is in general not necessary to interfere of the third party. However, when the third party has any legal relationship with the party or based on extending an effect of a trial decision to the third party under the Patent Act, a result of a trial between other people sometimes directly or indirectly affects a legal position of the third party.

In this situation, the third party may suffer unforeseen legal damages depending on the result as just observing the proceeding of the trial procedures conducted by the parties. The third party in the situation intervenes a pending trial between parties to assist one of the parties or joins the trial as a demandant into one of the parties to state a purport of own demand against the opposite party. The system of intervention accepts proceeding the trial in this way.

2. Trials etc. to Which the Provision of Intervention Are Applied

An intervention is provided in Patent Act Articles 148, 149 (as applied mutatis mutandis pursuant to Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1) 68(4))

- (1) Invalidation trial
- (2) Invalidation trial for registration of the extension of the patent term
- (3) Opposition to grant of patent (Patent Act Article 119)
- (4) Rescission of trademark registration

- (5) Invalidation trial of reclassification of trademark registration
- (6) Opposition to registration of trademark (Trademark Act Article 43-7)
- (7) Re-trial against a final and binding trial decision of (1), (2), (4) or (5), and a final and binding decision to revoke of (3) or (6)

3. Trials to Which the Provision of Intervention Are not Applied

A provision of intervention does not apply to the following trials (the provision of Patent Act Article 161 (Design Act Article 52, Design Trademark Act Articles 56(1), 68(4)) and Patent Act Article 166).

- (1) Appeal against an examiner's decision of refusal (Patent Act Article 121(1), Design Act Article 46(1), Trademark Act Article s 44(1), 68(49))
- (2) Appeal against an examiner's decision to dismiss amendment of design or trademark application for registration (Design Act Article 47(1), Trademark Act Articles 45(1), 68(4))
- (3) Trial for correction of patent application (Patent Act Article 126)

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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.).

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57-02 P U D T**Non-Compliance with Formality Requirements of (Written)
Application of Intervention**

1. Regarding a written application of intervention, when a case falls under the following (1) or (2), a chief administrative judge designates the term and orders an amendment, and if an applicant fails to do so after the term has been passed, a chief administrative judge shall dismiss the application by decision similar to the dismissal of a written demand for trial (Patent Act Article 133, Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

(1) When a written application of intervention does not comply with formality requirements provided in Patent Act Article 149(1) (Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)) (Enforcement Regulations of the Patent Act Article 49, Form 65 (Enforcement Regulations of the Utility Model Act Article 23(10), Enforcement Regulations of the Design Act Article 19(8), Enforcement Regulations of the Trademark Act Articles 22(5)(6)).

(2) When a fee for the application is not paid or insufficient.

2. When a written application of intervention which is insufficient in formality may not amend the insufficiency, a chief administrative judge shall dismiss the application by decision upon giving an opportunity of submission of a written explanation (Patent Act Article 133-2, Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

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57-05 P U D T
Effects of Intervention

1. Trial Procedures

An intervenor may submit a document stating a method of allegation or evidence in a trial, and act any other trial procedures (Patent Act Article 148(4), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

2. Use of Trial Procedures by Applicant for Intervention

An applicant for Intervention may act trial procedures with applying an intervention (Code of Civil Procedure Article 43(2)).

It is interpreted that trial procedures acted by an applicant of intervention are effective when a party is used it regardless of the time of the use by a party, even if a decision of disapproval of the intervention becomes determined (Analogous to the Code of Civil Procedure Article 45(4)).

3. Suspension or Termination of Procedures of Intervenor

When a reason for suspension or termination of procedures of an intervenor (Patent Act Articles 22~24, Utility Model Act Article 2-5(2), Design Act Article 68(2), Trademark Act Article 77(2)) is occurred, trial procedures themselves are stayed (Patent Act Article 148(5)).

4. Withdrawal of Intervention

(1) Timing of withdrawal

Withdrawal of intervention is equivalent to withdrawal of a demand for a trial (Patent Act Articles 155(1), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)), the withdrawal may be

accepted at any stage of a trial until a trial decision becomes final and binding.

(2) Conditions of withdrawal

It is interpreted that a consent of any party is not required for withdrawal of intervention because withdrawal does not harm the interests of the original party (a party that includes an intervenor) and the other party, and the effects of a trial decision extend to the intervenor.

There is an exception when an intervention is under Patent Act Article 148(1)(intervention as a co-demandant) and a trial demandant withdraws a trial and only an intervenor proceeds a trial proceedings, after a demandee submits a written reply against a statement of the intervenor, it is interpreted that a consent of the demandee is required for the withdrawal of intervention by analogy with the provision of Patent Act Article 155(2) (Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

(3) Procedures of withdrawal

Withdrawal is conducted orally in oral proceedings and in writing in other cases. When withdrawal is conducted in writing, both parties shall be notified to that effect.

5. Lapse of Intervention

Intervention is lapsed when non-permission of intervention is determined, a trial decision becomes final and binding, or an application of intervention is withdrawn.

6. Relationship with Withdrawal of Trial

When a demandant/appellant withdraws a demand for trial, a consent of an intervenor is not required.

When a trial is withdrawn, an intervenor under Patent Act Article 148(1) (intervention as a co-demandant) may continue the trial proceedings (Patent Act Article 148(2)), but an intervenor under Patent Act Article 148(3)

(Supporting intervention) will lose the status as an intervenor.

7. Effects of Trial Decision

When a trial decision is made, effects of the decision extend to an intervenor. A person whose application of intervention is rejected may file an action against the trial decision (Patent Act Articles 178(2), Utility Model Act Article 47(2), Design Act Article 59(2), Trademark Act Article 63(2)). Considering this, it is interpreted that effects of a trial decision extend to a person whose application of intervention is rejected.

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57-07 P U D T**Decision to Approve or Disapprove Intervention**

1. Procedures of Decision to Approve or Disapprove Intervention

(1) When an application for intervention is filed, a chief administrative judge shall serve a duplicate of a written application for intervention to both parties and intervenors (who have already obtained an approval of intervention) and shall give them an opportunity to state their opinion against the request within specified period of time (Patent Act Article 149(2), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

Documents other than a written application for intervention submitted by an intervenor will be handled according to item 4. below.

(2) As a result of hearing the opinion in the above (1), when eligibility of being a demandant for intervention under Patent Act Article 148(1) (intervention by a third party as a party), or interests under Patent Act Article 148(3)(assisting intervention), are not clear, a chief administrative judge shall inquire the applicant to clarify it (a reason for intervention) (Analogous to the Code of Civil Procedure Article 44(1)).

(3) After the specified period has been passed, a decision to approve or disapprove intervention shall be made. Administrative judges (a panel) shall decide it by trial (Patent Act Article 149(3), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

In the Code of Civil Procedure, only when a party (Code of Civil Procedure includes an intervenor in parties) objects against the intervention, approval or disapproval of the intervention is decided (Code of Civil Procedure Article 44), whereas in the Patent Act, approval or disapproval shall be decided regardless of whether opinions are submitted from parties and intervenors.

(4) A decision to approve or disapprove intervention shall be made in writing

and a reason therefore shall be included in the decision (Patent Act Article 149(4), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)) (→3.).

2. Decision to Approve or Disapprove Intervention

Requirements for intervention is a matter to be examined ex officio.

In deciding approval or disapproval of intervention, a reason for the request and the opinion against this request shall be examined.

Approval or disapproval of intervention is determined by the presence or absence of eligibility of being a demandant in case of intervention under Patent Act Article 148(1) and by the presence or absence of interests in case of intervention under Patent Act Article 148(3).

3. Form of Decision to Approve or Disapprove Intervention

(1) Matters to be stated in a decision to approve or disapprove intervention is determined in Enforcement Regulations of the Patent Act Article 50-6 (Enforcement Regulations of the Utility Model Act Article 23(10), Enforcement Regulations of the Design Act Article 19(8), Enforcement Regulations of the Trademark Act Article 22(5), (6)).

A. Trial number

B. Name or appellation of parties and intervenors, and their agent

C. Name or appellation and address or domicile of an applicant for intervention, and name or appellation of the agent

D. Conclusion and reasons for the decision

E. Date of the decision

An administrative judge affixes the name and seals on a decision (Imprint alternative measure →00-02 2.).

Parties and intervenors to be stated in the decision are as below.

(A) Demandant

(B) Intervenor of demandant's side

(C) Demandee

(D) Intervenor of demandee's side

(2) Indication of conclusion (→45-04 6. (3))

4. Documents Submitted by Applicant for Intervention

An applicant for intervention may request for intervention and conduct the trial procedures as an intervenor in parallel (→57-05 2.), therefore, a duplicate of the documents submitted by the applicant shall be served to parties even before deciding approval or disapproval of intervention, and any opinions, if necessary, may be asked.

5. Dissatisfaction against Decision to Approve or Disapprove Intervention

Dissatisfaction may not be filed against a decision to approve or disapprove intervention (Patent Act Article 149(5), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

An applicant for intervention whose application has been rejected may also institute an action if dissatisfied with the trial decision (Patent Act Article 178(2), Utility Model Act Article 47(2), Design Act Article 59(2), Trademark Act Articles 63(2)).

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57-09 P U D T
Request for Intervention and
Dismissal or Withdrawal of Demand for Trial

1. Dismissal of Demand for Trial

When procedures for a written demand/request for trial/appeal have a deficiency, a demand/request for trial/appeal or a trial/appeal shall be dismissed. When an application for intervention is filed with a demand for trial with a deficiency, a chief administrative judge shall dismiss a written demand for trial by decision (Patent Act Article 133(3), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56, 68(4)), or a panel shall dismiss a trial by trial decision (Patent Act Article 135, Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56, 68(4)), then, a chief administrative judge shall dismiss an application for intervention by decision (Patent Act Article 133-2, Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56, 68(4)).

2. Withdrawal of Trial Before Decision to Approve or Disapprove Intervention

An application for intervention is filed under Patent Act Article 148, Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56, 68(4), when a trial is withdrawn before a decision to approve or disapprove intervention, the trial shall be ended.

3. Dismissal or Withdrawal of Trial After Decision to Approve or Disapprove Intervention

An intervenor under Patent Act Article 148(1) (intervention by a third party as a party) may continue the trial procedures (Patent Act Article 148(2)) even

after the original party (a party that includes an intervenor) withdraws the trial (Patent Act Article 148(2)), while an intervenor under Patent Act Article 148(3)(assisting intervention) will lose the status as an intervenor when a trial is withdrawn (→57-05 6.).

Even if a demandant does not satisfy eligibility of being a demandant and the trial shall be dismissed due to unlawful demand, when an intervenor under Patent Act Article 148(1) (intervention by a third party as a party) satisfies eligibility of being a demandant, the trial procedures may be continued.

(Example) A panel shall dismiss a demand for trial and a trial decision is rendered to invalidate the registration of utility model by request of an intervenor (under Patent Act Article 148(1) (intervention by a third party as a party) (Trial No. 14725, 1979 (Utility Model Registration No. 1059988)).

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