

**Proceedings of Suits against Appeal/Trial Decision made by the JPO
(For Patent/Utility Model)**

The Intellectual Property High Court would like to request the parties to make necessary preparations described below in order to enable effective and planned progress of a suit against appeal/trial decision made by the JPO on a patent/utility model. We appreciate your understanding and cooperation regarding this matter.

**Guidelines for Proceedings of Suits against
Appeal/Trial Decision made by the JPO**

The Intellectual Property High Court would like to request the parties to make preparations described below in order to proceed suits in accordance with the *Flow of Procedures of Suits against Appeal/Trial Decision made by the JPO (Patent/Utility Model)*.

1. Designation of the first date for preparatory proceedings

The Intellectual Property High Court (hereinafter referred to as "the Court") shall designate the first date for preparatory proceedings prior to the first date for oral argument. The Court will send a written inquiry to both parties prior to the designation. Please respond to the inquiry by indicating your opinions for referring your case to preparatory proceedings and candidate dates for the proceedings.

2. Preparations by the parties before the first date for preparatory proceedings

(1) Submission of the first brief and evidence by the Plaintiff

A. Submission of basic documentary evidence

The Plaintiff should submit basic documentary evidence within about two weeks from the filing of the complaint (the specific date is indicated in the above-mentioned inquiry) along with the description of evidence. Regarding the manner of offering documentary evidence and the type of basic documentary evidence, please refer to "Submission of Documentary Evidence/Evidence in Electromagnetic Data" in the "Guidelines and Formats for Proceedings of Suits against Appeal/Trial Decision made by the JPO."

B. Submission of the first brief and evidence other than basic documentary evidence

- a. The Plaintiff should submit the first brief no later than ten days before the first date for preparatory proceedings except in cases when the Court designates a specific submission date.

In this first brief, the plaintiff should state concrete statements of admission and/or denial in the appeal/trial decision and state the grounds for rescission of the decision.

All grounds for rescission should be stated in this first brief.

- b. All evidence other than basic documentary evidence should be submitted by this point in time. The description of evidence should also be submitted at the same time.

(2) Submission of a written answer by the Defendant

When the Defendant receives a complaint, the Defendant should promptly submit a written answer that includes statements of the answers to the objects of the claim described in the complaint, and admission and/or denial of each of the fact described in the statements of the claims.

3. The first date for preparatory proceedings

On the first date for preparatory proceedings, points at issue shall be clarified, and the schedule for the proceeding shall be coordinated considering the deadlines of the Defendant's brief for rebuttal and the Plaintiff's brief for re-rebuttal, as well as whether to schedule an explanatory session.

4. Preparations by the parties before the second date for preparatory proceedings

(1) Submission of a brief and evidence by the Defendant

A. The Defendant should submit a brief describing rebuttal to the Plaintiff's allegation of the grounds for rescission by the deadline set by the Court on the first date for preparatory proceedings (approximately within one month from the first date for preparatory proceedings). All the Defendant's arguments should be stated in this brief.

B. All necessary evidence should be submitted at this point in time. The description of evidence should also be submitted at the same time.

(2) Submission of the second brief by the Plaintiff

- A. Upon receipt of the Defendant's brief referred to above, the Plaintiff should submit the second brief if there is any re-rebuttal or matter to supplement the argument by the deadline set by the Court on the first date for preparatory proceedings (approximately within one month from the date specified in (1) A. above).
- B. Any additional or supplemental evidence in connection with the above should be submitted with the description of evidence.

5. The second date for preparatory proceedings

The second date for preparatory proceedings, which was designated on the first date for preparatory proceedings, is about one to two weeks from the deadline of submission of the second brief by the Plaintiff as stipulated in 4 (2) above.

- (1) Clarification of the points at issue and submission of evidence shall be substantially completed on this date. However, the Court may designate the third date for preparatory proceedings (and more) to continue allegations and submission of evidence as necessary.
- (2) Upon substantial completion of the clarification of points at issue and submission of evidence, the Court shall conclude preparatory proceedings and give a notice of the scheduled date for oral argument, in which the outcome of preparatory proceedings shall be stated. (See 7. *infra*)
- (3) Explanatory session may be conducted on the second or third date for preparatory proceedings, or on the first date for oral argument. (See 6. *infra*)

6. Explanatory session

- (1) Explanatory session may be conducted on the second or third date for preparatory proceedings, or on the first date for oral argument. Technical advisors attend the session in general.
- (2) Please prepare the following materials for explanatory session:
 - A. Copies of the submitted briefs and documentary evidence for the technical advisors when involved; and
 - B. Materials to be used in the explanatory session (submit them as documentary evidence)

7. Oral argument

Oral argument will be conducted in the courtroom on the designated date. In oral argument, the outcome of preparatory proceedings shall be stated. The Court may request both parties to present five-minute explanation of the points in dispute. Thereafter, the argument shall be concluded and the date for rendition of judgment shall be designated.

8. Rendition of judgment

- (1) Judgment shall be rendered on the designated date in the courtroom. The parties are not required to appear in the courtroom on the date for rendition of judgment.
- (2) The parties may receive the service of an authenticated copy of the judgment document after its rendition at the office of the court clerk who administers the case. Service by postal mail is also available.

In principle, suits against appeal/trial decision made by the JPO progress by the above-mentioned proceedings. However, the flow of procedures may differ considering the circumstances of individual cases.

Please describe the outline of the arguments in the opening part of the brief under the title “Gist of the Plaintiff’s Arguments (grounds for rescission)” or “Gist of the Defendant’s Rebuttals” if the brief becomes voluminous (for example, more than 20 pages).

Please consult with the court if there are any individual circumstances which need to be taken into account.