

[設問 1]

In this connection, the Patent Law Treaty (the “PLT”) stipulates “*reinstatement of rights*” for an applicant having lost his/her rights due to a failure to comply with a time limit for an action in a procedure, and allows the member states to choose either “*Due Care*” or “*Unintentional*” as a requirement to grant this relief (Article 12 of the PLT). National legislations according to this provision include, for example, the one in the EU which adopts the “*Due Care*” requirement and grants relief to an applicant who fails to comply with a time limit even though he/she has paid due care. Although Japan was not a member state of the PLT at that time, the Japanese Patent Act seems to have taken such practice into account for the sake of international harmonization and adopted a system to grant relief flexibly to applicants having filed patent applications in foreign languages and then failed to submit translations within a prescribed period.

Having said that, the meaning of “*justifiable reason*” under Article 184-4(4) of the Patent Act should be interpreted in light of the following factors: (1) considering the international application system based on the Patent Cooperation Treaty wherein an applicant having filed a patent application in a foreign language and then submitted a translation thereof into Japanese within the time limit for submission of national documents shall be deemed to have filed the application in Japan as of the international filing date, an applicant having filed a patent application in a foreign country who intends to take advantage of this system should take the responsibility of submitting translations of the specification and other foreign language documents within the time limit for submission of national documents; and (2) even after the lapse of the time limit for submission of national documents, third parties need to continue to monitor whether or not the patent application in a foreign language is deemed to have been withdrawn.

[設問 2]

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