

## Relaxation of Recent Japanese Patent Law Amendments for Remedy of Rights

The JPO standard for a successful remedy had been very strict compared to other major patent offices, and the strict JPO standard arguably surpassed the criteria of “due care,” which is supposed to be applied to the remedy system in accordance with the adopted treaties. The cases were required to have a “legitimate reason” for not having been able to follow a required procedure by the deadline.

After the acceptance of the Patent Law Treaty (PLT) and Singapore Treaty on the Law of Trademarks (STLT) in 2016, the Japanese patent law was amended. This relaxation the remedy of rights has led to a new criterion of excluding “cases where the procedure was not followed intentionally.”

Applicants can request a potential restoration of rights for the following procedures:

- filing a translation for a foreign-language Japanese patent application (*Japanese Patent Law, Article 36-2*)
- filing a new application claiming priority based on a patent application (*Japanese Patent Law, Articles 41 and 43-2*)
- requesting examination (*Japanese Patent Law Article 48-3*)
- payment or late payment of a patent fee (*Japanese Patent Law, Article 112-2*)
- entering the Japanese national phase of PCT applications by filing national documents and translations (*Japanese Patent Law, Article 184-4*)
- notifying an appointment of a patent administrator for a foreign applicant when entering the Japanese national phase of PCT application (*Japanese Patent Law, Article 184-11*)

As we reported in an article published in *The Patent Lawyer* titled “The strict standard for remedy of rights at the JPO likely relaxed by recent patent law amendments” (*The Patent Lawyer*, September/October 2021, p. 75-77), the success rate for remedy of rights was only 29% based on the analysis of cases from 2017 to 2020 (although the JPO generally does not publicly disclose the alleged reasons for cases where the remedies were not accepted). As such, we reviewed the prosecution history for the new cases for which a request for remedy of rights was filed.

## **Methodology**

The new criterion based on the amended patent law is applicable to cases for which the deadline was missed on or after April 1, 2023. The request for remedy should be filed within two months from the date on which there is no longer an issue preventing the procedure, and within one year after the period for following the procedure expired. Based on requests under the previous law, it can be understood that the JPO normally issues a notice of non-acceptance of the request within approximately three to six months should the request be judged as not acceptable. As a result, 24 cases for which a request was filed from April 1, 2024, to August 1, 2024 ([JPO](#)) were reviewed to see whether the remedy of rights has actually been relaxed at the JPO.

## **Results**

For all 24 cases, a request was filed for remedy of rights based on a failure to file a request for examination (Japanese Patent Law Article 48-3 (5)). A notice of non-acceptance has not been issued in any of the 24 cases as of December 27, 2024, indicating that the requests have most likely been accepted.

We were able to confirm that the process of remedy of rights has actually been relaxed at the JPO. The current remedy system seems to be much more applicant-friendly compared to the previous system under the prior law. As this becomes a much more viable option for companies wishing to remedy their rights in Japan, we expect the number of remedy applications at the JPO to increase.