

83-00.5 P U D T
Appeal Against a Chief Administrative Judge 's Decision
to Dismiss

An appeal against a decision to dismiss made by a chief administrative judge is a request for examination against the Commissioner of the JPO (A decision to dismiss the procedure under Patent Act Article 133(3) (not including a decision to dismiss a written request under Patent Act Article 133(3)), Patent Act Article 133-2).

1. A “decision to dismiss made by a chief administrative judge” is an administrative disposition made by the Administrative Agency. The Patent Act does not have any provisions for an appeal against the decision, however, an appeal may be filed under the Administrative Complaint Review Act.

From the point of view of a purport of the system of the administrative complaint review, an appeal under the Administrative Complaint Review Act is preferable to be filed against the administrative agency other than the agency making a disposition. Therefore, when there is a complaint against the decision to dismiss made by a chief administrative judge, an examination may be requested against the Commissioner of the JPO.

2. A “request for examination against the Commissioner of the JPO” does not bring any changes in a relationship under the Patent Act between the Commissioner of the JPO and a chief administrative judge under the Administrative Complaint Review Act.

3. The Tokyo High Court (the IP High Court) has exclusive jurisdiction over any appeal against a decision to dismiss a written request for correction (Patent Act Article 178(1)).

(Revised Feb 2015)

83-02.2 P U D T**Composition of Panel to Handle Trial/Appeal Cases That Have
Been Remanded by Court**

Regarding a trial/appeal case of which the trial/appeal decision has been rescinded and remanded by court, members of panel were in principle changed considering fairness and neutrality. However, the designation of an administrative judges who was involved in the original trial/appeal does not fall under an administrative judge's involvement in the prior decision as the examiner.

1. The Patent Act Article 139 provides when an administrative judge has reasons for exclusion, the administrative judge is excluded from acting as a judge for the case to ensure the fairness of trials. One of the reasons for exclusion is when the administrative judge of the case is the examiner who has made a decision of refusal (An administrative judge's involvement in the prior decision as the examiner) (Patent Act Article 139(iv)).

2. In connection with this, about the pros and cons of examining the case remanded from the trial again by the original examiner, there is a court precedent as below: "An administrative judge's involvement in the prior decision as the examiner is a reason for exclusion because when a person who involved in the decision of the prior instance participates the upper instance of the case, the multilevel appeal system becomes meaningless as a result. For avoiding such a result, when a case is remanded to the original decision on an appeal against examiner's decision of refusal, even if an examiner who made a decision before the remand participates the decision of the case after the remand, the multilevel appeal system does not become meaningless as a

result, thereby it does not fall under an administrative judge's involvement in the prior decision as the examiner" (1955 (Gyo-na) 48, Judgment of the Tokyo High Court, July 14, 1956).

3. Accordingly, it is interpreted that the above subject matter also does not fall under an administrative judge's involvement in the prior decision as the examiner. A case for rescinding the trial decision requires more careful examination in view of its importance. From this reason, more consideration is given to fairness and neutrality on procedures of trials/appeals and a composition of a panel.

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