

58-12 PUD

Seeking the Opinion of Director of Customs

1. Outline of the System of Inquiry for Opinions

When a customs verification procedure (note) is initiated on a patent right, utility model right, or design right, a right holder, an exporter, or an importer may, within a certain period of time, petition the Director-General of Customs to request an opinion from the Commissioner of the Japan Patent Office as to whether said right belongs in the technical scope of the patented invention or registered utility model, or belongs in the registered design or design similar thereto (Customs Act Articles 69-7(1) and 69-17(1)).

The Director-General of Customs may also request an opinion from the Commissioner of the Japan Patent Office on the technical scope, etc. when the former finds it necessary to do so, without a petition from a right holder, an exporter, or an importer (Customs Act Articles 69-7(9) and 69-17(9)).

The Director-General of Customs notifies a petitioner and an exporter or an importer about the content of the opinion provided by the Commissioner of the Japan Patent Office, and verifies whether the goods for exportation or importation constitute infringement in consideration of said opinion and other relevant materials.

(Note) “Verification procedure” refers to a procedure to verify whether the goods deemed to infringe an intellectual property right (“the goods suspected of infringement”) fall under the goods that constitute infringement (Customs Act Articles 69-3(1) and 69-12(1)).

2. Requirements for Requesting Inquiry for Opinions

(1) Subject: the goods on which a verification procedure concerning a patent right, a utility model right, or a design right is in progress.

(2) Requester: a patentee, a utility model right holder, a design right holder, or an exporter or importer.

(3) Time period for the request: within ten days (excluding the administrative organization holidays) (until the lapse of ten days) and, when the term is extended, within 20 days (excluding administrative organization holidays) (until the lapse of 20 days), from the date on which the notification for initiating a verification procedure was received.

(4) Content of the opinion requested: the technical scope relating to the right of the goods on which a verification procedure is in progress.

(5) Required material: a material that clarifies a condition of a product or a process deemed to constitute (or not to constitute) infringement of a right in a specific manner.

3. Outline of the Procedure

(1) Inquiry from the Director-General of Customs

The Director General of Customs seeks an opinion regarding the technical scope of a patented right or a registered utility model, or the scope of a registered design or a design similar thereto, with the following documents, etc.:

A. Written inquiry seeking the Commissioner of Patent Office's opinion

A condition of the goods in a concrete manner concerning inquiry of opinions, which is specified by the Director-General of Customs

B. Written petition seeking the Commissioner of the Patent Office's opinion and appendices

Documents and the appendices submitted by a petitioner to seek said opinion.

C. Other materials to be used as reference

(2) Response by the Commissioner of the Patent Office

The Commissioner of the Japan Patent Office states an opinion in writing within 30 days of the date on which the written inquiry seeking an opinion was submitted (Customs Act Articles 69-7(4) and 69-17(4)). The Commissioner of the Japan Patent Office orders the Trial and Appeal Division to deal with the clerical affairs relating to the technical scope of a patented invention or a registered utility model, or a registered design or a design similar thereto.

The Trial and Appeal Division appoints three administrative judges pursuant to designation by the division head.

(Revised Jun.2019)