

Note: When any ambiguity of interpretation is found in this provisional translation, the Japanese text shall prevail.

# **Guidelines Concerning Remedial Provisions Applicable after the Expiration of a Time Limit**

(Amended on April 26 , 2021)

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**Japan Patent Office**

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## **Introduction**

In these guidelines, the following terms have the meanings described below.

"Applicant, etc.":

The applicant of a patent application, the original patentee of a patent right, the applicant of an international patent application, the applicant of a utility model registration application, the original holder of a utility model right, the applicant of an international utility model registration application, the applicant of a design registration application, the original holder of a design right, the original holder of a trademark right, the person who files an application for registration of a renewal of the effective period of a registered defensive mark, or the person who should file an application for registration of reclassification

"Remedial provisions":

The remedial provisions applicable after the expiration of a time limit if there is a "legitimate reason" for the expiration. Those provisions were introduced or amended by:

- (1) the amendment (the "Amendment of 2011") under the Act to Partially Amend the Patent Act, etc. (Act No. 63 of 2011, the "Amendment Act of 2011"),
- (2) the amendment (the "Amendment of 2014") under the Act to Partially Amend the Patent Act, etc. (Act No. 36 of 2014, the "Amendment Act of 2014"),
- (3) the amendment (the "Amendment of 2015") under the Act to Partially Amend the Patent Act, etc. (Act No. 55 of 2015, the "Amendment Act of 2015"), and
- (4) the amendment (the "Amendment of 2019") under the Act to Partially Amend the Patent Act, etc. (Act No. 3 of 2019, the "Amendment Act of 2019")

## **Purpose of these guidelines**

The purpose of these guidelines is to ensure the predictability for applicants, etc. as to whether they are entitled to obtain a remedy, by specifying the details of the remedial provisions such as the requirements for obtaining a remedy, the criteria for making a determination concerning a remedy, and the procedures to be taken by the applicants, etc.

## **Procedures covered by these guidelines**

These guidelines are applicable to the following provisions related to:

- (1) remedies after the expiration of the time limits for the submission of a translation of an application written in a foreign language and a late payment of a patent fee and a patent surcharge, etc. (introduced in the Patent Act, the Utility Model Act, the Design Act, or the Trademark Act (including the Supplementary Provisions) by the Amendment of 2011),
- (2) a remedy after the expiration of the time limit for a request for examination and a priority claim for an application after the expiration of the priority period (introduced in the Patent Act or the Utility Model Act by the Amendment of 2014),
- (3) remedies after the expiration of the time limits for the appointment of a patent / utility model administrator for an international patent / utility model application ("appointment of a patent administrator, etc.") and for the payment of a second-installment registration fee and a registration surcharge (introduced in the Patent / Utility Model Act and the Trademark Act, respectively, by the Amendment of 2015), and
- (4) a priority claim for an application after the expiration of the priority period (introduced in the Design Act by the Amendment of 2019).

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Please note that these guidelines are not applicable to remedial provisions concerning the expiration of a time limit “due to reasons beyond one’s control”.

The remedial provisions introduced by the Amendment of 2011 are applicable to any application that is deemed to have been withdrawn due to failure to submit a translation on or after the entry into force of the Amendment Act of 2011 (April 1, 2012) and also to any patent right, utility model right, design right, or trademark right, etc. that are deemed to have been extinguished or nonexistent on or after the said date.

The remedial provisions introduced by the Amendment of 2014 are applicable to any patent application that is deemed to have been withdrawn due to absence of a request for examination on or after the entry into force of the Amendment Act of 2014 (April 1, 2015) and also applicable to any priority claim, for which the priority period is expired, of a patent application or a utility model registration application filed on or after the said date.

The remedial provisions introduced by the Amendment of 2015 are applicable to any international patent application and international utility model registration application that are deemed to have been withdrawn on or after the entry into force of the Amendment Act of 2015 (April 1, 2016) due to failure to submit a notification of the appointment of a patent administrator, etc. and also applicable to a trademark right that can be deemed to have been extinguished on or after the said date due to failure to make a late payment of a second-installment registration fee or a registration surcharge.

The remedial provision introduced by the Amendment of 2019 is applicable to any priority claim, for which the priority period is expired, of a design registration application filed on or after the entry into force of the Amendment Act of 2019 (April 1, 2021).

### Notes on these guidelines

These guidelines provide for the basic principles concerning the remedial provisions mentioned above. Hypothetical cases are inserted for the purpose of illustration only; actual decision will be made by taking various factors into consideration, such as the cause of the expiration of a time limit.

It should be noted that the remedial provisions are designed to provide a remedy, in relation to a failure to meet a time limit, in exceptional circumstances where the prescribed requirements are satisfied, and do not necessarily provide a remedy in all cases of expiration. Even when facing an event that could hinder the smooth completion of a procedure, an applicant, etc. is required to meet the time limit as long as the event does not prevent the applicant, etc. from completing the procedure within that period.

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## **1. Remedial provisions applicable after the expiration of a time limit**

### **1.1 Outline of remedial provisions**

Under the Patent Act, remedial provisions in case of failure to meet the prescribed time limit had existed prior to the Amendment of 2011, such as the reinstatement of a patent right by a late payment of a patent fee or a patent surcharge (a "late payment of a patent fee, etc.") specified in Article 112-2 of the Patent Act. Under the said provision, if the original patentee failed to complete a procedure within the time limit due to a "reason beyond his/her control," he/she was allowed to make a late payment of a patent fee, etc. within 14 days from the date on which the reason ceased to exist (or two months for those who live outside Japan) and within six months from the expiration of the time limit. If these requirements were satisfied, a patent right that had been extinguished due to failure to pay a patent fee, etc. was to be restored.

The requirement of "reason beyond one's control" was introduced by the Amendment Act of 1994 (Act No. 116 of 1994) by taking into consideration the consistency with the existing requirements applicable to the cases of expiration of the time limits for filing an appeal against an examiner's decision of refusal or filing a request for a retrial. Underlying rationale was that a patent right should be managed at the patentee's own responsibility and that such remedies should be properly balanced with the interest of third parties who would be obliged to monitor if an extinguished patent right might reemerge at any time.

However, it had been pointed out that this requirement was much stricter than those established in countries such as European countries and the United States, and that it did not provide sufficient remedies in substance. Under the Patent Law Treaty (PLT), Article 12 provides "reinstatement of rights" applicable to the cases where applicant's rights or patentee's rights are extinguished due to expiration of a procedural time limit. Major countries, including non-PLT member states, have introduced remedial procedures in compliance with the said provision.

In view of such international trend, in order to establish a remedial system that complies with the provision of the PLT concerning "reinstatement of rights," the requirements for some procedures were relaxed by the Amendment of 2011.

After the said amendment, if there is a "legitimate reason" for a failure to complete a procedure within the prescribed time limit, a patent right may be restored by a late payment of a patent fee, etc. within two months from the date on which such reason ceased to exist and within 12 months from the expiration of the time limit (6 months in the case of a procedure related to a trademark).

For some procedures such as the procedure to submit a translation of an application written in a foreign language specified in Article 36-2, paragraph (2) of the Patent Act and the procedure to submit the translation of a foreign-language patent application specified in Article 184-4, paragraph (1) of the Patent Act, provisions concerning remedies for the expiration of a time limit have been established.

The Amendment of 2014 introduced provisions concerning a remedy for the expiration of the time limit for filing a request for examination under Article 48-3, paragraphs (1) and (2) of the Patent Act. Also introduced are those concerning a remedy for the expiration of the time limit for filing a patent or a utility model registration application that is entitled to claim priority based on an earlier application under Article 41, paragraph (1) of the Patent Act or Article 8, paragraph (1) of the Utility Model Act or that is entitled to claim priority under Article 4 D (1) of the Paris Convention and Article 43-3,

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paragraphs (1) and (2) of the Patent Act (applied *mutatis mutandis* under Article 11, paragraph (1) of the Utility Model Act) (the "time limit for filing an application claiming priority"). The latter provisions were established in compliance with the provision of the PLT concerning "Restoration of Priority Right" (Article 13 (2) of the PLT).

In the Amendment of 2015, the added provisions include those concerning a remedy for the expiration of the time limit for filing a notification of the appointment of a patent administrator, etc. specified in Article 184-11, paragraph (2) of the Patent Act (applied *mutatis mutandis* under Article 48-15, paragraph (2) of the Utility Model Act) and those concerning a remedy for the expiration of the time limit for making a late payment of a second-installment registration fee under Article 41-2, paragraph (5) of the Trademark Act. These provisions were established in compliance with the "Reinstatement of Rights" (Article 12 (1) of the PLT) and the "Relief Measures After the Expiry of a Time Limit" (Article 14 (2) of the Singapore Treaty on the Law of Trademarks (the "STLT")).

Finally, by the Amendment of 2019, a remedy was made available to the expiration of the time limit for filing an application claiming priority under Article 4 D (1) of the Paris Convention and Article 43-3, paragraphs (1) and (2) of the Patent Act, which become applicable *mutatis mutandis* to design applications through amended Article 15 of the Design Act. This amendment is to align with the provision of the draft Design Law Treaty concerning "Restoration of Priority Right."

## **2. Procedure to seek a remedy**

An applicant, etc. who failed to complete a procedure within the time limit and wishes to obtain a remedy related to the procedure under the relevant remedial provision must, within the remedial procedure period, complete the procedure for which the prescribed time limit was not met and must submit a statement of the grounds for restoration that describes the reason for not having been able to complete the procedure within that time limit (see 5. Sample statement of the grounds for restoration).

If the procedural documents for which a remedy is sought (e.g. statement to submit a translation) and a statement of the grounds for restoration are submitted within the remedial procedure period, the JPO Commissioner will determine whether a remedy should be granted based on the information presented in the statement of the grounds for restoration.

An applicant, etc. who seeks restoration of the right of priority must submit a statement of the grounds for restoration that describes the reason for not having been able to file an application claiming priority within the time limit for filing such application, while filing an application and a priority claim within the priority restoration period.

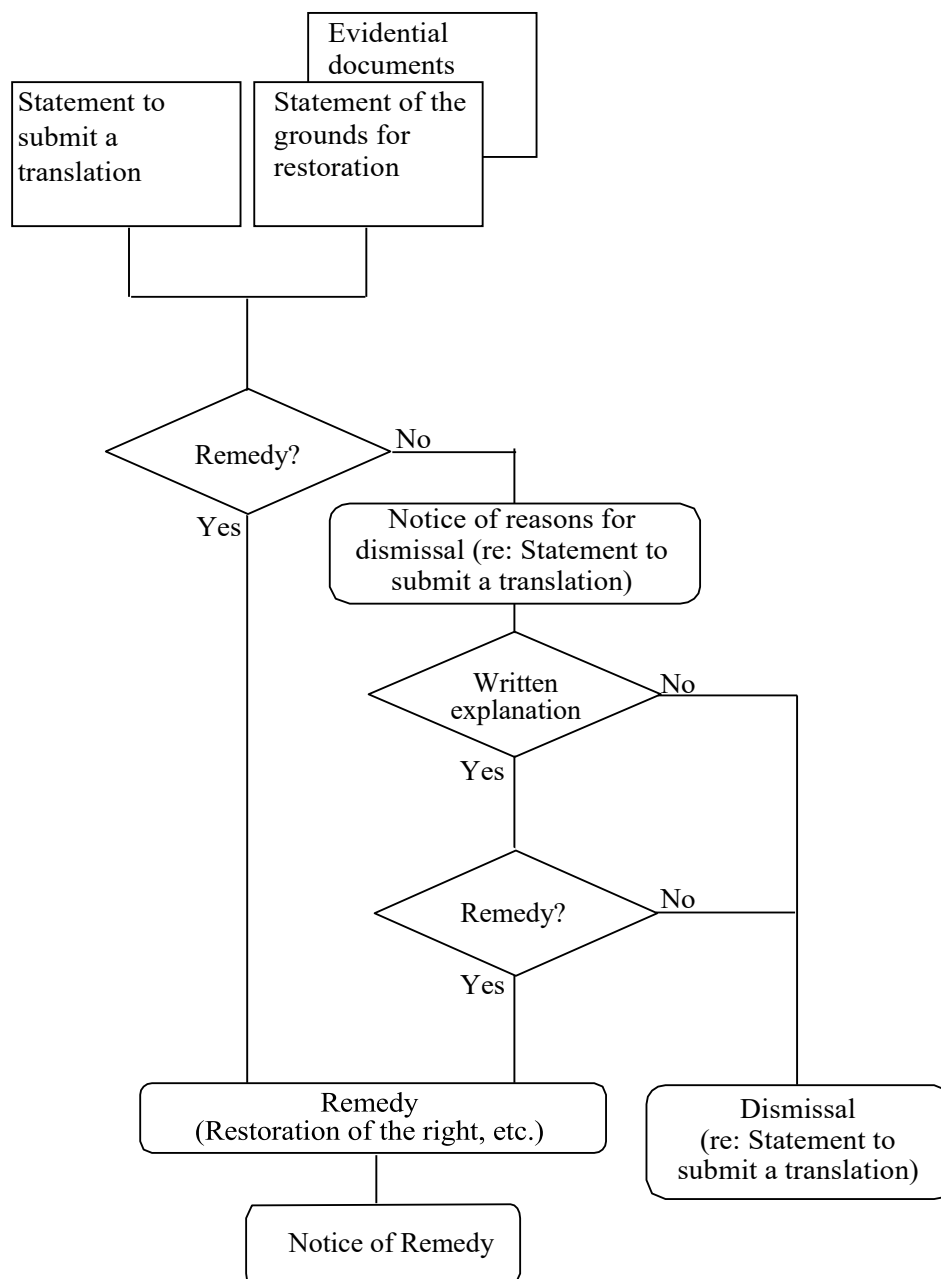
Please note that, if the applicant, etc. wishes to restore the right of priority claimed in an international patent / utility model application at the JPO as a designated Office, the applicant, etc. must submit a statement of the grounds for restoration within one month from the date on which the time limit for the submission of national documents expired (if a request for examination has been made within the time limit for the submission of national documents, one month from the date of request).

The determination concerning the restoration of the right of priority will be made in the same manner as procedures concerning remedies on missed time limits.



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[Flow chart of the procedure]  
(Example: Statement to submit a translation (Article 36-2 of the Patent Act))



## 2.1 Matters to be included in a statement of the grounds for restoration

An applicant, etc. who missed a time limit for a procedure to which the remedial provisions may be applicable must, in a statement of the grounds for restoration, describe the matters A to C in (1) below to show that the reason for not having been able to complete the procedure within the prescribed time limit is a "legitimate reason," and indicate the "date on which the reason for not having been able to complete the procedure ceased to exist" as mentioned in (2) below, together with the grounds for finding that date as such, in a concrete and sufficient manner (Please refer to 5).

In the case of the restoration of the right of priority, an applicant, etc. must also describe the same matters as mentioned above. Although the "date on which the reason for not having been able to file an application ceased to exist" is not regarded as the date from which the priority restoration period should be counted, the applicant, etc. must also state the matters mentioned in (2) because those matters will be taken into consideration when making a determination as to whether the applicant, etc. has taken reasonable measures to file an application within the prescribed time limit after the event in question ended.

The information presented in a statement of the grounds for restoration submitted by an applicant, etc. will be disclosed to the public in principle under Article 186, paragraph (1) of the Patent Act except for the cases that fall under item (v) or (vi) of the said paragraph.<sup>1</sup>

### (1) Grounds for claiming the described reason as a "legitimate reason"

#### A. Event that caused the expiration of the time limit (Please refer to 3.1.3)

- The dates on which the event occurred and ended respectively<sup>2</sup>
- The details of the event
- The persons related to the event<sup>3</sup>

#### B. Measures taken prior to the occurrence of the event (Please refer to 3.1.4(1))

- The persons who should take measures (all persons) (Please refer to 3.1.5)
- The details and timing of the measures taken by the aforementioned persons (all persons)

As the details of the measures taken by the persons (all persons) who should take measures, please describe in detail (1) the time-limit management system and other measures established in advance in order to prevent the expiration of the time limit and (2) the measures actually taken in response to the situation. In particular, if an assistant is involved, it is necessary to take into consideration each of the three requirements (Please refer to 3.1.5 (5) a to c) and to describe in detail what measures have been taken by the person who should take measures.

The JPO Commissioner will make a determination by examining whether the measures

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<sup>1</sup> In principle, any of the matters described in a statement of the ground for restoration and the relevant evidential documents shall not be disclosed if it falls under item (v) (documents that are likely to cause damage to an individual's reputation or peaceful existence) or item (vi) (documents which are likely to injure public policy) of Article 186, paragraph (1) of the Patent Act. A statement of the grounds for restoration and the relevant evidential documents do not fall under items (i) to (iii) of the said paragraph.

<sup>2</sup> The "date on which the event ended" means the date on which it becomes possible to take the action that has been hindered since the occurrence of the event. For example, in the case of the absence of a staff member in charge of the procedure due to an accident, etc., such date means the date on which it becomes possible for a substitute staff member to take the action necessary to carry out the procedure. In the case of notification of an incorrect time limit due to a system error, such date means the date on which a person realized or should have realized that an incorrect time limit was notified. If such date is difficult to specify, please state to that effect and indicate the date on which the event seems to have ended.

If the date on which an event occurs is unknown, for example, when a certain event occurs due to a system error, state to that effect.

<sup>3</sup> This applies to such cases as where the event that caused the expiration of the time limit has resulted from somebody's action.

taken prior to the occurrence of the event would have been sufficient under normal circumstances to prevent the expiration of the time limit (If more than one measures have been taken, such determination will be made based on an overall assessment of all of them).

C. Measures taken after the occurrence of the event ([Please refer to 3.1.4\(2\)](#))

- The persons who should take measures (all persons) ([Please refer to 3.1.5](#))
- The details and timing of the measures taken by the aforementioned persons (all persons)

**(2) "Date on which the reason for not having been able to complete the procedure ceased to exist" and the grounds for finding the date as such date**

A. The date on which the reason for not having been able to complete the procedure ceased to exist ([Please refer to 3.2.2](#))

B. The grounds for finding the date mentioned in A above as such date

**2.2 Evidential documents that should be attached to a statement of the grounds for restoration**

An applicant, etc. who wishes to obtain a remedy under the remedial provision must submit evidential documents to support the matters presented in the statement of the grounds for restoration. Such documents shall be attached to the said statement, and need to prove the facts presented as the grounds for claiming the reason as a "legitimate reason" in [2.1 \(1\)](#) above.

Unless the event that caused the expiration of the time limit is obvious to the JPO,<sup>4</sup> the applicant, etc. must submit objective evidential documents certified by a third party. Examples of such documents are: an official document such as a disaster certificate (if such expiration was caused by a natural disaster); a medical certificate concerning the illness (in case of a serious illness of the applicant, etc.); a statement issued by the distribution company of a system to show the system did not function in accordance with its specification (to prove a technical errors of the system).

It might sometimes be difficult to produce any evidence certified by a third party since there could be various facts that might lead to the expiration of a time limit. Even in such a case, the applicant, etc. is required to make every effort to submit evidential documents to support the matters stated in a statement of the grounds for restoration.<sup>5</sup>

The evidential documents submitted by the applicant, etc. will be disclosed to the public in principle under Article 186, paragraph (1) of the Patent Act except for cases that fall under item (v) or (vi) of the said paragraph.<sup>6</sup>

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<sup>4</sup> In the case of an event such as a big earthquake that is obvious without evidential documents, such documents need not to be submitted.

<sup>5</sup> For example, business-related emails, business manuals, copies of contracts, statements concerning the procedure that was not completed within the time limit.

<sup>6</sup> Please refer to Footnote 2 above.

### 3. Requirements for obtaining a remedy

Based on the information presented in the statement of the grounds for restoration submitted by the applicant, etc., the JPO Commissioner determines whether a remedy should be granted for the procedure that was not completed within the time limit.

The remedy will be granted should the following two requirements be satisfied:

Requirement 1: There is a legitimate reason for not having been able to complete the procedure or file an application claiming priority within the prescribed time limit (Please refer to [3.1](#))

Requirement 2: The procedure that was not completed within the prescribed time limit must be completed within the remedial procedure period. For the restoration of rights of priority, an application must be filed and a priority be claimed within the priority restoration period (Please refer to [3.2](#)).

#### 3.1 Existence of a legitimate reason (Requirement 1)

There is a legitimate reason for not having been able to complete a procedure or file an application claiming priority within the prescribed time limit

##### 3.1.1 Basic approach

Since the Amendment of 2011, in order to provide a remedy flexibly taking into consideration different facts in individual cases, the JPO has adopted an approach in line with the PLT.<sup>7</sup> More specifically, the applicant, etc. is permitted to complete a procedure after the expiration of the time limit for the procedure if there is a "legitimate reason" for not having been able to do so. Such "legitimate reason" can be found where the measures that had been taken by the applicant, etc. to carry out the procedure are considered to be sufficient as the necessary measures required by the circumstances ("reasonable" measures)<sup>8</sup>.

The same approach is taken in the case of procedures introduced by the Amendment of 2014, i.e. late request for examination after the expiration of the time limit and restoration of the right of priority.

##### 3.1.2 What is a "legitimate reason"?

A determination on whether the reason for not having been able to complete the procedure within the time limit is regarded as a "legitimate reason" will be made based on the information presented in a statement of the grounds for restoration, taking into consideration the perspectives such as an event that caused the expiration of the time limit ([3.1.3](#)), measures taken by the applicant, etc. to carry out the procedure ([3.1.4](#)) and parties who should take measures ([3.1.5](#)).

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<sup>7</sup> Article 12 (1) (iv) of the PLT specifies that the Office finds that the failure to comply with the time limit occurred in spite of due care required by the circumstances having been taken.

<sup>8</sup> The necessary measures required by the circumstances can be interpreted as those that can be considered to be required in light of the status of the applicant, etc. and the circumstances surrounding the applicant, etc. Such measures could vary depending on whether he or she is an individual, a small/midsize business or a large corporation. Also, in some cases, these measures are different in the case where the applicant, etc. delegated an agent to carry out the procedure and the case where the applicant, etc. carries out the procedure on one's own.

### 3.1.3 "Event that caused the expiration of the time limit"

The following are examples of events that could cause the expiration of the time limit.

- Absence of the agent due to his/her unexpected hospitalization
- Absence of the agent due to his/her scheduled hospitalization
- Absence of the person in charge of the procedure due to an accident, etc. in the case where the applicant, etc. is a legal person
- Absence of the person in charge of the procedure due to compulsory retirement in the case where the applicant, etc. is a legal person
- Collapse of a company building due to an earthquake
- Destruction of an old company building before constructing a new one
- Unavailability of online filing due to a blackout caused by lightning
- Unavailability of online filing due to a scheduled blackout
- Notification of an incorrect time limit due to a system error
- Notification of an incorrect time limit due to a human entry error

Each event that caused the expiration of the time limit can be categorized into either (1) or (2) mentioned below depending on the nature of the event<sup>9</sup>:

#### (1) Cases where an "event that caused the expiration of the time limit" is considered to be predictable

If an event that caused the expiration of the time limit is considered to be predictable,<sup>10</sup> the applicant, etc. should have taken necessary measures in advance to prevent the event from causing the expiration of the time limit. In principle, the applicant, etc. in such a case cannot be considered to have taken reasonable measures, regardless of whatever measures were taken; and any reason for not having been able to complete the procedure within the time limit cannot be regarded as a "legitimate reason."

Based on the understanding described above, the following are examples of events where the remedies will not be granted:

##### [Examples of events where remedies will not be granted]

- Absence of the agent due to his/her scheduled hospitalization
- Destruction of an old company building before constructing a new one
- Absence of the person in charge of the procedure due to compulsory retirement in the case where the applicant, etc. is a legal person
- Unavailability of online filing due to a scheduled blackout

#### (2) Cases where an "event that caused the expiration of the time limit" cannot be considered to be predictable

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<sup>9</sup> The laws and regulations concerning procedural time limits can be considered to be the minimum knowledge that each applicant, etc. should have. If an applicant, etc. fails to meet a time limit due to lack of the knowledge about or an incorrect interpretation of those laws and regulations, the applicant, etc. cannot be considered to have taken reasonable measures in principle and the "legitimate reason" cannot be found.

<sup>10</sup> In other words, where the timing and the impact of an event are predictable.

Unlike the cases in (1) above, if an event that caused the expiration of the time limit cannot be considered to be predictable, it would be asking too much of the applicant, etc. to take necessary measures in advance so that such an event would not cause the expiration of the time limit. In such a case, a determination on whether the reason for not having been able to complete the procedure within the time limit is regarded as a "legitimate reason" will be made based on the information presented in a statement of the grounds for restoration, taking into consideration the perspectives such as measures taken by the applicant, etc. to carry out the procedure ([3.1.4](#)) and parties who should take measures ([3.1.5](#)).

### **3.1.4 Measures taken by the applicant, etc. to carry out the procedure<sup>11</sup>**

In the case where the event that caused the expiration of the time limit cannot be considered to be predictable, the measures that the applicant, etc. has taken to carry out the procedure can be categorized into (1) the measures taken prior to the occurrence of the event that caused the expiration of the time limit, and (2) the measures taken after the occurrence of such an event.

Based on the information presented in the statement of the grounds for restoration, the determination will be made on whether the measures taken by the applicant, etc. mentioned in (1) and (2) above can be considered to be reasonable.

#### **(1) Measures taken prior to the occurrence of the event that caused the expiration of the time limit**

In the case where the event that caused the expiration of the time limit cannot be considered to be predictable, based on the information presented in the statement of the grounds for restoration, a determination will be made on whether the measures taken by the applicant, etc. prior to the occurrence of the event, in other words, the measures taken to prevent the occurrence of the event, can be considered to be reasonable.

The following are the matters that will be taken into consideration when determining whether the measures taken prior to the occurrence of the given event that caused the expiration of the time limit can be regarded as reasonable.

##### **[Natural disasters]**

If an event that caused the expiration of the time limit can be attributed to a natural disaster, it was difficult for a person acting with due care to prevent the occurrence of the event. Thus, even if the applicant, etc. failed to take any measures to prevent it, the applicant, etc. would not be considered to have failed to take reasonable measures.

##### **[System errors]**

If an event that caused the expiration of the time limit can be attributed to a problem in a system or a system structure that is beyond the expectation of the applicant, etc. who is a user of the system (hereinafter simply referred to as a "system error"), it was difficult for a person acting with due care to prevent the occurrence of the event. Thus, even if the applicant, etc. failed to take any measures to prevent it, the applicant, etc. would not be considered to have failed to take reasonable

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<sup>11</sup> It is the applicant, etc. that should take measures to carry out the procedure. In some cases, for example, if an agent has been commissioned with the task of carrying out the procedure, a person other than the applicant, etc. might be considered to be a person who should take measures ("person who should take measures" Please refer to [3.1.5 \(3\)](#) and [\(4\)](#)).

measures, unless the selection or introduction of the system can be considered to be inappropriate.<sup>12</sup>

**[Human errors]**

If the event that caused the expiration of the time limit can be attributed to a human error<sup>13</sup> of the applicant, etc., he or she who is acting with due care should have taken measures in advance to prevent the error from causing such an event. In principle, therefore, the applicant, etc. are considered to have failed to take reasonable measures based on the fact that he or she was unable to prevent the occurrence of the event.

However, if special circumstances have made it impossible to prevent the occurrence of the event which could normally have been avoided by the measures taken by the applicant, etc., such measures could be found to be reasonable.<sup>14</sup>

If the event that caused the expiration of the time limit is attributed to a human error of a person assisting the applicant, etc. (an "assistant"), please refer to [3.1.5 \(5\)](#).

Based on the understanding described above, the following are example cases where a remedy may or may not be granted:

**[Example cases where a remedy will not be granted]<sup>15</sup>**

- An incorrect time limit was notified by a time-limit management system due to an erroneous data entry; and no effective checking (such as a double check) had been conducted in order to avoid such an error.
- There has been a set of email or fax communication between the applicant, etc. and his/her agent, etc. to carry out the procedure; an intended request from one party did not reach the other party due to reasons such as a mistake in transmission, poor telecommunications quality, and a system error; and the sender failed to check the receipt of the message by the other party or failed to check if the other had accepted the request.
- A person who had been using a time-limit management system did not fully understand how to use it.

**[Example cases where a remedy may be granted]**

- An incorrect time limit was notified due to an erroneous data entry to a time-limit management system; even though effective checking had been conducted in order to avoid such an error, special circumstances made it impossible to prevent the error from taking place.
- An incorrect time limit was notified due to a structural problem of a system that is beyond expectations of the applicant, etc.; and the date on which the applicant, etc. learned (or should have learned) the fact was after the expiration of the time limit.

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<sup>12</sup> If a system with questionable functional stability is selected, or if a new system was introduced so hastily that is doubtful there was a sufficient transition period to the new system, it might lead to a conclusion that reasonable measures have not been taken to prevent the system error.

<sup>13</sup> Human errors such as the loss of a document, an error in data entry, a mistake in communication, or misunderstanding of a fact

<sup>14</sup> For instance, where the applicant, etc., which is a small family business, became overwhelmed by many things such as preparations for a funeral for one of the family members who had been in charge of IP-related tasks and had passed away just before the expiration of a time limit; and this led to the situation where a person who was unfamiliar with such tasks sent documents to a wrong destination instead of the JPO.

<sup>15</sup> If the measures taken prior to the occurrence of the event that caused the expiration of the time limit as specified in 3.1.4 (1) cannot be considered to be reasonable, a remedy will not be provided regardless of what measures are taken subsequently. Even in the case where the measures taken prior to the occurrence of the event can be regarded as reasonable, a remedy will not be granted if the measures taken after the occurrence of the event as specified in 3.1.4 (2) cannot be regarded as reasonable.

- The damage caused by a natural disaster made it impossible to complete the procedure within the prescribed time limit.

## **(2) Measures taken after the occurrence of the event that caused the expiration of the time limit**

If the event that caused the expiration of the time limit cannot be considered to be predictable, based on the information presented in a statement of the grounds for restoration, the JPO Commissioner will determine whether the measures taken by the applicant, etc. after the occurrence of the event, more specifically, the measures taken to avoid missing the time limit and to submit documents necessary for the procedure to the JPO, can be regarded as reasonable.

After the occurrence of the event that might have led to the expiration of the time limit, the applicant, etc. should have taken reasonable measures not to miss the time limit. However, if the date on which the applicant, etc. learned (or should have learned) the existence of the event was after the expiration of the time limit, it was impossible for the applicant, etc. to take any measures to prevent it. Thus, the applicant, etc. is not considered to have failed to take reasonable measures just because the applicant, etc. did not take such preventive measures. However, after the date on which the applicant, etc. learned the existence of the event, the applicant, etc. is expected to take reasonable measures to submit documents necessary for the procedure to the JPO.

In the case where the event that caused the expiration of the time limit temporarily prevented the applicant, etc. from preparing documents necessary to carry out the procedure for which a remedy is sought, the length of such period will be taken into consideration when making a determination as to whether reasonable measures have been taken. For example, it is considered that a translation can be prepared within two months under normal circumstances.<sup>16</sup> In the case where a "period during which the applicant, etc. was unable to prepare a translation" (referred to as the "Period B" in this paragraph) exists during the "period starting from the date 'two months prior to the expiration of the time limit' and ending on the date on which the applicant, etc. became capable of submitting a translation to the JPO (referred to as the "Period A" in this paragraph), if the period calculated by subtracting the Period B from the Period A is longer than two months (the length of the period that is considered to be necessary to prepare a translation), the applicant, etc., in principle, will not be considered to have taken reasonable measures.<sup>17</sup>

The following are the matters that should be taken into consideration when determining whether the measures taken after the occurrence of the event that caused the expiration of the time limit can be regarded as reasonable.

### **[Absence of the person in charge of the procedure due to an accident, etc.]**

In the case where the applicant, etc. is a legal person, if one of its employees who was in

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<sup>16</sup> This has been determined by taking into consideration the facts that, under Article 36bis, paragraph (2) of the Patent Act prior to the Amendment of 2006, it is specified that an applicant, etc. who submits foreign-language documents and a foreign-language abstract must submit a Japanese translation within "two months" from the filing date of the patent application; and that under Article 184quarter, paragraph (1) of the Patent Act, the special time limit for the submission of a translation for a foreign-language patent application is "two months" after the date of submission of national documents.

<sup>17</sup> In the case of documents such as a request for examination or a written statement to make a late payment of a patent fee, etc., which it normally takes only a couple of hours to prepare, the applicant, etc. will not be considered to have taken reasonable measures in principle if there is a time gap longer than one day between the "date on which the event that caused the expiration of the time limit ended" and the "date on which the applicant, etc. became capable of submitting documents to the JPO to carry out the procedure (the date on which the reason for not having been able to complete the procedure ceased to exist). "



charge of procedures becomes unable to carry out the task due to an accident, etc., the task will be left temporarily unaddressed until a substitute person becomes capable of doing it.

In such a case, based on the information presented in the statement of the grounds for restoration, a determination will be made on whether the measures taken after the occurrence of the event that caused the expiration of the time limit can be regarded as reasonable from the perspectives such as the contact network in case of an accident, the date on which the affected employee reported, the date on which the applicant, etc. other than the affected person learned (or should have learned) of the accident, the selection of the substitute person, and the follow-up process of preparing documents.

**[Notification of an incorrect time limit due to a system error, etc.]**

In the case where the case management is carried out by using a time-limit management system, it is common to commence a procedure upon notice of the deadline by the system. Any action to comply with the time limit cannot be expected until an erroneous time limit is notified or a system malfunction is detected.

In such a case, based on the information presented in the statement of the grounds for restoration, the JPO Commissioner will determine whether the measures taken after the occurrence of the event that caused the expiration of the time limit can be regarded as reasonable from the perspective of actions taken in response to the system error, etc., the date on which the applicant, etc. learned (or should have learned) that a notified time limit was incorrect, and the follow-up process of preparing documents.

Based on the understanding described above, the following are example cases where a remedy may or may not be granted:

**[Example cases where a remedy will not be granted]<sup>18</sup>**

- One of employees of an applicant, etc. (a company) working for the IP department who was in charge of procedures suddenly fell ill and became unable to carry out the procedure; although other employees of the IP department could have been aware of the situation and could have taken measures to carry out the procedure within the prescribed time limit, no such measures have been taken.
- An incorrect time limit was notified due to a system error, etc. in the time-limit management system; although it was possible to detect it and take measures to complete the procedure within the prescribed time limit, no such measures have been taken.
- Damage was caused by a natural disaster; although recovery efforts have progressed later on to such an extent that it became possible to carry out the procedure and the applicant, etc. became capable of taking measures to complete the procedure within the prescribed time limit, no such measures have been taken.
- Online procedure became unavailable; although it was possible to complete the procedure within the prescribed time limit by alternative means (by postal mail, etc.), no such measures have been taken.
- A translator had been absent since a week prior to the time limit; and it took more than a week to complete a translation from the date on which a substitute person became capable

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<sup>18</sup> Even in the case where the measures taken prior to the occurrence of the event that caused the expiration of the time limit as specified in [3.1.4 \(1\)](#) can be considered to be reasonable, a remedy will not be granted if those taken after the occurrence of the event that caused the expiration of the time limit as specified in [3.1.4 \(2\)](#) cannot be regarded as reasonable. In other words, a remedy will not be provided unless both the measures taken before and after the occurrence of the event that caused the expiration of the time limit can be considered to be reasonable.

of such work.

**[Example cases where a remedy may be granted]**

- The applicant, etc. suddenly fell ill and became unable to carry out the procedure; there was no other applicants, etc. and it was difficult to even arrange for a substitute person within the prescribed time limit.
- An incorrect time limit was notified due to a system error, etc. in the time-limit management system, and the date on which the applicant, etc. detected (or should have detected) that fact was after the time limit for the procedure had expired.
- Damage was caused by a natural disaster; the date on which recovery efforts have progressed to such an extent that it became possible to carry out the procedure was after the time limit for the procedure had expired.

**3.1.5 "Persons who should take measures"**

If the event that caused the expiration of the time limit cannot be considered to be predictable, a determination as to whether the measures taken to carry out the procedure can be considered to be reasonable should be made from the perspectives not only of the measures taken by the applicant, etc. to carry out the procedure (Please refer to [3.1.4](#)), but of who should take such measures.

Based on the information presented in a statement of the grounds for restoration, the JPO Commissioner will determine whether there is a "legitimate reason", from the perspectives of [3.1.3](#), [3.1.4](#), and that of who should take measures as well.

**(1) Applicant, etc.**

If the applicant, etc. is a natural person, a determination as to whether the measures taken to carry out the procedure can be considered to be reasonable should be made from the perspective of the details of measures taken by the applicant, etc. himself/herself.

If the applicant, etc. is a legal person, the determination as to whether the measures taken to carry out the procedure can be considered to be reasonable should be made from the perspective of the details of measures taken not only by the employee in charge of the procedure but also by the applicant, etc. as a legal person.<sup>19</sup>

**(2) Where there are more than one applicant, etc.**

If there is more than one applicant, etc., each of them acts as the agent of all of them, and all of them can act before the JPO. Thus, the determination on whether the measures to carry out the procedure can be considered reasonable will be made separately on each and every applicant, etc.

In other words, where one of the applicants, etc. is found to have taken reasonable measures but others are not, the measures taken by applicants, etc. as a whole cannot be found reasonable.

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<sup>19</sup> For example, where an applicant, etc. has a department in charge of the procedure in question (the "IP department, etc."), finding on whether reasonable measures have been taken will be made by taking into account the measures that should be taken by the IP department as a whole, as well as those that should be taken by the person who is in charge of that specific case. Where an applicant, etc. does not have IP department, etc., such finding will be made based not only on the measures taken by the person directly in charge of the task, but also on those taken by the person supervising the task. In the case of a small business, especially, the person directly in charge of the task and the person who supervises the task could be the same.

The determination on "legitimate reason" will therefore be negative. What "reasonable measures" mean in such a case differs depending on the situation where each applicant, etc. was in.

For instance, if one of the applicants, etc. has been appointed as their representative and so notified to the JPO (under the proviso to [Article 14 of the Patent Act](#)), or even without such notification, if one of the applicants, etc. has been entrusted among them to act as a de facto representative before the Office to carry out any subsequent procedures, a determination will be made on whether the measures taken by the (de facto) representative and those taken by others can be considered reasonable from the perspective of whether they played their expected roles respectively.

Where the (de facto) representative could not carry out a procedure due to an unexpected accident, etc., and any other applicant, etc. was aware of the situation, the latter should have taken over the procedure on his/her behalf.

On the other hand, where the other applicants, etc. who were not expected to be aware of the situation failed to complete the procedure within the time limit, that alone will not lead to a conclusion that reasonable measures have not been taken and that no "legitimate reason" exists.

### **(3) Where agents are delegated with the procedures before the JPO**

In the case where the applicant, etc. has delegated to an agent the procedures before the JPO, it is the agent who usually carries out those procedures. In principle, when examining "the measures taken by the applicant, etc. to carry out the procedure" ([3.1.4](#)), those taken not only by the applicant, etc., but also by the agent, are taken into consideration in determining whether reasonable measures have been taken. If there is more than one agent, etc., such determination will be made on each of the agents using the same criteria as those in the case where there is more than one applicant, etc. (Please refer to (2)).

Where an agent is involved, the approach to find whether an applicant, etc. has taken reasonable measures will be different from the one to be followed where no agent is involved. The JPO Commissioner will determine whether the appointment of the agent was reasonable, and, on the assumption that it was, whether the handling by the applicant, etc. was reasonable.

It should be noted that, where the applicant, etc. is expected to take measures on his/her own to prevent the expiration of the time limit (for instance, where the applicant, etc. is aware of the risk of missing the time limit), the failure of the applicant, etc. to complete the procedure within the time limit will be regarded as a failure to take reasonable measures, even if the applicant, etc. delegates the procedure to an agent. In such a case, the existence of a "legitimate reason" will be denied.

If the agent is a "patent professional corporation," a determination as to whether reasonable measures have been taken will be made based on what measures have been taken not only by the patent attorney directly in charge of the procedure, but also by the corporation as a whole.

### **(4) Where the time limit management etc. is outsourced to parties other than agents**

Where the applicant, etc. has outsourced a party other than an agent mentioned in (3) above (such as a company managing the time limits of patent fees or a local agent in the case of a person living outside Japan) with tasks such as time limit management, and some event prevented the said person from conducting such a task and that resulted in the expiration of the time limit, a determination as to whether reasonable measures have been taken will be made, in principle, based on the details of the measures taken by the person outsourced with the task, using the same criteria as those in the case where an agent has been delegated with the procedures before the JPO (Please refer to (3) above).

If there is an agent as mentioned in (3) above, a determination as to whether reasonable measures have been taken will be made not only with regard to the person delegated with the task of time-limit management, etc., but also with regard to his / her agent as well.

If the person delegated with the task of time-limit management, etc. is a legal person, such determination will be made based on the details of the measures taken not only by the person directly in charge of the task, but also by the legal person.

**(5) Where an assistant is entrusted with the performance of certain tasks<sup>20</sup>**

Where the applicant, etc. entrusts an assistant with the performance of certain tasks, the expiration of the time limit could occur due to the assistant's action. In this case, a determination as to whether the measures taken prior to the occurrence of the event that caused the expiration of the time limit can be considered to be reasonable will be made based on whether the applicant, etc., whom the assistant reports to, satisfies the requirements(a) to (c) below (Please refer to [3.1.4 \(1\) \[Case where a human error caused the expiration of the time limit\]](#)). A determination as to whether these three requirements are satisfied will be made by finding relevant facts, such as the role played by the applicant, etc. in the time-limit management process (which he or she had established) involving the assistant as its part, the details of the tasks entrusted to the assistant, and the assistant's past experience. When making such determination, the circumstances that made it impossible to prevent the expiration of the time limit<sup>21</sup> will also be taken into consideration.

- (a) A person suitable for the tasks was employed as an assistant;
- (b) Proper guidance and instructions were given to the assistant;

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<sup>20</sup> An "assistant" means a person who is assigned to help the applicant, etc. or the agent, etc. who are responsible for taking necessary measures. An "assistant" is usually entrusted with tasks that do not require highly specialized knowledge. In the case where the applicant, etc. or the agent, etc. is a corporation, an "assistant" means a person who helps an employee of the IP department or the patent attorney who is in charge of the procedure.

<sup>21</sup> The circumstances which could be taken into consideration here include the following:

(Example 1) The applicant, etc. appointed two assistants for conducting and checking data entry. They were sufficiently instructed on how to perform the assigned tasks. The assistants conducted the tasks without any problem under normal circumstances. However, one day, one of them who was in charge of data entry suddenly fell ill after performing the task. Due to the following turmoil, the assistant in charge of checking data entry failed to detect an error.

(Example 2) Under proper instruction by an agent, the assistant of the agent used to send notifications of time limits to multiple applicants by email under normal circumstances. However, one day, the assistant mistakenly sent Applicant A some information that should have been sent to Applicant B. Applicant A did not notice that the information should have been sent to a different applicant (Applicant B) and mistakenly believed that the information was about his/her own. The assistant mistakenly kept on believing that the time limit was properly notified because the transmission record showed that the information was sent to the correct addressee (Applicant A). The assistant notified the agent to that effect. The assistant noticed the mistake after the expiration date of the time limit.

(c) The assistant was sufficiently managed and supervised.

Next, the JPO Commissioner will examine the measures taken after the occurrence of the event that caused the expiration of the time limit, more specifically the measures taken by the applicant, etc. to prevent the expiration of the time limit and, if the time limit was expired despite those measures, the measures to escape from the situation where the procedure cannot be carried out ([Please refer to 3.1.4 \(2\)](#)).

As described above, in the case of the expiration of the time limit due to an act of an assistant, a “legitimate reason” will be found for the failure to complete the procedure within the time limit only if both the measures taken prior to and subsequent to the occurrence of the event that caused the expiration of the time limit are considered to be reasonable.

In the case where an agent or a person delegated with the task of time-limit management entrusts an assistant with the performance of a certain task, such determination will be made based on the same criteria as those in the case where the applicant, etc. entrusts an assistant with the performance of a task.

**[Example cases where a remedy will not be provided]**

- The assistant was temporarily entrusted with a task that requires highly specialized knowledge.
- The assistant was entrusted with the task without sufficient guidance.
- The assistant misunderstood the facts because instructions were given orally and not clear.
- The applicant, etc. left the assistant solely in charge of all the time-limit management tasks and did not check the progress of those tasks at all.
- Although the applicant, etc. could have learned of an error made by the assistant and could have taken measures to complete the procedure within the time limit, the applicant, etc. did not take any measures at all.

### **3.2 Completion of the procedure within the remedial procedure period (Requirement 2)**

The procedure that was not completed within the prescribed time limit must be completed within the remedial procedure period. For the restoration of rights of priority, an application must be filed and a priority be claimed within the priority restoration period.

#### **3.2.1 Basic approach**

For the remedial procedure with respect to missed time limits, the same approach as in the PLT will be taken.<sup>22</sup> More specifically, such a procedure which could not be completed within the time limit may be carried out within two months from the date on which the reason for not having been able to complete the procedure within the time limit ceased to exist and within one year<sup>23</sup> from the date on which the time limit expired. The procedure after the remedial procedure period will not be permitted even if there is a “legitimate reason” for not having been able to complete the procedure within the time limit. Thus, it is necessary to clarify the “date on which the reason for not having been able to complete the procedure ceased to exist,” from which the remedial procedure period should be calculated.

The right of priority may be restored in accordance with a provision of the PLT Regulations<sup>24</sup>

<sup>22</sup> Rule 13 (2) of the Regulations under the Patent Law Treaty

<sup>23</sup> Within six months in the case of a trademark

<sup>24</sup> Rule 14 (2) of the Regulations under the Patent Law Treaty

only if an application and the priority claim are filed within the priority restoration period. It should be noted that, unlike the case of remedial procedure period, the aforementioned priority restoration period should not be calculated from the "date on which the reason for not having been able to file an application ceased to exist."

### **3.2.2 Date on which the reason for not having been able to complete the procedure ceased to exist**

The "date on which the reason for not having been able to complete the procedure ceased to exist" means the "date on which the applicant, etc. escaped from the situation where a procedure cannot be carried out," in other words, the date on which the applicant, etc. has become able to submit the documents necessary for a procedure before the JPO."

For example, in the case of the procedure to submit a translation, such date means the date on which the applicant, etc. has become capable of submitting a document containing the translation to the JPO. In the case of a late payment of a patent fee, etc., such date means the date on which the applicant, etc. has become capable of submitting a document concerning the payment to the JPO.<sup>25</sup>

The JPO Commissioner will determine whether a procedure that missed the time limit has been completed within the remedial procedure period which starts from the "date on which the reason for not having been able to complete the procedure ceased to exist" mentioned in the statement of the grounds for restoration.

In the case where the applicant, etc. wishes to carry out more than one procedures (for which the time limits were not complied with) related to the same application, each procedure shall be completed within the remedial procedure period calculated from each "date on which the reason for not having been able to complete the procedure ceased to exist".

## **4. Workflow after the determination as to whether a remedy should be granted**

Based on the information presented in the statement of the grounds for restoration, the JPO Commissioner will determine whether a remedy should be granted, in other words, whether to permit a procedure for which the time limit was not complied with.

### **(1) Where a remedy is granted**

If, based on the information presented in a statement of the grounds for restoration, the JPO Commissioner finds that the requirements to grant a remedy are satisfied, the Commissioner will permit the procedure and notifies the applicant to the effect that a remedy is granted.

### **(2) Where a remedy is not granted**

If, based on the information presented in a statement of the grounds for restoration, the JPO Commissioner finds that the requirements to grant a remedy are not satisfied, the Commissioner will send the applicant, etc. a notice of reasons for dismissal explaining the reason for not allowing the procedure for which the time limit was not complied with.

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<sup>25</sup> Whether a patent fee, etc. has been made available for payment will not be taken into consideration.

If the reasons for dismissal are notified, the applicant, etc. will be given an opportunity to submit a written explanation.<sup>26</sup> Based on the explanation, the JPO Commissioner will determine whether a remedy should be granted. If the conclusion is negative, the Commissioner will send the applicant, etc. a certified copy of a notice of dismissal of the procedure taken after the expiration of its time limit.

If the applicant, etc. is dissatisfied with the JPO's disposition, he or she may either request a review under the Administrative Complaint Review Act, or file an action against the disposition under the Administrative Case Litigation Act.<sup>27</sup>

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<sup>26</sup> Article 18-2, paragraph (2) of the Patent Act, Article 2-5, paragraph (2) of the Utility Model Act, Article 68, paragraph (2) of the Design Act, Article 77, Paragraph (2) of the Trademark Act and Article 27, paragraph (2) of the Supplementary Provisions of the Trademark Act

<sup>27</sup> A request for review with regard to a disposition may not be filed after three months from the day following the day on which the relevant person learned that the disposition was reached (Article 18, paragraph (1) of the Administrative Complaint Review Act). In the case of a disposition made by the end of March 2016, if the relevant person learned of the disposition by the end of said month, an opposition may be filed within 60 days calculated from the date following the date on which the relevant person learned of the disposition ([Article 3 of the Supplementary Provisions of the Administrative Complaint Review Act](#), Article 45 of the former Administrative Complaint Review Act).

An action concerning the disposition may not be filed after six months from the date on which the relevant persons learned of the disposition (Article 14, paragraph (1) of the Administrative Case Litigation Act).

## 5. Sample statement of the grounds for restoration

[Name of the document] Statement of the grounds for restoration

([Date of submission] August 1, XXXX)

(Omitted)

[Grounds for restoration]

Event that led to the expiration of the time limit (summary)

- Friday, May, 20, XXXX: Patent Attorney X in charge of this case sent Applicant A, by fax, a reminder concerning the time limit for the procedure to make a late payment (the due date for the Applicant A's response was set on Friday, June 17).
- Friday, June 17, XXXX: Applicant A sent the patent attorneys' office, by fax, a written instruction to make the late payment.
- Since Patent Attorney X did not receive the aforementioned fax by Friday, June 24, XXXX, which was the time limit for the procedure to make the late payment, Patent Attorney X did not carry out the aforementioned procedure to make the late payment.
- Friday, July 1, XXXX: Applicant A sent an email to Patent Attorney X.
- Friday, July 1, XXXX: From the aforementioned email, Patent Attorney X learned that Applicant A had sent a fax to request Patent Attorney X to carry out the procedure to make a late payment (This date should be regarded as the date on which the reason for not having been able to carry out the procedure ceased to exist).
- The subsequent investigation revealed that the fax machine became temporarily unusable due to the blackout that occurred in the district of Patent Professional Corporation B, to which Patent Attorney X belonged, from Saturday, June 18 to Sunday, June 19, XXXX.
- Monday, August 1, XXXX: A statement of the grounds for restoration was prepared and submitted to the JPO together with evidential documents.

(1) Grounds for claiming the described reason as a "legitimate reason"

A. Event that caused the expiration of the time limit (that it cannot be considered to be predictable)

In this case, the applicant is A, the agent is Patent Professional Corporation B, and the patent attorney who belongs to Patent Professional Corporation B and in charge of this case is X.

Patent Professional Corporation B was established in XXXX. The number of patent attorneys and staff members are XX and XX respectively. Patent Professional Corporation B provides services related to application filing procedures and patent fee payment management. So far, Patent Professional Corporation B carried out about XX tasks as the agent of Applicant A (Exhibit 1). In accordance with its business manual (Exhibit 2), Patent Professional Corporation B usually sends the applicant a reminder to notify the time limit for a procedure. At least one month prior to the time limit, Patent Professional Corporation B contacts the applicant once again by phone or email, and requests the applicant to send Patent Professional Corporation B a written instruction by fax or email by the specified due date in order to indicate whether the applicant wishes to carry out the procedure.

Unless Patent Professional Corporation B receives a written instruction by the specified due date, the Patent Professional Corporation B will not carry out the procedure.



In this case, the time limit for a late payment of a patent fee and a patent surcharge was Friday, June 24, XXXX. Patent Attorney X sent a fax to Applicant A on Friday, May 20, XXXX to notify that, if Applicant A wishes to have a late payment of a patent fee and a patent surcharge be paid, Applicant A must send Patent Attorney X a written instruction by Friday, June 17, XXXX. In the fax, Patent Attorney X emphasized that, if Applicant A fails to submit a written instruction by the due date, Patent Attorney X would not carry out the procedure (Exhibit 3). On Monday, June 20, XXXX, Patent Attorney X did not receive an instruction either by fax or email. Thus, Patent Attorney X did not carry out the procedure to make a late payment of a patent fee and a patent surcharge. However, Applicant A had sent a written instruction by fax after the business hours of the office on Friday, June 17, XXXX in order to request Patent Attorney X to carry out the procedure to make a late payment (Exhibit 4). Since Applicant A had not heard from Patent Attorney X on this case, on Friday, July 1, XXXX, Applicant A emailed Patent Attorney X (Exhibit 5) and found out that the time limit had expired. Thus, Friday, July 1, XXXX should be considered to be the date on which the event that caused the expiration of the time limit ended.

Subsequent investigations revealed that a blackout occurred all around the district of Patent Professional Corporation B from Saturday, June 18, XXXX to Sunday, June 19, XXXX due to heavy rain (Exhibit 6). As a result, the fax machine, which could have functioned without the blackout, was unusable (Exhibit 7). For this reason, Patent Attorney X was unable to notice the transmission of a fax from Applicant A. The date when the blackout began, i.e., Saturday, June 18, XXXX, should be considered to be the date on which the event that caused the expiration of the time limit occurred.

As described above, it was not easy to find out that the fax machine became unusable for a while as a result of a blackout on the weekend when the office was closed. It can be said that it was impossible to notice this event until Patent Attorney X received a phone call from Applicant A. Thus, the event that caused the expiration of the time limit cannot be considered to be predictable.

#### B. Measures taken prior to the occurrence of the event

Applicant A filled out a written instruction in accordance with the format presented by Patent Professional Corporation B and sent it by fax by the specified due date. After the transmission of the fax, Applicant A checked the fax communication record and made sure that the fax transmission was properly completed (Exhibit 8). Until then, Applicant A's instruction transmitted by fax had never failed to reach the agents.

As described in (1) above, Patent Professional Corporation B established a business manual (Exhibit 2) which has always been complied with to send reminders to each applicant and check instructions from applicants. Until then, Patent Professional Corporation B had never failed to check instructions from applicants.

As mentioned in (1), Patent Attorney X clearly requested Applicant A to send a written instruction and emphasized that, if Applicant A fails to submit a written instruction by the due date, Patent Attorney X would not carry out the procedure (Exhibit 3).

*\* Concerning each of the persons who should take measures (all persons), please describe in detail (1) the time-limit management system established in advance and the measures taken in advance in order to prevent the expiration of the time limit and (2) the measures actually taken in response to the situation in this case. In particular, if an assistant is used, it is necessary to describe in detail what measures have been taken by the persons who should take measures from the perspective of each of three requirements for using an assistant (3.1.5 (5) (a) to (c)).*

#### C. Measures taken after the occurrence of the event

Patent Attorney X and other employees of Patent Professional Corporation B were unable to notice that the fax machine became unusable for a while due to the blackout that occurred during the weekend when the office was closed.

On Friday, July 1, XXXX, after the email from Applicant A revealed that the time limit had expired, Patent Attorney X promptly started preparing a written statement for late payment of a patent fee and a patent surcharge and completed the preparation on that day.

(2) "Date on which the reason for not having been able to complete the procedure ceased to exist" and the grounds for finding the date as such date

A. Date on which the reason for not having been able to complete the procedure ceased to exist

The date on which the said reason ceased to exist is Friday, July 1, XXXX.

B. The grounds for finding the date as the "date on which the reason for not having been able to complete the procedure ceased to exist"

Immediately after finding out the event that caused the expiration of the time limit, Patent Attorney X started preparing a written statement. The date on which the written statement is completed can be considered to be the "date on which the reason for not having been able to complete the procedure ceased to exist."

[List of the submitted documents]

[Name of the document] Document to prove that tasks were commissioned from Applicant A to Patent Professional Corporation B (Exhibit 1) 1

[Name of the document] Business manual (Exhibit 2) 1

[Name of the document] Notice of the time limit sent from Patent Attorney X to Applicant A (Exhibit 3) 1

[Name of the document] Request for payment sent from Applicant A to Patent Attorney X (Exhibit 4) 1

[Name of the document] Written inquiry from Applicant A to Patent Attorney X (Exhibit 5) 1

[Name of the document] Document to prove the occurrence of the blackout (Exhibit 6) 1

[Name of the document] Document to explain the functions of the fax machine owned by the Patent Professional Corporation B (Exhibit 7) 1

[Name of the document] Communication records of the fax machine owned by Applicant A (Exhibit 8) 1

\* Please refer to ["2.1 Matters that should be stated in the statement of the grounds for restoration"](#)

**This is a fictional statement created to show what should be presented as the "grounds for restoration." Please note that it does not necessarily mean that a statement containing the same information as this example will be found to have a "legitimate reason."**