

Revisions to the Examination Guidelines for Patent and Utility Model in Japan

Applicable to examinations conducted on or after July 1, 2026

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Abstract

On June 25, 2026, the Japan Patent Office (JPO) published revisions to the Examination Guidelines for Patent and Utility Model in Japan. The revised Guidelines and the accompanying Examination Handbook apply to examinations conducted on or after July 1, 2026. They clarify or revise the treatment of inventive step, amendments introducing disclaimers, divisional applications based on foreign language written applications, corrections of mistranslation, applications filed on the same date for identical inventions, and applicant identity for purposes of the secret prior art provision. This article explains the principal revisions and their practical implications, with particular attention to Japanese translations and divisional filing strategies. [JPO Guidelines revision notice \(in Japanese\)](#); [JPO Handbook revision notice \(in Japanese\)](#).

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References to the Guidelines below are to the *Examination Guidelines for Patent and Utility Model in Japan*. “Handbook” refers to the *Examination Handbook for Patent and Utility Model in Japan*. Article numbers refer to the Japanese Patent Act.

1 Principal revisions

1.1 Assessment of inventive step

The revisions clarify two aspects of the assessment of inventive step under Part III, Chapter 2, Section 2 of the Guidelines.

First, when considering factors such as design variations from the primary prior art or obstructive factors, examiners should not be unduly constrained by the problem expressly stated in a cited document. They should also consider problems that are obvious to a person skilled in the art, or that such a person, having encountered the cited invention, could readily conceive of based on the common general knowledge at the time of filing. This does not mean that the problem expressly stated in the cited document is to be disregarded. (Guidelines, Part III, Chapter 2, Section 2, 3.)

Second, the overall assessment must consider the degree of each factor supporting or opposing inventive step, as well as whether the factor exists. In particular, the existence of an obstructive factor does not, by itself, establish inventive step. It is one factor supporting inventive step, and its weight must be assessed in the circumstances. (Guidelines, Part III, Chapter 2, Section 2, 3 and 3.2.2.) [Revised Guidelines \(in Japanese\)](#).

1.2 Amendments introducing disclaimers

Amendments and the prohibition on adding new matter

A disclaimer expressly excludes part of the subject matter otherwise encompassed by a claim while retaining the existing wording defining that subject matter.

The revised Guidelines clarify that an amendment excluding only an accidental overlap with a cited invention is a typical example of an amendment that normally does not introduce new technical matter. The previous wording could be read as establishing a general rule that excluding an overlap was sufficient to avoid adding new matter. The revised introductory wording makes clear that the stated cases are examples, and the revised heading expressly states that this example presupposes an accidental overlap and a marked difference in technical idea. (Guidelines, Part IV, Chapter 2, 3.3.1(4) and 3.3.1(4)(i).)

In this example, the excluded invention falls within the literal scope of the claim but is so markedly different in technical idea that a person skilled in the art would understand, from the original disclosure as a whole and the common general knowledge at filing, that it could not have been contemplated as part of the claimed invention's

technical idea from the outset. The disclaimer makes that exclusion explicit. (Guidelines, Part IV, Chapter 2, 3.3.1(4)(i).)

An amendment falling outside this example is not automatically an addition of new matter. The general test remains whether the amendment introduces new technical matter in relation to the technical matters derived from the entire original description, claims and drawings. (Guidelines, Part IV, Chapter 2, 3.3.1(4).) [Revised Guidelines \(in Japanese\)](#).

Relationship with inventive step

Excluding an overlap with a cited invention does not necessarily overcome a lack of inventive step.

In the accidental-overlap example described above, the invention already involves an inventive step before amendment: it differs markedly in technical idea from the cited invention, despite the literal overlap. If it becomes markedly different in technical idea only as a result of the amendment, this may raise a question as to whether the amendment introduces new technical matter. This should not be read as a prohibition on every disclaimer that establishes inventive step through a supported limitation. The Handbook also addresses such amendments, which remain subject to the ordinary new-matter test. (Guidelines, Part IV, Chapter 2, 3.3.1(4)(i), Points to Note (2); Handbook, Part XII, Chapter 1, Item 12101, 1(1) and 2(1).) [Revised Guidelines \(in Japanese\)](#); [Handbook \(in Japanese\)](#).

The approach to obstructive factors described in Section 1.1 also applies to disclaimers. An applicant may, for example, exclude a feature treated as essential in a cited document and argue that there is an obstructive factor against removing that feature. The mere existence of such a factor is not conclusive. The cited disclosure must first be examined, and the degree of the obstructive factor must then be assessed together with motivation and other relevant factors to determine whether the claimed invention would have been readily arrived at. (Guidelines, Part III, Chapter 2, Section 2, 3 and 3.2.2.) [Revised Guidelines \(in Japanese\)](#).

Relationship with clarity

A disclaimer may fail the clarity requirement if the exclusions account for a substantial part of the claimed invention, are numerous, or cannot be understood without consulting the cited document. The revised Guidelines also draw attention to cases in which the excluded subject matter is undefined in the application or is defined differently from the corresponding subject matter in the application. (Guidelines, Part

IV, Chapter 2, 3.3.1(4)(i), Points to Note (3).) [Revised Guidelines \(in Japanese\)](#); [JPO guidance on amendments introducing disclaimers \(in Japanese\)](#).

1.3 Foreign language written applications: corrections of mistranslation and divisional applications

For foreign applicants, these revisions are particularly relevant because they address the relationship between the original foreign language disclosure and the Japanese translation. The relevant revisions also apply to Japanese national phase applications based on international applications filed in a language other than Japanese. For convenience, when discussing these corresponding procedures, this article uses the term “foreign language written applications” to refer collectively to both categories of applications. (Guidelines, Part VIII, including 6.1.3.) [Revised Guidelines \(in Japanese\)](#).

Amendments by a written correction of mistranslation

A written correction of mistranslation is the prescribed document for correcting a mistranslation by reference to the original foreign language document. Amendments made by this procedure are not subject to Article 17bis(3), which prohibits new matter beyond the translation. They must nevertheless remain within the original foreign language disclosure. An ordinary written amendment may suffice where the correction adds no new matter beyond the translation. (Guidelines, Part VII, Chapter 2, 4.1.)

A written correction of mistranslation may also include amendments that could otherwise be made by an ordinary written amendment. The applicable restrictions on the timing and purpose of amendments still apply; exemption from the prohibition on new matter beyond the translation does not remove the other amendment requirements. (Guidelines, Part VII, Chapter 2, 4.1.3 and 6.3.)

If the reasons for correction or supporting materials are insufficient to establish that the corrected description, claims and drawings contain no new matter beyond the original text, the examiner may request clarification. If doubts remain, the examiner compares the amended text with the foreign language document to determine whether it contains new matter beyond the original text. These procedures were already provided for before the revision. (Guidelines, Part VII, Chapter 2, 4.1.1 and 4.1.2.)

The revised Guidelines clarify the treatment of amendments that are clearly not aimed at correcting a mistranslation. They identify as an abuse of the procedure the submission of a translation of only a small portion of the foreign language document, followed by the addition of a substantial portion for the first time through a written correction of mistranslation. Such an amendment is treated in the same way as an

ordinary written amendment and is found to constitute new matter beyond the translation. (Guidelines, Part VII, Chapter 2, 4.1.5.) [Guidelines \(in English\)](#).

Requirement 2 and the original disclosure

The Guidelines set out three substantive requirements for division of a patent application. In summary:

Requirement 1: The divisional application's claims must not together cover all the inventions disclosed in the original application's description, claims and drawings immediately before division.

Requirement 2: The matters disclosed in the divisional application's description, claims and drawings must fall within the original application's disclosure as filed.

Requirement 3: Those matters must also fall within the original application's description, claims and drawings immediately before division.

(Guidelines, Part VI, Chapter 1, Section 1, 2.2.) [Guidelines \(in English\)](#).

Requirements 2 and 3 address different reference points. Requirement 2 looks back to the original disclosure at filing; Requirement 3 generally looks to the text remaining immediately before division. There is an important timing rule: where the original application is open to amendment when the divisional application is filed, satisfaction of Requirement 2 also satisfies Requirement 3. (Guidelines, Part VI, Chapter 1, Section 1, 2.2.)

The present revisions clarify Requirements 2 and 3 where the original application is a foreign language written application. Previously, the Guidelines stated that Requirement 2 was assessed by reference to the original foreign language document without expressly addressing its relationship with the Japanese translation. The revised text specifies that the divisional application's disclosure must fall within both the original application's foreign language document and its translation. For this purpose, the scope of the translation includes matter that could permissibly be introduced into the original application by a correction of mistranslation. (Guidelines, Part VII, Chapter 1, 6.1.3 and 6.1.3(1).)

Where the divisional application itself is a foreign language written application, for purposes of these substantive requirements, the relevant disclosure is the Japanese translation deemed to constitute its description, claims and drawings, as amended where applicable, rather than its foreign language document alone. (Guidelines, Part VII, Chapter 1, 6.1.3(2).) [Guidelines \(in English\)](#).

Requirement 3 where a mistranslation remains in the original application

Suppose that a mistranslation remains in the original application's description, claims and drawings immediately before division. Correcting that mistranslation in the divisional application may introduce wording not present in the original application at that time, raising a question under Requirement 3.

The revised Guidelines expressly address this situation where both the original and divisional applications are foreign language written applications. If the divisional application is amended by a written correction of mistranslation to correct a mistranslation that also existed in the original application immediately before division, the divisional application does not fail Requirement 3 solely because the corrected matter was not, on its face, stated in the original application at that time. This treatment applies only to the extent that the correction would also have been permissible as a correction of mistranslation in the original application. We refer to this below as the “special treatment under Requirement 3.” (Guidelines, Part VII, Chapter 1, 6.1.3(3).)

This special treatment does not apply if the correct translation is supplied in the Japanese translation initially filed for the divisional application or through an ordinary written amendment. Nor does it apply where the divisional application is filed as a regular Japanese-language patent application. (Guidelines, Part VII, Chapter 1, 6.1.3(3), Explanation.) [Guidelines \(in English\)](#).

In our view, this treatment does not permit the applicant simply to reinstate subject matter previously deleted from the original application by amendment. It is confined to correction of mistranslation, not reversal of a substantive amendment. The timing distinction above and the practical procedure for relying on this treatment are discussed in Section 3.2.

1.4 Applications filed on the same date for identical inventions

Where two or more pending applications filed on the same date claim identical inventions, Article 39 provides for consultation to determine the application for which a patent may be granted. The revisions change the procedure where the applicants differ and examination has not been requested for some of the applications, and clarify the procedure where the applicants are the same. Examination of an application for which examination has been requested may proceed even though examination has not been requested for another application filed on the same date.

The procedures described below concern cases in which the relevant applications are all pending before the JPO. Separate procedures apply, for example, where a patent or

utility model right has already been registered for one of the applications. (Guidelines, Part III, Chapter 4, 4.4.2(1) and (2).) For Article 39, applicant identity is assessed at the time of examination, unlike the filing-time assessment under Article 29bis discussed in Section 1.5. (Guidelines, Part III, Chapter 4, 4.4.)

Different applicants

If examination has also been requested for the other application, the JPO invites the applicants to consult before issuing a notice of reasons for refusal under Article 39. Any other reasons for refusal are notified together with the invitation. (Guidelines, Part III, Chapter 4, 4.4.2(1)a(a).)

If examination has not been requested for the other application, the examiner first addresses reasons for refusal other than those under Article 39. If those reasons are not overcome, the application is refused. If there are no such reasons, or they have been overcome, the JPO invites the applicants to consult before issuing an Article 39 notice of reasons for refusal. (Guidelines, Part III, Chapter 4, 4.4.2(1)a(b).)

Same applicant

Where the applicant is the same, the invitation to consultation is accompanied by a notice of reasons for refusal under Article 39. Other reasons for refusal, if any, are notified at the same time. (Guidelines, Part III, Chapter 4, 4.4.2(1)b.) [Revised Guidelines \(in Japanese\)](#).

Under Handbook Item 3407, it is sufficient to issue the invitation only for the application under examination. Previously, this treatment addressed applications whose filing dates were the same as a result of division under Article 44. The revision clarifies that it also applies to applications actually filed on the same date. The Handbook states that it is preferable to issue invitations for both applications if examination can be initiated for both.

New Handbook Item 3409 supplements the procedure where there are multiple applications filed on the same date, including cases involving different examination-request statuses. (Handbook, Items 3407 and 3409.) [Handbook \(in Japanese\)](#).

Responding to the invitation

A separate report of the consultation result is not always necessary. If amendments or arguments establish that the inventions are no longer, or were not, identical for Article 39 purposes, the objection may be overcome without such a report. (Guidelines, Part III, Chapter 4, 4.4.3.)

However, if the identity issue remains unresolved and no consultation result is reported within the designated period, consultation is deemed to have failed. The same applies where the submissions do not clearly identify the agreed application or contradict each other. Applicants should not assume that amending one application alone communicates an agreement as to which application is to proceed. (Guidelines, Part III, Chapter 4, 4.4.3.) [Revised Guidelines \(in Japanese\)](#).

1.5 Applicant identity under the secret prior art provision

Article 29bis addresses, subject to its statutory conditions, inventions disclosed in earlier applications that were not yet published when the application under examination was filed. It does not apply where the applicants of the earlier application and the application under examination were identical at the time the latter was filed.

The revised Guidelines clarify that applicant identity is determined substantively, taking into account notices of change of applicant and circumstances such as a change of name, inheritance, merger or company split. A change of name does not change the applicant's identity. General succession, such as inheritance, merger or company split, takes effect without notification to the JPO. Accordingly, the applicants may be identical at the relevant filing time even if their recorded names do not match. Where there are joint applicants, the entire set of applicants must be identical. (Guidelines, Part III, Chapter 3, 3.1.2.) [Revised Guidelines \(in Japanese\)](#).

In a company split, ownership of the right to obtain a patent depends on the relevant split agreement or plan. The examiner will not ordinarily know how those rights were allocated. If an Article 29bis objection is raised despite substantive applicant identity, the applicant should verify the succession and explain, in a written opinion or other appropriate submission, why the applicants were identical at the relevant filing time.

2 Other revisions

The revisions also clarify or update the following matters:

- Examiners must verify the filing time or date of the application under examination. (Guidelines, Part I, Chapter 2, Section 1, 2.) [Revised Guidelines \(in Japanese\)](#).
- In examining converted applications based on foreign language written applications, attention should be paid to the corresponding considerations for divisional applications. (Guidelines, Part VII, Chapter 1, 6.2.3, referring to 6.1.3.) [Guidelines \(in English\)](#).

- Where a patent application based on a utility model registration is filed as a foreign language written application, its substantive requirements are assessed using the translation deemed to be the description, claims and drawings, rather than its foreign language document. (Guidelines, Part VII, Chapter 1, 6.3.2, referring to 6.1.3(2).) [Revised Guidelines \(in Japanese\)](#); [Guidelines \(in English\)](#).
- Cross-references in Part VIII concerning international patent applications filed in a foreign language have been updated to reflect the revisions to Part VII. [Revised Guidelines \(in Japanese\)](#).

The Handbook also adds examples of how to cite videos as prior art, revises or adds items on applications filed on the same date, and introduces Part XII, Chapter 1 on examination of applications amended to introduce disclaimers. [JPO Handbook revision notice \(in Japanese\)](#).

3 Practical considerations

3.1 Before introducing a disclaimer

A disclaimer can give rise to new-matter and clarity objections and may leave an inventive-step objection unresolved. There may also be consequences for claim interpretation after grant. The JPO cautions that, where excluded matter is defined using language from a cited document rather than language expressly disclosed in the original application, the meaning of that exclusion cannot be interpreted by reference to the application's description and drawings in the usual way. The resulting scope of protection may differ from the patentee's expectations. [JPO guidance on amendments introducing disclaimers \(in Japanese\)](#).

We therefore do not recommend relying on a disclaimer where there is no express basis for the amendment in the original description, claims and drawings. Applicants should first consider other amendments grounded in the original disclosure. This is a practical recommendation, not an additional legal requirement that every permissible disclaimer must have an express textual basis.

Where a disclaimer is nevertheless necessary, applicants should at least check whether it introduces new technical matter, whether the excluded subject matter is clear, whether the technical idea changes, and whether an inventive-step objection would remain after amendment.

When relying on the accidental-overlap example, the written opinion should explain why the invention already involved an inventive step before amendment and why the

disclaimer does not change its technical idea. Merely asserting a marked difference in technical idea is insufficient: the explanation should show why a person skilled in the art would understand, in light of the problem and common general knowledge at filing, that the excluded subject matter could not have been contemplated as part of that technical idea from the outset. (Guidelines, Part IV, Chapter 2, 3.3.1(4)(i), Points to Note (1) and (2).) [Revised Guidelines \(in Japanese\)](#).

3.2 Japanese translations and divisional filing strategy

Prepare the translation properly and support any corrections

The original application's Japanese translation should accurately reflect the foreign language document and be filed within the prescribed translation period. Applicants should not assume that an inadequate translation can later be completed through a written correction of mistranslation. The revised Guidelines expressly reject procedures clearly not aimed at correcting mistranslation, including the substantial omissions described in Section 1.3. (Guidelines, Part VII, Chapter 2, 4.1.5.)

A written correction of mistranslation must state the content of the mistranslation and the reasons for correction. Supporting materials must be attached where necessary to enable a person skilled in the art to understand the correction and its reasons. We recommend explaining each correction and its basis in the foreign language disclosure clearly, particularly for extensive corrections, so that the examiner and third parties can verify it without an undue burden. (Guidelines, Part VII, Chapter 2, 6.1 and 6.2.)

[Guidelines \(in English\)](#).

For a divisional application, check Requirement 2 against both the original foreign language document and the original translation, including the scope of matter that could permissibly be introduced into the original application by a correction of mistranslation. Matter appearing only in the foreign language document is not automatically available for the divisional application. (Guidelines, Part VII, Chapter 1, 6.1.3(1).) [Guidelines \(in English\)](#).

Choose the procedure according to whether the original application can be amended

If a mistranslation remains in the original application immediately before division, first determine whether the original application is open to amendment. When division takes place during an amendment period, Requirement 3 is satisfied if Requirement 2 is satisfied. This timing rule should be considered before relying on the special treatment

under Requirement 3. (Guidelines, Part VI, Chapter 1, Section 1, 2.2.) [Guidelines \(in English\)](#).

Where the original application is not open to amendment and the divisional application must rely on that special treatment, correcting the inherited mistranslation at the outset can defeat reliance on the special treatment. The required sequence is:

1. File the divisional application as a foreign language written application.
2. In its initial Japanese translation, retain the relevant mistranslated disclosure as it stood in the original application immediately before division. Do not introduce the corrected matter in that initial translation in reliance on the special treatment.
3. Correct the mistranslation through a written correction of mistranslation in the divisional application, explaining why the correction would also have been permissible in the original application. (Guidelines, Part VII, Chapter 1, 6.1.3(3), including the Explanation.) [Guidelines \(in English\)](#).

This sequence concerns the disclosure requiring correction. It does not mean that the divisional application's claims should reproduce all the inventions disclosed in the original application; the other divisional requirements, including Requirement 1, must still be met.

Division after a decision of refusal or a decision to grant

The clarification is particularly relevant where a divisional application is filed during an available divisional filing period after a decision of refusal without an accompanying appeal, or after a decision to grant, when the original application cannot be amended.

Without relying on the special treatment, one way to avoid this difficulty after a decision of refusal is to file the divisional application at the same time as requesting an appeal against the decision of refusal. An amendment opportunity arises at that time under Article 17bis(1)(iv); it is not a general period following the appeal request. Under the timing rule described above, compliance with Requirement 2 then also satisfies Requirement 3. This explains why an applicant wishing to preserve a route for correcting the mistranslation might consider an appeal solely to secure that amendment opportunity. (Guidelines, Part VI, Chapter 1, Section 1, 2.2; Part IV, Chapter 1, 2(v).) [Guidelines: Timing of amendments \(in Japanese\)](#).

A regular Japanese-language divisional application filed when the original application cannot be amended is subject to Requirement 3 by reference to the original

application's description, claims and drawings immediately before division. A written correction of mistranslation cannot be used in such an application to introduce corrected matter by reference to the original foreign language document. (Guidelines, Part VII, Chapter 1, 6.1.3(3), Explanation.)

The revised Guidelines expressly provide a route through a foreign language written divisional application followed by a written correction of mistranslation, even where the original application is not open to amendment. An appeal solely for the purpose of securing that amendment opportunity may therefore be unnecessary. The same route can preserve an opportunity to correct an inherited mistranslation in a divisional application filed after a decision to grant. It does not extend the statutory period for filing a divisional application or remove other filing and amendment requirements. (Guidelines, Part VII, Chapter 1, 6.1.3(3); Part VI, Chapter 1, Section 1, 2.1 and 2.2.) [Guidelines: Foreign language written applications \(in English\)](#); [Guidelines: Requirements for division \(in English\)](#).

Review earlier amendments before relying on mistranslation correction

Applicants should also examine the amendment history of the original Japanese translation. In our view, reinstating a feature deleted or substantively changed by amendment is not a correction of mistranslation merely because the earlier wording can still be found in the foreign language document.

Accordingly, when deleting or changing matter in the original application's description, applicants should consider the effect on later divisional applications and the availability of correction of mistranslation. This is particularly important if a later divisional application may need to be filed when the original application is no longer open to amendment.

3.3 Managing applications filed on the same date

Where several applications filed on the same date concern identical inventions, applicants should establish the following at an early stage:

- Whether examination has been requested for each application and whether the applicants are identical.
- The scope of protection to be pursued in each application.
- Whether to respond through consultation, claim amendments or arguments addressing the asserted identity of the inventions.

Examination of one application may proceed even if examination has not been requested for another. Where the applicant is the same, the invitation to consultation

and the notice of reasons for refusal require coordinated responses. (Guidelines, Part III, Chapter 4, 4.4.2 and 4.4.3; Handbook, Items 3407 and 3409.) [Revised Guidelines \(in Japanese\)](#); [Handbook \(in Japanese\)](#).

3.4 Corporate reorganizations and succession to rights

Following a merger, company split or other succession, applicants should verify who held the right to obtain a patent at the filing time relevant to Article 29bis, which rights were transferred under the relevant agreement or plan, and whether the required notices of change of applicant have been filed.

The JPO records should be aligned with the substantive ownership position without delay. In particular, Article 34(5) requires notification following inheritance or other general succession. Such succession is distinct from an ordinary assignment: its legal effect does not depend on filing the notice with the JPO. [JPO guidance on general succession \(in Japanese\)](#); [JPO guidance on change of applicant \(in Japanese\)](#).

END

Links

- [JPO notice of the June 2026 Guidelines revisions and the revised chapters \(in Japanese\)](#)
- [JPO Examination Guidelines \(in English\)](#)
- [JPO notice of the June 2026 Handbook revisions \(in Japanese\)](#)
- [JPO guidance on amendments introducing disclaimers \(in Japanese\)](#)

The JPO's English Guidelines are provisional translations. This article follows the revised Japanese text for the substance of the July 2026 revisions.