

59-03 P U D T**Effects of a Motion Requesting a Recusation and
Procedures for Trial for Recusation and Effects of the Decision**

1. Effects of a Motion Requesting a Recusation

When a motion for recusation is filed, the trial/appeal procedures shall be terminated until a decision of a trial for recusation is rendered, provided, however, that this shall not apply to the case requiring an urgent action (Patent Act Article 144). An act requiring urgency refers to the same as the case of exclusion.

2. Procedures for a trial for recusation

(1) When a request for recusation is filed by a party, etc. in writing, or orally during the oral proceedings (→33-04 3. (6)), a trial clerk conducts procedures for commencement of a trial for recusation.

(2) When a motion requesting a recusation is filed, procedures of the related trial case are terminated, and a new panel is formed consisting of administrative judges designated by the Commissioner of the JPO (→ 59-01 7.) as a judgement body for the motion for recusation. In this case, an administrative judge named in the motion may not participate in the panel but may express an opinion (Patent Act Article 143(1)).

A trial/appeal clerk whose name is in the motion may not participate in a trial for recusation. A new trial/appeal clerk who is designated by the Commissioner of the JPO participates in a trial for recusation .

Regarding an administrative judge named in the motion in the case where it is found that it is abuse of the right to motion for recusation, see 59-01 8.

(3) Measure when a motion requesting a recusation is filed during oral proceedings (or examination of evidence)

59-02 2. (3) shall be applied.

(4) The grounds for recusation shall be made prima facie showing within 3 days from the date on which the motion is filed (Patent Act Article 142 (2)). If it is failed to do so, since the subsequent completion of the motion is not allowed, the motion shall be dismissed by decision. This prima facie showing for recusation is the same as the case of exclusion (→59-02 2. (4)).

(5) A trial for a motion requesting a recusation shall be examined and reached the conclusion as soon as possible. This is the same as the case of exclusion (→59-02 2.(5)).

(6) A trial for recusation is principally conducted through documentary proceedings (Patent Act Article 145(2)).

(7) A decision on a motion for recusation shall be made in writing and the reason for the decision must be given, and an appeal against this decision may not be field (Patent Act Article 143(2)(3)). This decision becomes final and binding immediately.

(8) When a decision is rendered against a motion for recusation, a trial clerk binds a copy of the decision to the record of the case and a piece of paper indicating to that effect is put in the record wrapper and circulate it to a chief administrative judge of the case.

(9) When an administrative judge or a trial clerk who participates in a trial for a motion for recusation is named in another motion for recusation, the procedures are the same as above.

3. Effects of Decision of a Trial for Recusation

When a decision for a trial for recusation is rendered to the effect that the motion has a ground, the administrative judge related to the case shall be excluded from conducting the duties thereafter.

(Note) When a decision for a motion for recusation is rendered to the effect that the motion has a ground and such the ground falls under grounds for

exclusion (Patent Act Article 139 (i)~(vii)), the trial/appeal procedures that the subject administrative judge or trial/appeal clerk was involved after the ground occurred have become invalid.

(Revised Feb 2015)