



## 原出願が審判係属中である分割出願 に対する審査中止の運用

東和国際特許事務所  
所長代理・弁理士  
津野 洋明

2023年4月より、原出願が審判係属中である分割出願に対して審査中止を申請することが可能になります。

この運用の対象となる特許出願は、特許庁の発表によれば、以下の(1)から(4)を全て満たす出願です。

- (1) 令和5年4月1日以降に審査請求がされた審査着手前の出願
- (2) 原出願の拒絶査定後に分割された分割出願であること
- (3) 原出願について拒絶査定不服審判請求がされており、原出願が前置審査又は拒絶査定不服審判に係属中であること
- (4) 原出願の前置審査又は審判の結果を待つことが便宜であるもの

本申請は、対象となる分割出願の審査請求日から起算して5開庁日以内に手続を行うことが求められます。したがって、分割出願に対する審査請求の検討と合わせて本運用の申請を行うか否かを検討する必要があります。

そして、分割出願が本運用の適用対象となった場合、原出願において以下の(A)～(C)のいずれかがなされてから3か月後まで当該分割出願の審査が中止されます。

- (A) 前置審査において出願人に特許査定の際の本が送達される
- (B) 拒絶査定不服審判において出願人に最初の審決の際の本が送達される
- (C) 審判請求が取下や却下となる

本運用が開始されると、従前から行われていた審査の加速（早期審査制度やP

PH)に加えて、審査の減速も可能になります。したがって、審判係属中の原出願に対して、2件の分割出願を行って、「早期権利化を図りたい出願A」、「原出願の審判動向を考慮したい出願B」に分けるといった出願戦略が可能になるものと思われま

## **JPO's new operation of suspending examination of a divisional application where an appeal filed with respect to the original application is still pending**

Towa International Patent Firm  
Director, Patent Attorney

**Hiroaki Tsuno**

From April 2023, it will be possible to request suspension of examination of a divisional application in which an appeal filed with respect to the original application is still pending.

According to an announcement by the JPO, this operation is applicable upon request to patent applications that satisfy all of the following (1) through (4).

(1) Applications for which a request for examination is filed on or after April 1, 2023 and the examination is not yet initiated.

(2) Divisional applications that were divided after an examiner's decision of refusal of the original application.

(3) An appeal against the decision of refusal has been filed with respect to the original application, and the original application is pending before a reconsideration by examiners before appeal proceedings or an appeal against the decision of refusal.

(4) It is convenient to wait for the result of the reconsideration by examiners before appeal proceedings or appeal against the decision of refusal of the original application.

The application for the operation must be filed within 5 business days from the date of request for examination of the divisional application. Therefore, it is necessary to consider whether or not to file an application for the operation together with the examination request for the divisional application.

If this operation has been applied to a divisional application, examination of the divisional application will be suspended until three months after any of the following (A) through (C) is made in the original application.

(A) A copy of the notice of patent grant is served upon the applicant in the reconsideration by examiners before appeal proceedings.

(B) In an appeal against the decision of refusal, a copy of the first trial/appeal decision is served upon the applicant.

(C) The request for appeal is withdrawn or dismissed.

With start of this operation, in addition to the acceleration of examination (Accelerated Examination System or PPH) that has been in place for some time, a deceleration of examination will also be possible. Therefore, it is expected that application strategies will be available in which two divisional applications are filed for the original application while an appeal is still pending, such as “Application A for which early grant of patent is desired” and “Application B for which progress of the appeal filed with regard to the original application is desired to be considered.”