J. Y. Interpretation No.213（March 20, 1987）*

ISSUE: Do the provisions in Article 101 of the Patent Act with respect to the opposition proceeding and Article 110 of the same Act with application *mutatis mutandis* of the first paragraph of Article 26 concerning loss of validity if application for patent rights and any other proceedings made were delayed beyond the statutory peremptory period violate the people's litigation and property rights? The Administrative Court in its precedents ruled that the reasons for appeal for retrial provided in Article 497 of the Code of Civil Procedure are not applicable to an appeal for retrial against a judgment rendered in an administrative procedure. Do the said precedents violate the people's right of litigation? Are the Administrative Court precedents constitutional in ruling that there is no need to institute the litigation or continue the process of litigation if in fact the original administrative act ceases to exist at the commencement of litigation or in the course of action, or if the administrative act ceases to be effective due to lapse of a specified period or other reasons and the party concerned has recoverable interests under law?

RELEVANT LAWS:

Article 15 and 16 of the Constitution（憲法第十五條、第十

* Translated by Chung Jen Cheng.

** Contents within frame, not part of the original text, are added for reference purpose only.

六條）; Article 26,101 and 110 of the Patent Act（專利法第二十六條、第一百零一條、第一百十條）; Article 28 of the Administrative Proceedings Act（行政訴訟法第二十八條）; Article 497 of the Code of Civil Procedure（民事訴訟法第四百九十七條）.

KEYWORDS:

appeal for retrial（再審）, administrative act（行政處分）.**

HOLDING: 1. The provisions in Article 101 of the Patent Act amended and promulgated on May 12, 1960, with respect to the object proceeding, and the provisions in the first paragraph of Article 26 that apply mutatis mutandis to Article 110 of the same Act with respect to the invalidation of procedures in connection with patent rights that have been delayed beyond the statutory peremptory or any specified period, are intended for the prudent granting of patent rights and the prevention of a person from delaying the prompt, irrevocable decision of a patent application, and should not be construed as an infringement of the people's litigation and property rights or as contradictory to our Constitution.

解釋文：一、中華民國四十九年五月十二日修正公布之專利法第一百零一條有關新型專利異議程序之規定，及同法第一百十條準用同法第二十六條第一項關於專利之申請及其他程序延誤法定期間者，其行為為無效之規定，旨在審慎專利權之給予，並防止他人藉故阻礙，使專利申請案件早日確定，不能認係侵害人民之訴訟權及財產權，與憲法尚無牴觸。

2. Article 28 of the Administrative Proceedings Act does not include "an irrevocable judgment may also be objected to by an action for retrial, provided that some important evidence which might affect the judgment was not taken into consideration" as prescribed in Article 497 of the Code of Civil Procedure as one of the reasons for filing an appeal. When an administrative court accepts an appeal for administrative relief, it is natural for the court to determine if there are reasons for the action as stated in Article 28 of the Administrative Proceedings act and if there was some important evidence not taken into consideration in the irrevocable judgment. Precedents of the Administrative Court in Case (49) Tsai-Tze No. 54, Case (50) Tsai-Tze No.8 and Case (54) Tsai- Tze No.95, maintaining that the reasons for appeal for retrial provided in Article 497 of the Code of Civil Procedure are not applicable to appeal for retrial against a judgment rendered in an administrative procedure, are not contradictory to the aforementioned intents and cannot be construed as contradictory to the people's litigation right as protected by the

二、行政訴訟法第二十八條未將民事訴訟法第四百九十七條所稱「確定之判決，如就足影響於判決之重要證物，漏未斟酌」之情形列為再審原因，雖有欠週全，惟行政法院受理再審之訴，審查其有無前揭第二十八條所列各款之再審原因時，對於與該條再審原因有關而確定判決漏未斟酌之重要證物，仍應同時併予審酌，乃屬當然。行政法院四十九年裁字第五十四號、五十年裁字第八號、五十四年裁字第九十五號等判例，認民事訴訟法第四百九十七條（修正前第四百九十三條）所定再審之原因，不得援以對於行政訴訟判決提起再審之訴，與上述意旨無違，尚難認與憲法保障人民訴訟權之規定牴觸。

Constitution.

3.Precedents of the Administrative Court Case (27) Pan-Tze No.28 and Case (20) Pan-Tze No.16 were rendered in light of the fact that a suit for the purpose of revoking an administrative sanction is predicated upon the existence of an administrative sanction, provided that there is no need to initiate or continue the action when the sanction no longer exists at the time of the initiation of an action or ceases to exist during the course of a suit. The rulings falling within such an extent do not contradict provisions provided in the Constitution for the protection of the people's litigation rights. However, if an administrative act becomes invalid due to the passage of time or other reasons, while the legal effects produced before its invalidation do not disappear along with the invalidation of the original sanction, the party concerned should be allowed to initiate or continue the suit, provided the revocation of said act can restore his legal interest. In such event, the aforesaid Precedents are no longer applicable.

三、行政法院二十七年判字第二十八號及三十年判字第十六號判例，係因撤銷行政處分為目的之訴訟，乃以行政處分之存在為前提，如在起訴時或訴訟進行中，該處分事實上已不存在時，自無提起或續行訴訟之必要；首開判例，於此範圍內，與憲法保障人民訴訟權之規定，自無牴觸。惟行政處分因期間之經過或其他事由而失效者，如當事人因該處分之撤銷而有可回復之法律上利益時，仍應許其提起或續行訴訟，前開判例於此情形，應不再援用。

REASONING: 1. To promote industrial development, most countries make laws to grant patents for new inventions having industrial applicability or new models or improvements in the design, construction or fitting of an object having practicality so as to encourage inventiveness and creativity. The granting of patent rights concerns the interests of the applicant and interested parties. It also has a bearing on the interest of the public. To ensure that the patent examination process is fair and thorough, and the granting of patent rights prudent, the ROC government amended and promulgated the Patent Act on May 12, 1960, stipulating that an invention or creation that is deemed patentable following examination should first be published. Article 101 of the same Act also provides: "Any person who deems an approved new utility model, during its publication period, as having violated the provisions of Articles 95 through 97 of this Act, or any interested party who deems that the approved model is in contravention of the provisions of Article 12 of this Act, may, within six months from the date of publication, file

解釋理由書：一、國家為促進產業之發達，對於新發明具有產業上利用價值者或對於物品之形狀構造或裝置首先創作合於實用之新型者，均依法給予專利權，以鼓勵發明與創作。專利權之給予，關係專利申請權人及利害關係人之權益，對公眾之利益亦有影響。為期專利之審查公正周全，審慎專利權之給予，中華民國四十九年五月十二日修正公布之專利法規定，經審查認為可予專利之發明或創作，應先行公告，並於第一百零一條規定：「公告中之新型，任何人認為有違反本法第九十五條至第九十七條之規定，或利害關係人認為違反本法第十二條之規定者，得自公告之日起六個月內，備具聲請書，附具證件，向專利局提起異議，請求再審查」，旨在使公眾或利害關係人得依異議程序，對於公告中之新型專利，請求再予審查，防止對不應給予專利權之案件給予專利。然因此項異議程序易被利用以阻礙專利申請案之確定，謀取不法利益，故為兼顧專利申請權人之權益，於同法第一百十條規定，準用第二十六條第一項，關於專利之申請及其他程序，延誤法定或指定之期間者，其行為無效。此項規定，對聲明故障經專利局認為有正當理由者，既有同條項但書排

an objection with the Patent Office by submitting a written application, together with supporting evidence, requesting re-examination." The intent of the aforesaid clause is to allow the public or an interested party to request re-examination of a new model following an established objection procedure to prevent the granting of an application for patent rights for a model that should not be patented. Nevertheless, this objection procedure is predisposed to abuse in the hands of people who want to block the irrevocable decision of a patent application in order to make unlawful gain. Thus, in consideration of the interest of the patent applicant, the first paragraph of Article 26 of the Patent Act also applies mutatis mutandis to Article 110 of the same Act, prescribing that "when a patent application or any other procedure in connection with patent rights has been delayed beyond the statutory peremptory or any specified period, this proceeding shall be rendered void, provided that if it has been shown to the satis faction of the Patent Office that some obstacles existed, this provision shall not apply." The aforesaid clause contains a

除其適用，自不妨礙異議權之正當行使，且為防止他人藉故阻礙，使專利申請案件早日確定所必要，不能認係侵害人民之訴訟權與財產權，與憲法尚無牴觸。至上開法條規定，提起異議者，應備具聲請書，附具證件，係關於異議程序之程式，尚非對於行政訴訟兼採職權調查主義所為之限制，併予說明。

proviso ensuring the reasonable exercise of right of objection, which is necessary in the case where people use an objection as an excuse to delay the prompt, irrevocable decision of a patent application. It should not be construed as an infringement of the people's litigation and property rights or contradictory to the Constitution. In addition, Article 101 of the Patent Act requires the person who files an objection to submit a written application, together with supporting evidence as a part of the objection procedure, which does not limit the administrative procedure and the power of investigation by the vested authority.

2. Retrial is an action of the court to render judgment on a litigation case that has been irrevocably decided. To uphold the irrevocability of a ruling, the basis for filing an appeal for retrial or reexamination should be as prescribed in the law. Article 28 of the Administrative Proceedings Act does not include "an irrevocable judgment may also be contested by an action for retrial, provided that some important evidence which might affect the judgment was not taken into consideration"

二、再審乃法院就已裁判確定之訴訟事件，更為審理及裁判之程序；為維護裁判之確定力，提起再審之訴或聲請再審之原因，自應以法律明文規定者為限。行政訴訟法第二十八條，未將民事訴訟法第四百九十七條所稱「確定之判決，如就足影響於判決之重要證物，漏未斟酌」之情形列為再審原因，就行政法院兼具法律審與事實審之功能，且行政訴訟係採一審終結之現制，參酌民、刑事訴訟法均將此種情形定為再審原因之意旨而言，雖有欠週全；惟行政

as prescribed in Article 497 of the Code of Civil Procedure as one of the reasons for filing an appeal. Though the current system of the administrative court conducting trials based on both the matter-of-law and matter-of-fact and adopting a one-tier system does not seem consistent with the intent of retrial as provided in the civil and Code of Criminal Procedures, when an administrative court accepts an appeal for administrative relief, it is natural for the court to determine if there are reasons for the action as stated in Article 28 of the Administrative Proceedings Act and if there was some important evidence not taken into consideration in the irrevocable judgment. Precedents of the Administrative Court in Case (49) Tsai-Tze No.54, Case (50) Tsai-Tze No.8, and Case (54) Tsai-Tze No.95 maintaining that the reasons for appeal for retrial provided in Article 497 of the Code of Civil Procedure are not applicable to appeal for retrial against a judgment rendered in an administrative procedure, are not contradictory to the aforementioned intents and cannot be construed as contradictory to the people's litigation right as protected by the

法院受理再審之訴，審查其有無前揭第二十八條所列各款之再審原因時，對於與該條再審原因有關而確定判決漏未斟酌之重要證物，仍應同時併予審酌，乃屬當然。行政法院四十九年裁字第五十四號、五十年裁字第八號、五十四年裁字第九十五號等判例，認民事訴訟法第四百九十七條（修正前第四百九十三條）所定再審之原因，不得援以對於行政訴訟判決提起再審之訴，與上述意旨無違，尚難認與憲法保障人民訴訟權之規定牴觸。

Constitution.

3. An administrative litigation is a measure for seeking judicial relief when the petitioner thinks that the illegal administrative act of a central or local agency has injured his rights. The administrative litigation provided by our prevailing Administrative Proceedings Act aims primarily at revoking illegal administrative act to be deemed non-existent ab initio so as to eradicate the injury to people's rights. Precedents of the Administrative Court Case (27) Pan- Tze No.28 and Case (20) Pan-Tze No.16 maintain that, "The subject matter of an administrative litigation is the act of a government agency. If in fact the original act ceases to exist, the reason for the appeal also ceases to exist due to non-existence of the subject matter, such that the appeal should be rejected" and "If the subject matter of appeal ceases to exist, the suit relationship is considered ended," were rendered in light of the fact that a litigation for the purpose of revok ing an administrative sanction is predicated upon the existence of an administrative act, provided that there is no need to

三、行政訴訟，乃人民因中央或地方機關之違法行政處分，認為損害其權利，請求司法救濟之方法。我國現行行政訴訟法所規定之行政訴訟，係以撤銷訴訟為主，旨在撤銷違法之行政處分，使其自始歸於無效，藉以排除其對人民權利所造成之損害。行政法院二十七年判字第二十八號及三十年判字第十六號判例所謂：「行政訴訟原以官署之處分為標的，倘事實上原處分已不存在，則原告之訴因訴訟標的之消滅，即應予以駁回」及「當事人請求標的消滅，其訴訟關係即應視為終結」各等語，係因以撤銷行政處分為目的之訴訟，乃以行政處分之存在為前提，如在起訴時或訴訟進行中，該處分事實上已不存在時，自無提起或續行訴訟之必要，首開判例，於此範圍內，與憲法第十六條保障人民訴訟權之規定，自無牴觸。惟行政處分因期間之經過或其他事由而失效，其失效前所形成之法律效果，如非隨原處分之失效而當然消滅者，當事人因該處分之撤銷而有可回復之法律上利益時，仍應許其提起或續行訴訟，前開判例於此情形，應不再援用。

initiate or continue the action when the act no longer exists at the time of initiation of an action or ceases to exist during the course of a litigation. Precedents falling within such an extent do not contradict provisions in Article 16 of the Constitution for the protection of people's litigation rights. However, if an administrative act becomes invalid due to the passage of time or other reasons, while the legal effects produced before its invalidation do not disappear along with the invalidation of the original sanction, the party concerned should be allowed to initiate or continue the litigation, provided the revocation of said act can restore his legal interest. In such event, the aforesaid Precedents are no longer applicable.

Justice Tieh-Cheng Liu filed dissenting opinion.

本號解釋劉大法官鐵錚提出不同意見書。