

Date	October 8, 2010	Court	Tokyo District Court, 40th Civil Division
Case number	2009 (Gyo-U) 597		
<p>– A case in which the court dismissed an action for rescission of a disposition dismissing a procedure for a written amendment of procedures, which was imposed for the reason that an amendment of procedures for submitting an original priority certificate is not permitted after the time limit for the submission of a priority certificate has lapsed, as prescribed in Article 15, paragraph (1) of the Design Act and Article 43, paragraph (2) of the Patent Act, because the intended purpose of the action can be achieved by seeking rescission of the prior disposition (the disposition dismissing the procedure pertaining to a submission form for a priority certificate) and said action lacks benefits.</p>			

This action relates to a case seeking rescission of a disposition dismissing a procedure (Tokyo District Court; October 8, 2010; 2009 (Gyo-U) 540; hereinafter referred to as "Case No. 540").

In this judgment, the court ruled as follows: If a judgment that rescinds a disposition dismissing the procedure pertaining to a submission form for a priority certificate (hereinafter referred to as the "Disposition Dismissing the Written Submission") becomes final and binding in Case No. 540, the subsequent disposition in question (a disposition by the Commissioner of the JPO on March 4, 2009 that dismissed the procedure pertaining to the written amendment of procedures submitted on November 4, 2008; the "Disposition") will be no longer be effective as it lacks a premise. (The Commissioner of the JPO, which is an administration agency that imposed the Disposition, comes to bear at least the obligation to rescind the Disposition [inconsistent disposition], which contradicts and conflicts with the Disposition Dismissing the Written Submission ex officio, due to the binding force of the judgment rescinding the Disposition Dismissing the Written Submission in Case No. 540 [Article 33, paragraph (1) of the Administrative Case Litigation Act].); as a result, the Commissioner of the JPO has to handle the application in question as one for which a priority claim under the Paris Convention based on an OHIM application is effective, deeming that an amendment of procedures to resolve the violation of Article 15, paragraph (1) of the Design Act and Article 43, paragraph (2) of the Patent Act was made in relation to the procedure pertaining to the submission form in question on the premise that a priority certificate was submitted in the procedure in question; therefore, the plaintiff's intended purpose would be achieved through rescission of the Disposition Dismissing the Written Submission; . thus, it is not found that there are

benefits to seeking rescission of the Disposition separately from the Disposition
Dismissing the Written Submission. Based on this ruling, the court dismissed this
action.