

59-01 P U D T**Grounds for Exclusion and Recusation, etc.**

1. The Commissioner of the JPO shall designate an administrative judge and a trial/appeal clerk for each trial/appeal case (Patent Act Articles 137(1), 144-2(1), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)), and when there is a person who is unable to participate in a trial/appeal as an administrative judge or a trial/appeal clerk, the Commissioner of the JPO shall release the designation and replace it with another administrative judge (Patent Act Articles 137(2), 144-2(3), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)). To ensure impartiality of a trial, if a designated administrative judge has a special relationship with a specific trial/appeal case, it is necessary to prevent him/her from performing the duties. This refers to the system of exclusion or recusation (Patent Act Articles 139~144-2, Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

2. Exclusion is legally excluded from performing the duties based on a certain ground, while recusation is excluded from performing the duties when a motion requesting exclusion from executing the duties is filed by a party, etc. with circumstances that might prevent impartiality of the trial/appeal.

3. Grounds for Exclusion, Formal Requirements for a Motion Requesting an Exclusion, Time of Exclusion

(1) Grounds for exclusion are shown below (Patent Act Articles 139 (i)~(viii), 144-2(5), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

A. When an administrative judge or a trial/appeal clerk, or his/her spouse or his/her ex-spouse is or was a party or an intervenor of the case, or a patent opponent of the case (in this section 59-01, hereinafter referred to as “a person involved in requesting the trial/appeal”) (i)

B. When an administrative judge or a trial/appeal clerk is or was a relative by blood within the fourth degree of kinship, a relative by affinity within the third degree of kinship or a relative living together, of a person involved in requesting the trial/appeal (ii)

C. When an administrative judge or a trial/appeal clerk is a guardian, a supervisor of the guardian, a curator, a supervisor of the curator, an assistant, or a supervisor of the assistant, of a person involved in requesting the trial/appeal (iii)

D. When an administrative judge or a trial/appeal clerk becomes a witness or an expert witness of the case (iv)

E. When an administrative judge or a trial/appeal clerk is or was an agent of a person involved in requesting a trial/appeal (v)

F. When an administrative judge was involved in the case related to an appeal that has been filed against the examiner’s decision as the examiner (vi) (→12-04)

G. When an administrative judge was involved as an examiner in the decision of the patent application pertaining to the patent right in the case of the application for registration of extension of duration under Article 67(2) (vii)

H. When an administrative judge or a trial/appeal clerk has a direct interest to the case (viii)

I. A direct interest herein includes a legal interest, but not includes a financial interest. An example of a legal interest is shown below.

(A) An administrative judge or a trial/appeal clerk is a lienholder of the right that is subject to the dispute in the case

(B) An administrative judge or a trial/appeal clerk is a pledgee of the

the right that is subject to the dispute in the case

(C) An administrative judge or a trial/appeal clerk is a licensee of the right that is subject to the dispute in the case

(D) An administrative judge or a trial/appeal clerk is a guarantor of the right that is subject to the dispute in the case

(2) A motion requesting an exclusion (Patent Act Article 140, 144-2(5), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4))

Although there are grounds for exclusion, if an administrative judge or a trial/appeal clerk is involved in the case, a party, etc. may file a motion requesting an exclusion.

A. Movant

Those who may file a motion requesting an exclusion is a party or an intervenor (Patent Act Articles 140, 144-2(5), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)). An opponent of a patent (registration of trademark) opposition may also file a motion.

Other administrative judges may express an opinion on a ground for exclusion to the manager.

B. Formal requirements for motion (Patent Act Articles 142, 144-2(5), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4), Enforcement Regulations of the Patent Act Article 48-2, Form 64, Enforcement Regulations of the Utility Model Act Article 23(12), Enforcement Regulations of the Design Act Article 19(8), Enforcement Regulations of the Trademark Act Article 22(6))

Regardless of a motion being filed in writing or orally (→6.), it is necessary to clarify a trial/appeal case, a name of administrative judge or a trial/appeal clerk to be excluded and a ground for exclusion (indicate a corresponding number in Patent Act Article 139).

However, a motion made orally is accepted only at the oral proceedings.

C. Time of exclusion

A motion for exclusion may be filed before a trial/appeal decision is made.

(Note) 1. It may be a ground for filing a motion until a trial/appeal decision is made.

2. After a trial/appeal decision becomes final and binding, it may be a ground for retrial (Patent Act Article 171(2), Code of Civil Procedure Articles 338(1)(2), 339, Utility Model Act Article 42(2), Design Act Article 53(2), Trademark Act Articles 57(2), 68(5)).

4. Grounds for Recusation, Formal Requirements for a Motion Requesting an Recusation, Time of Recusation

(1) Grounds for recusation (Patent Act Article 141, 144-2(5), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4))

A ground for recusation is regulated where there are circumstances that would prejudice the impartiality of the trial/appeal proceedings. This refers to objective rational grounds for concern by a party about impartiality of the proceedings made by the administrative judge or impartiality of the clerical work performed by the trial/appeal clerk. The followings are not a ground for exclusion, but they might be a problem about recusation.

A. An administrative judge or a trial/appeal clerk is a close friend of a party to the case.

B. An administrative judge or a trial/appeal clerk has an enemy relationship with a party to the case.

C. An administrative judge or a trial/appeal clerk has a special financial interest to the case.

D. An administrative judge or a trial/appeal clerk submitted a private expert opinion to the case.

E. An administrative judge or a trial/appeal clerk has a common-law or engagement relationship with a party.

(2) Motion for recusation (Patent Act Articles 142, 144-2(5), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4), Enforcement Regulations of the Patent Act Article 48-2, Form 64, Enforcement Regulations of the Utility Model Act Article 23(12), Enforcement Regulations of the Design Act Article 19(8), Enforcement Regulations of the Trademark Act Article 22(6))

A. Movant

Those who may file a motion requesting a recusation is a party or an intervenor (Patent Act Articles 1401(1)).

B. Formal requirements for recusation (Patent Act Article 142)

Regardless of a motion being filed in writing or orally (→6.), it is necessary to clarify a trial/appeal case, a name of administrative judge or a trial/appeal clerk to be recused and a ground for recusation. However, a motion made orally is accepted only at the oral proceedings.

C. Time of exclusion

A motion may not be filed after making a written or oral statement with regard to the case. However, this shall not be applied where a party or an intervenor was not aware of the ground of the recusation, or the ground for recusation occurred after such the statement, a motion may be filed even after making the statement (Patent Act Articles 141(2), 144-2(5), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

Regarding the statement, when a party or an intervenor files a certain motion in oral proceedings, even a ground has not been stated yet, it can be said there was a statement.

5. Substantial Avoidance

For avoiding a motion for exclusion or recusation filed by a party, etc. and for the sake of ensuring impartiality of trial/appeal proceedings, when an

administrative judge or a trial/appeal clerk is likely to fall under the causes, the Commissioner of the JPO shall not designate that person (→12-04).

If there is such concern, an administrative judge or a trial/appeal clerk reports the manager to that effect.

6. See 33-04 3.(6) for the proceedings for a trial case concerning exclusion or recusation made in the oral proceedings.

7. For an appeal to be examined an exclusion or recusation case, an administrative judge other than an administrative judge named in the motion or a trial/appeal clerk other than a trial/appeal clerk named in the motion shall be designated (Patent Act Articles 143(1), 144-2(5), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

8. Abuse of Rights to Motion for Exclusion or Recusation and the Countermeasures

Regarding a motion requesting an exclusion (recusation) that has a clear intention of delaying the trial procedures, an administrative judge subject to the motion also participates in deciding a dismissal since it is abuse of the right to motion.

This decision shall be made with great deliberation so as not to lose the guarantee of impartiality.

(Revised October 2015)

59-02 P U D T**Effects of a Motion Requesting an Exclusion and
Procedures for Trial for Exclusion and Effects of the Decision**

1. Effects of a Motion Requesting an Exclusion

When a motion for exclusion is filed, the trial procedures shall be terminated until a decision of a trial for exclusion is rendered, provided, however, that this shall not apply to the case requiring an urgent action (Patent Act Article 144)(→26-01 13.).

Examples of an act requiring urgency are as follows:

- (1) a witness will leave abroad, or a witness will die if an inquiry is not made urgently, and
- (2) an object will be changed or disappeared if an examination is not made urgently.

2. Procedures for a trial for exclusion

(1) When a request for exclusion 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 exclusion.

(2) When a motion requesting an exclusion 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 exclusion. 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 exclusion. A new trial/appeal clerk who is designated by the Commissioner of the JPO participates in a trial for exclusion.

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 exclusion, see 59-01 8.

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

A. When a motion for exclusion orally during oral proceedings (or examination of evidence), (When a motion is filed in writing, since the motion is addressed to the Commissioner of the JPO, it is interpreted that the motion is filed to the Commissioner of the JPO through an administrative judge in charge of the oral proceedings) a chief administrative judge shall order a trial clerk to state in a trial record of the oral proceedings that a motion requesting an exclusion is filed and declare that the trial procedures will be terminated until the decision of the motion is rendered.

Considering a ground for a motion which is made prima facie showing when the motion for exclusion is filed orally (or in writing), if the motion is immediately determined that it is clearly abuse of a right to motion for exclusion, a consultation shall be started immediately after filing the motion and a decision to dismiss the motion due to abuse of the right to motion may be made after confirming other prima facie grounds are not filed (59-01 8.).

B. When the subject administrative judge shall conduct an urgent action (→1.), a party, etc. is notified to that effect and the proceedings are continued without termination.

(4) The grounds for exclusion shall be made prima facie showing within 3 days from the date on which the motion is filed. If it is failed to do so, since the subsequent completion of the motion is not allowed, the motion shall be dismissed by decision (Clause examples of Decision of Dismissal→59-05 2.).

Prima facie showing is to make a trial examiner presume that facts of petitioner's allegation are certain. A means for proof applying the above has no limitation.

(5) A trial for a motion requesting an exclusion shall be examined and reached

the conclusion as soon as possible. The trial procedures for the case are terminated because of a motion for exclusion.

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

(7) A decision on a motion for exclusion shall be made in writing and the reason for the decision must be given, and an appeal against this decision may not be filed (Patent Act Article 143(2)(3)) (Form of Decision →59-05 1.)). This decision becomes final and binding immediately.

(8) When a decision is rendered against a motion for exclusion, a trial clerk binds a copy of the decision to the record of the case contiguously 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 exclusion is named in another motion for exclusion, the procedures are the same as above.

3. Effects of Decision of a Trial for Exclusion

An administrative judge who has a ground for exclusion may not perform the duties for the subject trial case ipso jure (Exception →the proviso of Article 144 of the Patent Act). This effect occurs regardless of whether the administrative judge or a party, etc. knows a ground for exclusion.

As a result of the trial, the proceedings in which an administrative judge who clearly has a ground for exclusion is involved should be procedurally invalid, therefore the trial should be examined again if a trial decision has not yet been made, whereas if a trial decision has been already made and an action against this decision is filed, the trial decision shall be rescinded in the court. If a trial decision becomes final and binding, this becomes a reason for re-trial (Patent Act Article 171(2) →Code of Civil Procedure Article 338(1)(ii)).

When a motion requesting an exclusion is filed and a trial decision for the exclusion is rendered, an appeal against this decision may not be filed (Patent Act Article 143(3)). It also may not be a reason for re-trial.

(Revised Feb 2015)

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)

59-05 P U D T
Form of Decision of Exclusion or Recusation
and Case Examples

1. A form of decision of a motion for exclusion or recusation (hereinafter simply referred to as “exclusion”) should be included below.

(1) Trial number

(2) Name (appellant) and address (domicile) of a movant for exclusion, and a name of his/her agent

(3) Case identification

(4) Conclusion of decision

(5) Ground for decision (Patent Act Article 143(2))

(6) Date of decision

(7) Signature and seal of administrative judges (Alternative to Imprint →00-02 2.)

2. A form and a clause example of decision of dismissal are shown in the following page when there is no prima facie showing for a ground of exclusion within 3 days from the date of filing a motion requesting an exclusion.

3. Court Precedents for Trial/Appeal for Exclusion or Recusation (a conclusion shows in a brackets)

(1) A motion requesting a recusation was dismissed since the circumstances of another trial case may not be a ground for recusation of the present case. Trial for recusation No. 1, 1965. (Dismissal of the motion for recusation)

(2) Since an administrative judge involved in a trial for correction of the specification and approved the correction and an administrative judge notified a reason for invalidation of the patent against the corrected patent are the same person, the administrative judge must have been confident that the patent invention after correction satisfied the requirement of “an invention can be patented independently” provided in Patent Act Article 126(3) and thus the present patent did not fall under a reason for patent invalidation. However, the administrative judge decided there was a reason for invalidation. From this fact, it can be said that this leads to instability in the determination of the administrative judge. In this regard, a motion for a recusation was filed on the grounds that there are circumstances for the administrative judge that would prejudice the impartiality of the trial, but the motion for recusation was dismissed because it cannot be said that there are such circumstances from the purport of the provision of Patent Act Article 153. Trial for recusation, No. 1, 1973. (Dismissal of the motion for recusation)

(3) A motion requesting a recusation was dismissed since the facts that a chief administrative judge did not specify the term for submitting a means of proof and made a notice of documentary proceedings ex officio do not fall under the circumstances that would prejudice the impartiality of the trial. Trial for recusation, No. 3 1965. (Dismissal of the motion for recusation)

(4) A motion requesting a recusation was filed on the grounds that an administrative judge has a close relation with an agent of the demandant of the (district court) infringement injunction case, etc. involving the same

party as the present case but being different case, and at the same time the administrative judge clearly states to the effect that the administrative judge would like to reach a conclusion of the advisory opinion (Hantei) case filed at a later date and involving the same party and subject as the present case while leaving this case without making any progress. This motion requesting a recusation has no grounds since there is no circumstances that would prejudice the impartiality of the trial because there is no prima facie evidence sufficient for accepting objective reasonable grounds which concerns impartial intervention, and it cannot be said that the administrative judge has an exceptional relationship with the agent. Trial for recusation, No. 2, 1976. (Motion for recusation unsuccessful)

(5) A motion requesting a recusation against an administrative judge executing the duties of the request for the advisory opinion (Hantei) was dismissed due to unlawful request because there is no regulations for filing a motion requesting a recusation against an administrative judge in the procedures of the advisory opinion. Trial for recusation, No. 1, 1976. (Dismissal of the motion for recusation)

(6) A motion requesting a recusation on the ground that an administrative judge participating the decision of dismissal of amendment is involved as a chief administrative judge in the case (an invalidation trial) where the invention that has the same purpose and operation with similar contents and the same party is involved, and there are circumstances for the administrative judge that would prejudice the impartiality of the trial. However, this motion is groundless since the circumstances do not violate the provision under Patent Act Article 139 (6). Trial for recusation, No. 2, 1975. (Motion for recusation unsuccessful)

(7) A motion requesting a recusation on the ground that there is a fact in the different case that an administrative judge refused an interview with a party of one side but had an interview with a party of the other side and ignored a

request for oral proceeding. This clearly lacks impartiality of the proceedings and is examined with prejudice, and there are the reasonable grounds to suspect that the proceedings of this case are made with prejudice as well. However, this motion for the recusation is groundless because the facts may not be acknowledged that the proceedings of the present case lacks impartiality and performed with prejudice in that only the circumstances that there was a refusal of interview and the point that it was not found the necessity for oral proceedings only with the reasons of various circumstances between a demandant, a demandee and an intervenor each other. Trial for recusation, No. 2, 1978. (Motion for recusation unsuccessful)

(8) A trial decision and a retrial against the trial decision does not involve the previous trial. Trial for recusation, No. 1, 1980. (Trial for motion for exclusion)

4. Reference Court Precedents

(1) Regarding the decision on a motion requesting an exclusion or recusation under the Patent Act, an action for the judicial review of administrative dispositions may not be filed separately and independently from an appeal against the trial decision of the case ((1960(O)1072) Judgement of Supreme Court, 2nd Petty Bench, March 24, 1961, 15-3 Saikosaibansho Minji Hanreishu (“Minshu”) (Supreme Court Collection of Civil Cases) p587).

(2) Procedures for an examination for an application for patent and an application for a utility model registration are separate and independent each other, therefore, when a patent application is converted to an application for a utility model registration, there is no reason that an examiner involved in the original patent application is excluded from an appeal against a decision of refusal of an application for utility model registration ((1969 (Gyo-U) 81) Judgment of Tokyo High Court, Oct 30, 1970, 2-2 Mutaizaisanken-kankei

Min • Gyo Saibanreishuu (Civil Administrative Court Precedents of Intangible Property Rights) 546).

(3) It is not an involvement in the previous trial in a case where an administrative judge who affixed the censorship seal to the written assessment issued by the examiner during his/her tenure as Director of Examination Division or Chief Examiner performs his/her duty on the case ((1941 (O) 1104, Judgment of Supreme Court, Jan 23, 1942) Trial Decision Extra No. 23, p415, “Tokkyohou Gaisetsu (Overview of Patent Act)”, Yoshifuji, (9th enlarged edition) p535).

(4) A. “Participated in the prior instance” (Code of Civil Procedure Article 23(1)(vi)) means a judge participates in reaching the judicial decision in the prior instance. Even if there is a fact that a judge directed an oral argument and examined evidence in the prior instance, he/she is not excluded from performing the duties ((1951 (O) 759) Judgment of Supreme Court, 2nd Petty Bench, June 26, 1953, 7 Minshu 783).

B. “Participated in the prior instance” (Code of Civil Procedure Article 23(1)(vi)) means to participate in forming the national will of justice, more specifically, to participate in the judicial decision and written judgment.

It should be interpreted that preparatory procedures or preparation of oral arguments that remain as preparatory acts for trial are not included in the participation ((1964 (Gyo-Tsu) 28, Judgment of Supreme Court, Oct 13, 1964, 18-8 Minshu 1619).

C. A patent attorney who participated in the trial for a trial decision subject to a suit rescinding a trial decision as an administrative judge in his/her tenure (appointed June 9, 1964, retired end of March 1965, not participated in the trial decision of the case but participated in the proceedings as a chief administrative judge) was filed an action as an agent for the action. Such action is invalidated because the other party made an objection as violation of Patent Attorney Act Article 8(2) and the action was

dismissed as unlawful demand and maintained the original trial ((1968 (Gyo-Tsu) 78) Judgement of Supreme Court, 1st Petty Bench, Feb 13, 1969, 234 Hanrei Times 131, etc.)

(5) The provision under Rules of Civil Procedure Article 10 only specifies to make prima facie showing of grounds for recusation within three days from the date on which the motion was filed for preventing unsubstantiated allegations, but it does not specify not to commence a judgment on the motion until three days have been passed from the date of filing the motion (1978 (Ra)751) Judgment of Tokyo High Court, July 25, 1978、 898 Hanrei Jiho 36).

(6) If a supporting intervenor also has a self-specific ground, namely, a ground that there are circumstances existing between the intervenor and the administrative judge that would prejudice the impartiality of the trial, the supporting intervenor may also file a motion requesting a recusation as long as the principal parties don't lose the right to recusation and it does not go against the will ((1975 (Ra) 91) Judgment of Nagoya High Court, November 26, 1975, 815 Hanrei Jiho 62).

(7) A fact that a judge is a son-in-law of a procedural attorney does not fall under a ground for recusation ((1953 (O) 277) Judgement of Supreme Court, 2nd Petty Bench, Jan 28, 1955, 9-83 Minshu).

(8) A ground for recusation occurs when an existence of a special relationship both personal and materials between a judge and a specific case where objectively impartial judgment may not be expected. The motion shall be dismissed since general reasons not directly related to a specific case such as ineligibility, behaviors including subsequent behaviors, thought, legal opinions of the judge may not be interpreted as constituting grounds for recusation ((1970 (U) 283) Judgment of Tokyo High Court, May 8, 1970, 590 Hanrei Jiho 18; (1970 (Ku) 191) Judgment of Supreme Court, 1st Petty Bench, September 29, 1970, 100 Saishumin (Supreme Court Collection of Precedents Civil Affairs) 499).

(9) An act requiring urgency (Code of Civil Procedure the proviso of Article 26) refers to acts to be taken when it is necessary to perform immediately the judgment for avoiding the damages due to delay such as preservation of evidence, provisional seizure (disposition), etc. and realize urgently the results according to the content of the judgment. In view of a purport of the recusation system, it is reasonable to interpret that an act where the procedures in the instance are concluded such as by issuing a decision to dismiss an application for provisional disposition, but it does not form any new legal status is not included in the act requiring urgency. ((1976 (Ra) 676) Judgment of Tokyo High Court, Feb 18, 1977, 847 Hanrei Jiho 49).

(10) An application before and after division has become different cases, thus, it is not illegal an examiner or an administrative judge of the former case relates to an examination or a trial of the latter case, and it does not become a ground for recusation when an administrative judge of the former case who suggested a division during the trial proceedings is involved in a trial after a division ((1957 (O) 985) Judgment of Supreme Court, 3rd Petty Bench, April 4, 1961).

(11) A suit rescinding a trial decision may not be instituted against the decision of dismissal of a motion requesting a recusation of an administrative judge of the JPO ((1960 (O) 1072) Judgment of Supreme Court, 2nd Petty Bench, March 24, 1961).

(12) Regarding an execution of an authority to ask for explanation, even if a court considers another legal argument is possible from evidential materials already submitted and suggests this legal configuration to the party, it falls within a range of authority to ask for explanation and thus it cannot be said that there is a circumstance that would prejudice the impartiality of the trial ((1971 (Gyo-Ta) 1) Judgment of Tokyo High Court, April 3, 1971, 263 Hanrei Times 226).

(Revised June 2019)