

COVID-19 Countermeasures in Trial and Appeal taken by Japan, China and Korea

| | Japan | China | Korea |
|---|---|---|---|
| Measures taken for oral proceedings | | | |
| Online oral proceedings | <ul style="list-style-type: none">• Face-to-face oral proceedings are conducted with application of COVID-19 countermeasures.• If a party concerned is unable to attend oral proceedings due to COVID-19, an online oral inquiry in lieu of oral proceedings is conducted with the consent of both parties.• Working on a legal revision to allow parties concerned to attend oral proceedings online. | <ul style="list-style-type: none">• At the beginning of the COVID-19 break, on-site oral proceedings were completely suspended and all online oral proceedings were adopted; in the later stage, online oral proceedings were mainly used to cooperate with on-site oral proceedings. | <ul style="list-style-type: none">• In accordance with the government guidelines for COVID-19 treatment based on spread of the virus, IPTAB makes arrangements on the scheduling of the oral proceedings (delay, suspend, etc.). If it is inevitable to hold oral proceedings, it is recommended to do so in a video format (video oral hearings).• In-person oral hearing will be held only when the panel of administrative judges find it absolutely necessary, including when there is a request from the parties or there is a consent from the both parties. |
| Online examination of evidence (examination of witnesses, examination of documents, inspection, etc.) | <ul style="list-style-type: none">• Working on a legal revision to allow parties concerned to attend examination of evidence online. | <ul style="list-style-type: none">• Witness testimony must provide written content, combined with online review, the document can be mailed by the party concerned, and the collegiate panel will verify the authenticity on behalf of the other party after approval. | <ul style="list-style-type: none">• Even for video oral proceedings, all participants also have to appear at the IPTAB video hearing room. In that sense, evidence examination for video oral hearings will be conducted in the same way for in-person proceedings.• However, if the evidence is submitted on the date of oral proceedings, document camera may be used for inspection in detail. When requested from the panel of judges, it is required to submit the copy of evidence that will be sent to the other party. |
| Online access to online oral proceedings by members of the public | <ul style="list-style-type: none">• Necessity of introducing online observation is under consideration. | <ul style="list-style-type: none">• Online access to online oral proceedings after obtaining of consent of the collegiate panel and the login account of the remote trial system | <ul style="list-style-type: none">• No online access available for public admission. Members of public should appear at the hearing room for observation, either in Daejeon or Seoul. |
| Location restrictions for in-person oral proceedings | <ul style="list-style-type: none">• For the moment, in principle, restricted to IT Trial Court and the 1st Trial Court out of three trial courts* with consideration of air circulation and adequate space for social distancing. (*JPO main building (IT Trial Court) and METI Annex Building (the 1st Trial Court, the 2nd Trial Court))• Circuit Trials are possible with attention given to parties and infectious disease countermeasures. | <ul style="list-style-type: none">• In the Oral Trial Courts of the Reexamination and Invalidation Department, or 11 circuit trial courts over the country. | <ul style="list-style-type: none">• In-person oral hearings shall be conducted among one of the 6 hearing rooms in Daejeon. |
| Infection prevention equipment (circulator, thermometer, sanitizing liquid, face shields, etc.) | <ul style="list-style-type: none">• Circulator, thermometer, sanitizer, and face shields• During oral proceedings, the door is kept open (with the exception of in-camera procedures) for ventilation using a circulator• Cleaning the doors, desks, chairs, and microphones, etc., before and after oral proceedings• Preparing a bottle of hand sanitizer at the entrance to the Trial Court | <ul style="list-style-type: none">• Masks, thermometers, regular disinfection, health code verification | <ul style="list-style-type: none">• Masks, non-contact thermometers, sanitizer, (disposable) microphone covers, sanitary gloves, acrylic boards, regular disinfection• When entering the hearings rooms located in Daejeon, all participants should go through infrared thermal imaging system. |

COVID-19 Countermeasures in Trial and Appeal taken by Japan, China and Korea

| | Japan | China | Korea |
|--|--|---|--|
| Measures taken for oral proceedings | | | |
| Limiting party attendees | <ul style="list-style-type: none"> 3 attendees maximum in principle In cases where 4 or more attendees are required, a maximum of 3 attendees may be seated at the table for the party. Parties are requested to limit the number of other related individuals, such as witnesses or spectators, to the minimum. | <ul style="list-style-type: none"> No more than four attendees whether online oral proceedings or not | <ul style="list-style-type: none"> No restrictions in principle, but it has been recommended to restrict the number of attendance to 2 attendees per each party since the government social distancing level was raised to level 2 in November 2020. |
| Limiting public attendance | <ul style="list-style-type: none"> Available seats are limited to maintain social distance. | <ul style="list-style-type: none"> No special requirements for online oral proceedings. Several public auditors are permitted to attend the on-site oral proceeding until now. | <ul style="list-style-type: none"> In accordance with the government guidelines for social-distancing, only limited number of members of the public is allowed for observation based on the capacity of the hearing room. It has been advised to restrict public admission as of November 2020. |
| Requests to attendees (masks, microphones, etc.) | <ul style="list-style-type: none"> Wear a mask (panel, trial clerk, parties, witnesses, spectators) Panel and trial clerk carefully wash their hands and wear gloves when handling the originals of evidences, etc. Wear a face shield when necessary Speak using a microphone | <ul style="list-style-type: none"> No special requirements for online oral proceedings. On-site oral proceedings: <ol style="list-style-type: none"> Application in advance; Health codes, oral proceeding notices, masks; Wearing a mask throughout the oral proceeding is a must. | <ul style="list-style-type: none"> All participants should wear masks throughout the proceedings, use hand sanitizer, and go through body temperature check. Use disposable antimicrobial microphone cover and use disposable gloves when dealing with the evidence. |
| Physical condition check of attendees | <ul style="list-style-type: none"> Attendees are requested to fill in a questionnaire before entering the Trial Court Body temperature check by a non-contact thermometer Accept or reject attendance according to the results of questionnaire and body temperature | <ul style="list-style-type: none"> Check health codes and ensure that every attendee comes from low-risk area. | <ul style="list-style-type: none"> Check body temperature with the non-contact thermometer. |
| Other COVID-19 countermeasures used for oral proceedings | <ul style="list-style-type: none"> Communications regarding oral proceedings using email instead of FAX with consent of party concerned to allow communications while working from home <ol style="list-style-type: none"> Delivery of notification of matters to be examined prior to the date Arrangement of oral proceedings date Oral proceedings statement brief delivery prior to proceedings date Written confirmation of the date Confirmation of attendees Trial record copy delivery Other communications | <ul style="list-style-type: none"> Increase the equipments and courts available for online oral proceedings (added 10 remote trial courts) | <ul style="list-style-type: none"> 1 video oral hearing room and 2 technological explanatory session rooms were established in Seoul Office in December 2020 (mostly for online technology explanatory session, but may be used for video oral hearing with one party appearing at Seoul Office, if necessary). |

COVID-19 Countermeasures in Trial and Appeal taken by Japan, China and Korea

| | Japan | China | Korea |
|---|---|---|--|
| Relief measures for procedures affected by COVID-19 | | | |
| Extension of time limits | <ul style="list-style-type: none">Request for designated time limit extensions<ol style="list-style-type: none">Submission of a document, such as a written statement, etc., containing “the extension period requested” and “specific reasons for the necessity of such an extension.” Submission by FAX or Email is accepted.Extend the designated time limit ex officio (No fee required)Extensions are a maximum of 1 month (request for additional extensions are possible when necessary) | <ul style="list-style-type: none">No special period extension | <ul style="list-style-type: none">Request for extension of designated time limit, request for change of oral hearing date, request for suspension of proceedings filed by the parties due to COVID-19 will be accepted as much as possible.<ul style="list-style-type: none">In principle, request for extension of designated time limit is only available once for fast-track trials and accelerated trials. However, if the request for extension is made due to COVID-19, such request will be accepted as much as possible. |
| Relief measures when failing to meet time limits | <ul style="list-style-type: none">Relief request when failing to meet designated time limitsRelief request when failing to meet statutory time limits<ol style="list-style-type: none">Trial/appeal procedures for which relief measures are provided by law when failing to meet time limits due to “reasons beyond the person’s control”Relief must be requested within 6 months after expiry of the period and within 14 days (within two months for non-residents) after proceeding with the procedure becomes possible.Reasons for having failed the procedure must be explained in the document concerning said procedure or in a written statement. | <ul style="list-style-type: none">If the party concerned delays the time limit stipulated in the Patent Law and its implementation rules or the time limit specified by CNIPA due to epidemic-related reasons, resulting in the loss of its rights, the party concerned may within 2 months from the date of removal of the obstacle, and at the latest within 2 years from the date of expiration, request the restoration of rights. If request the restoration of rights, no need to pay the fee for restoration of rights, but submitting a written request for restoration of rights is required, explaining the reasons, and attaching corresponding supporting materials, and going through the corresponding procedures that should be completed before the loss of rights. | <ul style="list-style-type: none">1) When the proceeding has been invalidated due to a failure to meet the designated period for making an amendment to Petitions for Trial and/or 2) when failing to meet the period for filing a petition for the appeal against a decision to reject application due to COVID-19, such delay shall be deemed to be affected by a cause not imputable to him/herself (“reasons beyond the person’s control”) and entitled to relief measures.Relief must be requested within 2 months from the date of when such cause ceases to exist and within 1 year after the expiry of the period for amendment of invalidation of procedure or period for filing the petition for the appeal against a decision to reject application. |
| Exemption of certain documents | <ul style="list-style-type: none">Exemption of documentary evidence (proving effects of COVID-19) for relief when failing to meet statutory time limits | <ul style="list-style-type: none">No related exemptions | <ul style="list-style-type: none">No related exemptions of documentary evidence for relief when failing to meet a statutory time limit. |

COVID-19 Countermeasures in Trial and Appeal taken by Japan, China and Korea

| | Japan | China | Korea |
|---|---|---|--|
| Measures taken in appeal/trial examination in the Trial and Appeal Department | | | |
| Suspension of procedures | <ul style="list-style-type: none"> Temporary suspension of the following cases under the Declaration of a State of Emergency <ol style="list-style-type: none"> Cases in which interrogation of witnesses, inspections, or expert testimony is requested Cases which require direct visual examination of the original documentary evidence | <ul style="list-style-type: none"> No suspension | <ul style="list-style-type: none"> When the parties request for the suspension of trial/appeal proceedings due to COVID-19, such request will be accepted as much as possible. For inter partes cases which involves non-resident as an either party, where international postal service is suspended, such trial proceedings shall be suspended ex officio. |
| Adoption of documentary proceedings | <ul style="list-style-type: none"> Switching to documentary proceedings <ol style="list-style-type: none"> Switched to documentary proceedings in principle under the Declaration of a state of emergency (April 7 to May 25, 2020) During the emergency period, if required, online interviews or online oral inquiries were conducted. | <ul style="list-style-type: none"> Adoption of documentary proceedings if the facts of the case are simple and in line with the relevant provisions of “Examination Guidelines” | <ul style="list-style-type: none"> The presiding administrative judge may proceed with either oral hearings or documentary hearings. Even when there is a request for oral hearings from the parties, if the presiding administrative judge finds that trial decision can be made solely based on the examination of documents, trial proceedings may be conducted by documentary hearing without conducting an oral hearing. If it is decided to conduct documentary hearing, it is recommended to utilize interview and/or explanatory session by telephone or online. |
| Online interviews | <ul style="list-style-type: none"> Online interviews using video-conferencing platforms Submission of documents by email Exemption of autograph on the record of interview with the consent of the party concerned | <ul style="list-style-type: none"> No online meeting with the parties. Online discussion among collegiate panel members. | <ul style="list-style-type: none"> Online interviews or online technical explanatory sessions may be conducted using online video-conferencing system (On-nara video-conferencing system, created by the Korean government which may be used across all public agencies). When conducting online interview or online technical explanatory session, signatures from the parties for interview/session report may be waived with the consent from the parties |
| Teleworking of staff members (Administrative Judges, Clerks) | <ul style="list-style-type: none"> Teleworking of TAD staff members at a certain telework rate (Administrative judges, Clerks) Provisions of various tools supporting teleworking | <ul style="list-style-type: none"> According to the actual requirements of epidemic prevention and control, all members of the collegiate panel can work remotely. At present, some members work remotely from home. | <ul style="list-style-type: none"> In accordance with the government guidelines on the level of ‘social distancing’, the following is guidance is applied for teleworking: <p>Level 1: About one-fifth of employees may telework.</p> <p>Level 1.5 & 2: About one-third of employees may telework</p> <p>Level 2.5: At least one-third of employees are advised to telework.</p> <p>Level 3: it is required for all employees, except those whose mission is deemed essential, to telework.</p> Regardless of the COVID-19, administrative judges, trial researchers and formality examiners are allowed to telework at any time with the permission from the President of the IPTAB. |
| Other measures taken in appeal/trial examination | <ul style="list-style-type: none"> Acrylic boards in interview/meeting rooms | <ul style="list-style-type: none"> Circuit Trials should be examined and approved | <ul style="list-style-type: none"> Acrylic boards have been set in interview rooms and meeting rooms. |