

(ii) a study on various aspects of the unity of invention, including divisional application;

1. Unity of invention

Patent Article 37 of the Patent Act provides that two or more inventions may be the subject of a single patent application, provided that these inventions are of a group of inventions which fulfill the requirements of unity of invention based on a certain technical relation among them.

Article 37

Two or more inventions may be the subject of a single patent application in the same application provided that, these inventions are of a group of inventions recognized as fulfilling the requirements of unity of invention based on their technical relationship designated in Ordinance of the Ministry of Economy, Trade and Industry.

2. Relationship with the division of patent applications

Article 44 of the Patent Act, which covers the division of patent applications. This article stipulates that the applicant may make part of a patent application containing two or more inventions a new patent application. And, this article stipulates that, if a patent application is lawfully divided, the new application is deemed to have been filed at the same time as the original application.

The patent application division system was established to provide as much access to legal protection as possible for inventions that are included in patent applications and do not meet the requirement of unity of invention, pursuant to the objective of the patent system; i.e., the granting of exclusive rights for a certain period in exchange for publication.

Article 44

An applicant for a patent may extract one or more new patent applications out of a patent application containing two or more inventions only within the following time limits:

- (i) at such time when or within such time period in which amendments of the description, scope of claims or drawings attached to the request are allowed;
- (ii) within 30 days from the date of service of a certified copy of the examiner's decision to the effect that a patent is to be granted (excluding the examiner's decision to the effect that a patent is to be granted under Article 51 as applied mutatis mutandis under Article 163(3) and the examiner's decision to the effect that a patent is to be granted with regard to a patent application that has been subject to examination as provided in Article 160(1)); and
- (iii) within three months from the date of service of a certified copy of the examiner's initial decision to the effect that the application is to be refused.

(2) In the case referred to in the preceding paragraph, the new patent application shall be deemed to have been filed at the time of filing of the original patent application; provided, however, that this shall not apply for the purposes of application of these provisions and the provision of Article 30(3) in the case where the new patent application constitutes another patent application as prescribed in Article 29bis or a patent application as prescribed in Article 3bis of the Utility Model Act.

(3) For the purpose of application of Article 43(2) (including the cases where it is applied mutatis mutandis in Article 43bis(2) (including the case where it is applied mutatis mutandis in paragraph

3 of the preceding Article) and in paragraph 3 of the preceding Article) in the case where a new patent application is filed under paragraph 1, "within one year and four months from the earliest of the following dates" in Article 43(2) shall be deemed to be replaced with "within one year and four months from the earliest of the following dates or three months from the date of filing of the new patent application, whichever is later."

(4) Where a new patent application is filed under paragraph 1, any statements or documents which have been submitted in relation to the original patent application and are required to be submitted in relation to the new patent application under Article 30(3), 41(4), or 43(1) and 43(2) (including the cases where these provisions are applied mutatis mutandis in Article 43bis(2) (including the case where it is applied mutatis mutandis in paragraph 3 of the preceding Article) and in paragraph 3 of the preceding Article) shall be deemed to have been submitted to the Commissioner of the Patent Office simultaneously with such new patent application.

(5) If the period as provided in Article 108(1) is extended under Article 4 or Article 108(3), the 30-day period as provided in paragraph (1)(ii) shall be deemed to have been extended only for that period as extended.

(6) If the period as provided in Article 121(1) is extended under Article 4, the three-month period as provided in paragraph (1)(iii) shall be deemed to have been extended only for that period as extended.

(7) If the applicant of a new patent application as provided in paragraph 1 cannot file such new application within the time period provided in item (ii) or (iii) of the same paragraph due to a reason not attributable to the applicant, then, notwithstanding these provisions, the applicant may file such new application within 14 days (or two months, if the applicant is a resident abroad) from the day when such reason ceases to exist, but no later than six months from the expiry of the time period provided in these provisions.

3. Reference

- Examination Guidelines for Patent and Utility Model in Japan

Part II Chapter 3 "Unity of Invention"

https://www.jpo.go.jp/e/system/laws/rule/guideline/patent/tukujitu_kijun/document/index/02_0300_e.pdf

Part VI Chapter 1 "Division of Patent Application"

https://www.jpo.go.jp/e/system/laws/rule/guideline/patent/tukujitu_kijun/document/index/06_0101_e.pdf

- Examination Handbook for Patent and Utility Model in Japan

Part II Chapter 3 "Unity of Invention"

https://www.jpo.go.jp/e/system/laws/rule/guideline/patent/handbook_shinsa/document/index/02_e.pdf

Annex A

[Cases pertinent to Unity of Invention \(Article 37 of the Patent Act\)](#)