

Chapter 5 Priority

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Chapter 5 Priority

The priority rights stipulated in the Patent Act include, as provided in Article 28, the international priority claimed when applying for a patent in Taiwan for the same invention within 12 months after the first patent application in a foreign country, and as provided in Article 30, the domestic priority claimed by a patent applicant based on a prior patent application for an invention or utility model in Taiwan, pertaining to the invention or utility model described in the description, claim(s), or drawings of the prior application. This chapter explains the relevant criteria for international and domestic priority rights respectively.

1. International Priority

1.1 Introduction

The international priority system was first enacted in Article 4 of the Paris Convention, which stipulates that nationals or quasi-nationals of a Member State who have filed a patent application in a Member State and subsequently file a patent application for the same invention in another Member State are respectively granted a priority period of one year or six months, depending on the type of patent. The primary purpose of this system is to protect inventors from acts such as disclosure, implementation, or intervening applications by others in other Member States after filing a patent application in a Member State, causing prohibition of the same invention from meeting patentability requirements and obtaining patent protection in other Member States.

Where an applicant has first applied a patent application in a foreign country, which reciprocally allows ROC nationals to claim patent priority (hereinafter referred to as a reciprocal country), or with any member of the World Trade Organization (hereinafter referred to as the WTO, for a list of members, please refer to the International Bureau of Trade and Economic Information Network www.trade.gov.tw/cwto/), and, based on the invention for which the patent application is filed, files a patent application for the same invention in ROC within twelve(12) months, the applicant may claim the filing date of the foreign patent application as the priority date, serving as the base date for determining whether the application meets the patentability requirements such as novelty, lack of novelty based on legal fiction, inventive

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step, and the first-to-file principle. If a foreign applicant is a citizen of a non-member of the WTO and whose home country does not mutually recognize priority with the ROC, but the applicant has domicile or business establishment (i.e., a quasi-national) in any member of the WTO or in the territory of a reciprocal country, the applicant shall also be entitled to claim priority.

1.2 Types of International Priority

- (1) General priority: If the invention described in a patent application filed in ROC and claiming priority (hereinafter referred to as the subsequent application) is fully disclosed in a foreign-based application on which the applicant claims international priority (hereinafter referred to as the priority-basis application), the claiming of priority for the subsequent applications based on that priority-basis application is referred to as “general priority.”
- (2) Multiple priority: When multiple inventions described in the claim(s) of a subsequent application have been fully disclosed in more than one priority-basis applications, the claiming of priority for the subsequent application based on those more than one priority-basis applications is referred to as “multiple priorities.”
- (3) Partial priority: When some of the inventions described in the claims of a subsequent application has been disclosed in one or more priority-basis applications, the claiming of priority for the subsequent application based on those one or more priority-basis applications is referred to as “partial priority.”

1.3 Formal Requirements

The examination of formal requirements regarding “applicant,” “priority-basis application of international priority,” “time for claiming international priority,” “declaration of international priority,” “supporting documents and submission period for international priority,” “correction of declaration of international priority,” “restoration of international priority,” and “withdrawal of international priority” shall be conducted in accordance with the provisions of Chapter VII, “Priority and Grace Period,” of Part I, “Procedural Examination and Patent Administration.”

1.4 Substantial Requirements

1.4.1 Determination of “the same Invention”

When claiming priority, the determination of the “same invention” should be based on whether the invention described in the claims of the subsequent application has been disclosed in the description, claim(s), or drawings of the priority-basis application, rather than solely based on the claims of the priority-basis application. However, self-admitted prior art(s) and disclaimed contents recited in the priority-basis application should not be used as the basis for the determination.

An invention described in the claims of a subsequent patent application and an invention disclosed in the priority application shall be determined to be “same invention” if they fall under one of the following two circumstances:

- a. Where the two inventions are totally identical both in form of recitation and substantive content.
- b. Where the difference between the two inventions rests only in the wording of the recitation, or only in some corresponding technical features, such that a person ordinarily skilled in the art, based on the technical content explicitly disclosed in the invention of the priority-basis application, can directly and unambiguously derive the corresponding technical features of the invention in the patent application, whether substantially implied individually or as a whole, without any other technical features.

1.4.2 Determination of “First Application”

- (1) The determination of “first application” refers to a patent application filed in the territory of a WTO member or a reciprocal country that is the first patent application filed outside the ROC (including various industrial property rights equivalent to the ROC invention, utility model, or design patents). If a first application is filed in a territory other than the aforementioned territory, and a patent application is subsequently filed in the aforementioned territory, the priority claim shall not be recognized. If the application filed in the aforementioned territory is not a kind of patent application, the priority claim shall also not be recognized.
- (2) If two patent applications concerning the same subject are sequentially filed in the same WTO member or reciprocal country, and the previous application has been withdrawn, abandoned, or refused on or before the

time of filing date of the subsequent patent application, without having been laid open to public inspection and without leaving any rights outstanding, and if it has not yet served as a basis for claiming a right of priority. The subsequent application shall be considered as the “first application” (see Article 4 C(4) of the Paris Convention. As an example of the aforementioned outstanding rights, if a portion of the subject matter recited in a U.S. continuation-in-part application has been disclosed in its parent application and is therefore entitled to the benefit of the parent application’s earlier filing date, the parent application is said to have left rights outstanding. Further details can be found in the specific explanation of (3)b below.

If the priority-basis application benefits outstanding rights rather than being a “first application,” it should be determined whether the invention recited in the claims of the subsequent application has been disclosed in the parent application of the priority basis application. If it has been wholly or partially disclosed in the parent application, the applicant should be required to submit the description, claim(s), or drawings of the parent application for examination. For example, if the priority-basis application is a U.S. continuation-in-part application, and the portion disclosed in the parent application grants that part of the successive application outstanding rights, the applicant should be required to submit the description, claim(s), or drawings of the parent application for examination.

If the invention recited in the claim(s) of a subsequent application is disclosed only in the priority-basis application and not in its parent application, then the priority-basis application constitutes the “first application,” and the applicant is not required to submit the description of the parent application. In principle, unless the existence of an earlier application is evident, such as when a U.S. continuation-in-part application is claimed as a priority-basis application, from which the existence of an earlier parent application can be inferred, it is not necessary to specifically ascertain whether the priority-basis application is a “first application” during examination.

(3) The Types of “First Application:”

- a. US Continuation Applications: Since the inventions recited in the claims of a US continuation application are inventions disclosed in the description or drawings but not yet claimed in the earlier-filed parent application, the continuation application does not introduce any new

matter.

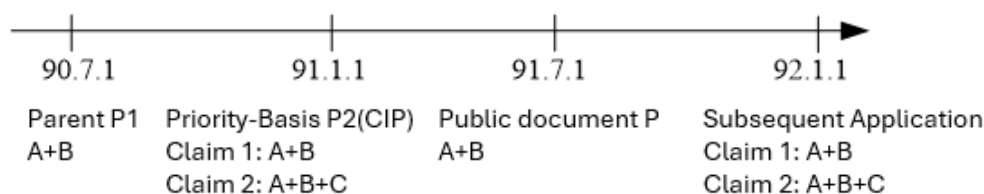
Therefore, the parent application is the “first application,” and the continuation application is not a “first application.” When a subsequent application claims priority, it must use the parent application as the priority basis.

- b. US continuation-in-part applications: Since some of the inventions recited in the claims of a US continuation-in-part application are inventions disclosed in the description or drawings but not claimed the earlier parent application, while the others are newly introduced matters.

Therefore, the invention disclosed in the parent application is a “first application,” while the portion of the invention disclosed in the continuation-in-part that has already been disclosed in the parent application is not a “first application.” However, the newly added portion that has not been disclosed in the parent application is a “first application.” When a subsequent application claims priority, any inventions already disclosed in the parent application must be based on the parent application; inventions disclosed only in the continuation-in-part must be based on the continuation-in-part application itself.

Using the following example as a specific illustration:

- P1 is the parent application of a continuation-in-part application; the applicants of P1 and P2 are the same.
- P2 is a continuation-in-part application of P1.
- The subsequent application claims priority based on the continuation-in-part application P2.
- P represents the public document which disclosed subject matter A+B.



[Remarks]

Regarding invention A+B in claim 1, P2 benefits outstanding rights from P1. P2 is a continuation-in-part application to P1, not a “first application” as stipulated in Article 28, Paragraph 1 of the Patent Act. Therefore, even if P1 is abandoned, withdrawn, refused, or not published,

the priority claimed by claim 1 of the subsequent application for P2 cannot be recognized (in this example, the priority period has expired from the filing date of P1 to the subsequent application). Invention A+B+C in claim 2 of the subsequent application is identical to claim 2 of P2, and the priority claimed based on P2 can be recognized. Since the priority claimed by claim 2 of the subsequent application based on P2 is recognized, the public document P disclosing A+B is citable as prior art against claim 1 of the subsequent application, but cannot be cited against claim 2.

- c. U.S. or Australian Provisional Application: A U.S. or Australian provisional application is filed by the applicant to secure an early filing date. Regardless of whether it contains claims, a non-provisional application containing claims must be subsequently filed within a specified period, or the provisional application must be converted into a non-provisional application, which may include new matters. However, if no non-provisional application is filed or converted within the specified period, the provisional application is deemed abandoned.

Therefore, the invention disclosed in a provisional application is considered a “first application.” Any portion of the non-provisional application that has already been disclosed in the provisional application is not considered a “first application.” However, the newly added matter not disclosed in the provisional application is considered a “first application.” Claimed inventions of a subsequent application that have already been disclosed in the provisional application, the provisional application must serve as the priority-basis application; for other portions disclosed in the non-provisional application, the non-provisional application must serve as the priority basis application. It should be noted that, in determining whether the invention recited in the claims of a subsequent application has been disclosed in a provisional application, the determination must be based on the description, claim(s), or drawings of the provisional application.

- (4) When a subsequent application claims multiple or partial priorities, the priority claims may be based on applications filed in the same or different countries on the same or different dates, provided that the invention claimed in the subsequent application meets the unity of invention requirement. For example, if a subsequent application recites inventions A and B in two separate claims, where A was first filed in the United States and B was first filed in France, then A may claim the U.S. priority date,

and B may claim the French priority date.

In principle, if the invention recited in a single claim of a subsequent application combines technical features disclosed in two or more foreign applications, priority cannot be claimed. However, if technical features A and B are two alternatives in an invention, and are recited in a single claim of a subsequent application and connected by "or" (such as in the Markush alternative format), it may claim multiple or partial priorities.

- (5) If a prior art search reveals that the filing date or publication date of an application or related materials falls between the priority date and the filing date of a subsequent application, the examiner should immediately determine whether the priority claim can be recognized based on the priority documents. If the priority claim is not recognized, the reasons should be stated. If necessary, the applicant may be notified to submit a Chinese translation or abridged translation of the priority documents within a specified period. Failure to submit a Chinese translation by the deadline will lead to the denial of the priority claim.

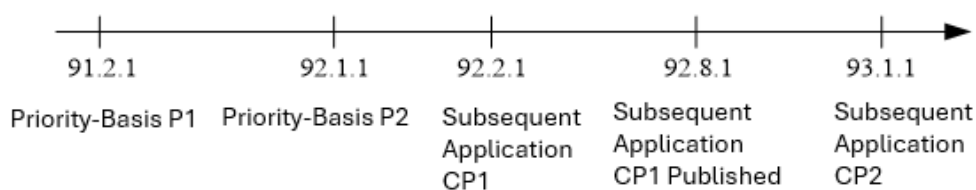
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1.5 Effect of Priority

The timeframe for determining whether an application meets the patentability requirements is generally based on the filing date. However, if an applicant claims priority by filing a patent application in the ROC within 12 months of the earliest priority date for a same invention, the examination of the patentability requirements such as novelty, lack of novelty based on legal fiction, inventive step, or the first-to-file principle shall be based on the priority date. However, it does not mean that the filing date in the ROC backdated to the priority date. Therefore, applications claiming priority will not be rejected due to intervening events occurring between the priority date and the filing date, such as the invention being disclosed in publications, publicly implemented, known to the public, earlier applications filed before yet published/issued after the filing date, or two or more applications for the same invention. Explanation is provided as follows:

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- P1 is the priority basis application of the subsequent ROC application CP1.
- P2 is the priority basis application of the subsequent ROC application CP2.
- The claimed inventions in CP1 and CP2 are identical and have been disclosed in P1 and P2.
- CP1 and CP2 were filed by different applicants.



[Remarks]

If the priority claim on P1 for the subsequent application CP1 and the priority claim on P2 for the subsequent application CP2 are recognized, pursuant to the requirements of the Patent Act regarding the lack of novelty based on legal fiction, CP2 will not be granted a patent because CP1's priority date is earlier than that of the CP2.

However, if the priority claim on P2 for the subsequent application CP2 is not recognized (e.g., it is not a first foreign application), CP1's publication date is earlier than CP2's filing date; therefore, the requirements of the Patent Act regarding novelty should be applied, and CP2 will not be granted a patent; even if CP1 and CP2 are filed by the same applicant, CP2 should be rejected for lack of novelty.

1.6 Priority and Exceptions to Lack of Novelty or Inventive Step

If an applicant files for a patent in a foreign country for the first time, and then files for a patent in Taiwan for the same invention during the priority period and claims priority, the examination of whether the application meets the patentability requirements shall be based on the priority date. The application will not be rejected due to intervening events occurring between the priority date and the filing date, such as the invention disclosed in publications, publicly implemented, known to the public, earlier applications filed before yet published/issued after the filing date, or two or more applications for the same invention.

An exception to the lack of novelty or inventive step for an invention before the filing of patent application refers to situations when the applicant discloses the invention intentionally or unintentionally, and applies for a patent within 12 months of such disclosure. In such cases, the technical content related to that disclosure does not constitute part of the prior art. See Chapter 3, Section 4, "Exceptions to Lack of Novelty or Inventive Step."

The effect of the exception to lack of novelty or inventive step and the effect of priority are distinct. The former only excludes technical content related to the disclosure during a 12-month grace period from being considered

as prior art for determining the novelty or inventive step of the claimed invention; it does not use the date of such disclosure as the base date for determining the novelty or inventive step requirement. Therefore, if another party files an application for the same invention between the date of such disclosure asserted by the applicant and the filing date, the effect of the applicant's claimed exception to lack of novelty or inventive step cannot preclude the fact that the other party's application has filed earlier, and the later application will not be granted a patent.

The starting date for priority rights differs from that of the grace period (the exception to lack of novelty or inventive step). The priority period is calculated as 12 months from the first filing date in a foreign country, while the grace period is calculated as 12 months from the day following the date of the disclosure event. Therefore, an application may simultaneously claim priority and the grace period of the exception to lack of novelty or inventive step. However, the starting date of priority cannot be retroactive to the occurrence date of the disclosure event, and the two periods shall not be accumulative.

1.7 Notes for Examination

- (1) For subsequent applications that claim multiple or partial priority, attention should be paid to whether they meet the unity of invention requirement.
- (2) Where partial priority is claimed, the priority claims for certain claims in a subsequent application shall not be denied solely on the grounds that other claims in the same application were not disclosed in the priority basis application on which the priority claim is based.
- (3) When necessary, the Specific Patent Agency may notify the applicant to specify the priority number corresponding to each of the claims and the related matters.
- (4) If, upon examination, the priority claimed by the subsequent application has been recognized, but the application contains more than one invention, and the application is subsequently divided, each divisional application may still claim priority.
- (5) If the invention recited in the claims of a subsequent application differs from that disclosed in the priority basis application, and the priority claim is not recognized, the applicant may amend the claims of the subsequent application. If the amendment does not exceed the scope disclosed in the description, claim(s), or drawings of the subsequent application as filed, e.g., if the amendment is already shown in the description of the subsequent

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application, and the invention recited in the amended claims of the subsequent application is the same as that disclosed in the priority-basis application, the priority claim may be recognized.

- (6) If the priority claim of an application is not recognized, and there are cited documents that have been published or filed before the priority date, the reasons for not recognizing the priority claim and the grounds for rejection due to non-compliance with patentability requirements may be stated in the Office Action. However, if the priority claim is not recognized, yet the application remains patentable even if the filing date is used as the determination base date; or if the priority claim is not recognized, and intervening documents (published or filed between the priority date and the filing date) are found, the reasons should be stated and the applicant should be notified of a response before the issuance of the final decision. If no response is submitted by the deadline, the reasons for not recognizing the priority claim should be stated in the written decision.
- (7) Withdrawal of a priority claim for a subsequent application must be made in writing before the issuance of the final decision. If multiple priorities are claimed, all priority claims may be withdrawn, or one or more priority claims may be withdrawn. If the withdrawal of a priority claim results in a change to the earliest priority date of the application, and any statutory deadlines calculated from the priority date have not yet expired, those deadlines shall be calculated from the changed earliest priority date or the filing date. For example, if a priority claim is withdrawn before the initiation of the early publication preparation procedure for an invention application (15 months from the filing date; or from the priority date if priority is claimed), rendering that priority date invalid, the early publication of the application shall be postponed to 18 months from the changed earliest priority date or the filing date. However, if the withdrawal occurs after the initiation of the early publication preparation procedure, regardless of whether the earliest priority date is changed, the publication date shall still be 18 months after the originally claimed earliest priority date.

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- (8) In a subsequent application that claims partial priority, the portion of the invention recited in the claims that is not disclosed in the priority-basis application, i.e., the portion for which priority is not claimed, may still serve as the basis for claiming domestic priority in a subsequent application. It should be noted that if such a subsequent application later serves as the basis for domestic priority, it shall be deemed withdrawn upon the

expiration of 15 months from its filing date.

1.8 Exemplary Cases

1.8.1 General Priority

[Title of Invention]

Combustion Apparatus for Kilns

[Claim(s)]

1. A combustion apparatus for kilns for forming a film on an electronic component, the apparatus comprising: a nozzle for supplying gas, and an electric heating coil for combusting the gas.

[Remarks]

If the invention recited in the claim has been disclosed in a priority-basis application, it meets the requirements set forth in Article 28, Paragraph 1 of the Patent Act, and thus may claim priority.

1.8.2 Multiple Priorities

Example 1.

[Title of Invention]

Racket String

[Claim(s)]

1. A racket string having different tensile elastic coefficients along its longitudinal direction thereof, wherein at least one segment has a tensile elastic coefficient 5% higher than other segments.

2. A stringed racket comprising the racket strings as recited in claim 1, wherein the segments having a higher tensile elastic coefficient than other segments constitute a central interwoven area of the racket, and the other segments constitute the peripheral interwoven area of the stringed racket.

[Remarks]

If the invention recited in claim 1 is disclosed in priority-basis application A having a filing date “a,” and the invention recited in claim 2 is disclosed in another priority-basis application B having filing date “b,” and claim 1 and claim 2 are filed together in one application in the ROC, multiple priorities may be claimed if the unity of invention requirement is met, with priority date “a” for claim 1 and priority date “b” for claim 2.

Example 2.

[Title of Invention]

Scissors

[Claim(s)]

1. A pair of scissors, wherein an integral elastic piece (11) is formed at a rear end of one scissor blade (1) facing forward, and is abutted by a guide portion on a handle of the other scissor blade (2) in a folding manner, thereby biasing the two scissor blades in an opening direction.

2. A pair of scissors, characterized in that, when the blade portion (5) and the handle portion (10) of one scissor blade (2) of claim 1 are separated, the two are pivoted at a center of the other scissor blade (1), and are engaged with each other by gears (19, 20) formed on the blade portion (5) and the handle portion (10).

[Remarks]

If the invention recited in claim 1 has been disclosed in priority-basis application A having filing date “a,” and the invention recited in claim 2 has been disclosed on another priority-basis application B having filing date “b,” and claim 1 and claim 2 are filed together in one application in the ROC, multiple priorities may be claimed if the unity of invention requirement is met. The priority date of claim 1 is “a,” and the priority date of claim 2 is “b.”

Example 3.

[Title of Invention]

Aminesulfonylbenzoic acid derivative

[Claim(s)]

1. A compound of formula (I) with substituent R having 1 to 10 carbon atoms.

[Remarks]

If a compound of formula (I) with substituent R having 1 to 5 carbon atoms has been disclosed in priority-basis application A having filing date “a,” and a compound of formula (I) with substituent R having 6 to 10 carbon atoms has been disclosed in another priority-basis application B having filing date “b,” and both are combined into a single claim in a subsequent ROC application, the compound of formula (I) with substituent R having 1 to 10 carbon atoms may claim multiple priorities if the requirement of unity of invention is met. The priority date for the compound with 1 to 5 carbon atoms is “a,” and the priority date for the compound with 6 to 10 carbon atoms is “b.”

1.8.3 Partial Priority

Example 1.

[Title of Invention]

Semiconductor Device and Manufacturing Method Thereof

[Claim(s)]

1. A semiconductor device for a MOS transistor, comprising: a drain region (1004) and a gate (1005), wherein the gate has a high resistivity portion at least including a lateral end of the drain region.

2. A method for manufacturing a semiconductor device, comprising: forming a polysilicon gate; forming a polysilicon film to form a sidewall, the sidewall being formed in an outer flange region of the gate, having a resistivity higher than that of the polysilicon gate; and

performing anisotropic etching.

[Remarks]

If the invention recited in claim 1 has been disclosed in priority-basis application A having filing date “a,” and claim 2 is a newly added invention not disclosed in any priority-basis application, and claim 1 and claim 2 are filed together in one application in the ROC, partial priority may be claimed if the unity of invention requirement is met, and the priority date of claim 1 is “a.”

Example 2.

[Title of Invention]

Baby Carrying Device

[Claim(s)]

1. A baby carrying device comprising a bag sewn to the size of a portion of a baby's torso, with openings on both sides of the bottom for inserting the baby's feet, the bag being sewn to the surface of a flat body, to a bag opening side of the body surface to serve as a pair of diagonal shoulder straps, a pair of lower straps, each with at least one end opposing a fixed part, attached to a corner of the flat body in a freely detachable manner, an auxiliary fixing metal part (11) being provided on a bottom surface of the flat body for attaching a front end of the lower straps.

2. The baby carrying device as claimed in claim 1, wherein a back pocket with an opening forming an insertion hole at one end of the bottom surface of the body is provided.

3. The baby carrying device as claimed in claim 1, characterized in that one end of the bottom surface of the body has a back pocket with an opening extending to the other end, and an elongated hole (12) formed on the back

pocket.

[Remarks]

If the invention recited in claim 1 has been disclosed in priority-basis application A having filing date “a,” the invention recited in claim 2 has been disclosed in priority-basis application B having filing date “b,” and claim 3 is a newly added invention not disclosed in any priority-basis application, and claims 1, 2, and 3 are filed together in one application in the ROC, partial priority may be claimed if the unity of invention requirement is met. The priority date of claim 1 is “a,” and the priority date of claim 2 is “b.”

Example 3.

[Title of Invention]

Aminosulfonylbenzoic acid derivatives

[Claim(s)]

1. A compound of formula (I) with substituent R having 1 to 10 carbon atoms.

[Remarks]

If a compound of formula (I) with substituent R having 1 to 4 carbon atoms has been disclosed in priority-basis application A having filing date “a,” and a compound of formula (I) with substituent R having 7 to 10 carbon atoms has been disclosed in another priority-basis application B having filing date “b,” a compound of formula (I) with substituent R having 5 to 6 carbon atoms is combined with the aforementioned claims to form a single claim for a compound of formula (I) with substituent R having 1 to 10 carbon atoms in the ROC, in the case where the unity of invention requirement is met, a compound of formula (I) with substituent R having 1 to 10 carbon atoms may claim partial priority, with priority date “a” for the compound of formula (I) with 1 to 4 carbon atoms and priority date “b” for the compound of formula (I) with 7 to 10 carbon atoms.

2. Domestic Priority

2.1 Introduction

The purpose of the domestic priority system is to enable applicants, after filing an invention or utility model application, to use that filing as a basis to amend or incorporate new subject matters, and enjoy benefits comparable to that of the international priority. Such amendments or incorporation of new

subject matters, when submitted in the form of amendments, are often considered exceeding the scope disclosed in the description, claim(s), or drawings of the application as filed. However, by utilizing domestic priority, there is still a chance to combine them into a single application, thereby securing comprehensive and seamless protection.

An applicant who files a subsequent patent application (hereinafter referred to as a subsequent application) based on an earlier domestic invention or utility model application (hereinafter referred to as the earlier application) may claim priority over the invention or utility model recited in the description, claim(s), or drawings of the earlier application. The domestic priority system applies exclusively to invention and utility model, not to design. Furthermore, invention and utility model applications may serve as the priority basis for each other. Once domestic priority is claimed, the earlier application shall be deemed withdrawn upon the expiry of 15 months after its filing date to avoid duplicate publication and examination.

2.2 Types of Domestic Priority

Similar to international priority as set forth in Section 1.2 of this chapter, domestic priority also includes three types: “general priority,” “multiple priority,” and “partial priority.”

2.3 Formal Requirements

The examination of formal requirements such as “applicant,” “earlier application for domestic priority,” “period for asserting domestic priority,” “statements of asserting domestic priority,” and withdrawal of domestic priority” shall be conducted in accordance with the provisions of Chapter VII “Priority and Grace Period” of Part I “Procedural Examination and Patent Administration.”

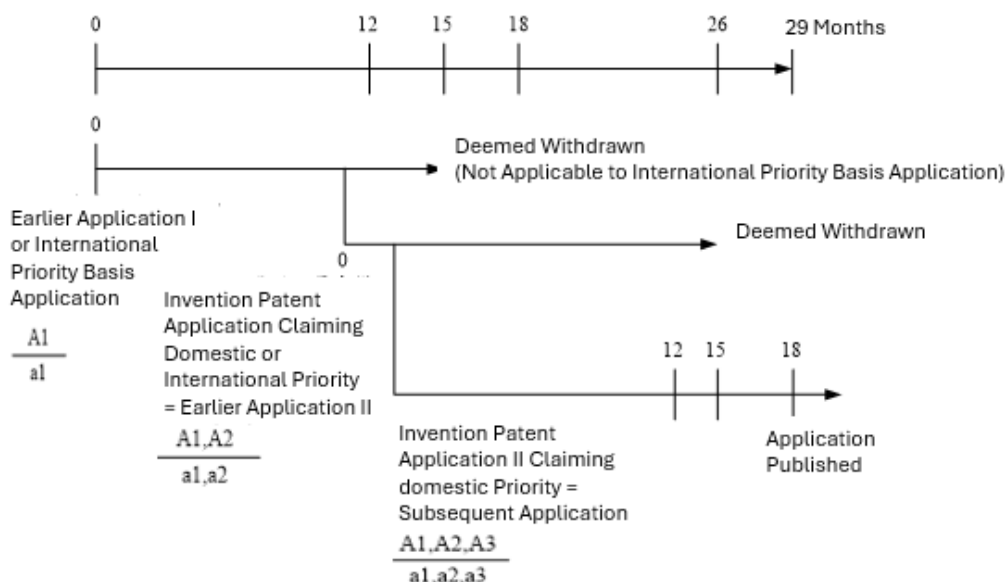
2.4 Substantial Requirements

- (1) A subsequent application should claim priority over the same invention or utility model recited in the description, claim(s), or drawings of the earlier application.
- (2) The determination of “the same invention,” please refer to section 1.4.1 of this chapter, “Determination of the same Invention.”
- (3) When claiming multiple domestic priorities, the subject matter of each claim should meet the requirements of unity of invention.

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- (4) Whether the priority of each claim in a subsequent application can be recognized shall be based on the description, claim(s), or drawings of the earlier application, and not solely on the claims of the earlier application.
- (5) Following the above, technical content that is not recited in the claims of the earlier application but has been disclosed in its description or drawings, may still be drafted as new claims in a subsequent application.
- (6) An invention or utility model that has not been claimed priority in a earlier application may still be claimed in other subsequent applications. However, the same invention or utility model may not be claimed in multiple subsequent applications to avoid the situation of double patenting.
- (7) Cumulative claims of priority are not permitted.

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In this diagram, the numerator represents the contents of the description, and the denominator represents the contents of the claim(s).

Earlier application II claims domestic priority over invention A1 in earlier application I, and subsequent application claims domestic priority over inventions A1 and A2 in earlier application II. The domestic priority claim of invention A1 in the subsequent application should not be recognized (cumulative priority claims are prohibited). Furthermore, earlier application II will be published 18 months after its priority date (the filing date of the earlier application I or the international priority-basis application). The subsequent application must be filed before the publication of earlier application II; otherwise, if earlier application II becomes prior art after publication, invention A1 in the subsequent application will lack novelty.

In cases where the subsequent application claims domestic priority for

invention A1 in earlier application II, since earlier application II had already claimed international priority for invention A1, the domestic priority claim for invention A1 in the subsequent application shall not be recognized; that is, cumulative priority claims are prohibited. The only invention for which priority is recognized in the subsequent application is invention A2, which was newly added in earlier application II.

To avoid the situation where some inventions are not recognized due to the cumulative claim of domestic priority, in this example, the earlier application II can abandon the claim of domestic priority and then claim the priority of A1 of earlier application I and A2 of earlier application II in the subsequent application (but the filing date of the subsequent application must be within 12 months of the filing date of earlier application I). As such, invention A1 of the subsequent application is regarded as having a filing date of earlier application I, and A2 is regarded as having a filing date of earlier application II, through the claiming of multiple priorities.

2.5 Effect of Priority

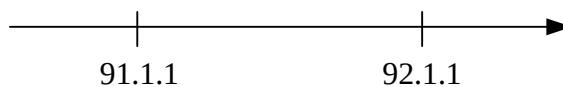
The timeframe for determining whether an application meets the patentability requirements is generally based on the filing date. However, if an applicant claims priority by filing a subsequent application within 12 months of the filing date of an earlier application disclosing the same invention or utility model, the examination of the patentability requirements—such as novelty, lack of novelty based on legal fiction, inventive step, or the first-to-file principle shall be based on the priority date. However, it does not mean that the filing date is backdated to the priority date. Therefore, applications claiming priority will not be rejected due to intervening events occurring between the priority date and the filing date, such as the invention or utility model being disclosed in publications, publicly implemented, known to the public, earlier applications filed before yet published/issued after the filing date, or two or more applications for the same invention or utility model.

2.6 Types of Claiming Domestic Priority

2.6.1 Subsequent Application Claiming Priority of Earlier Invention or Utility Model Application

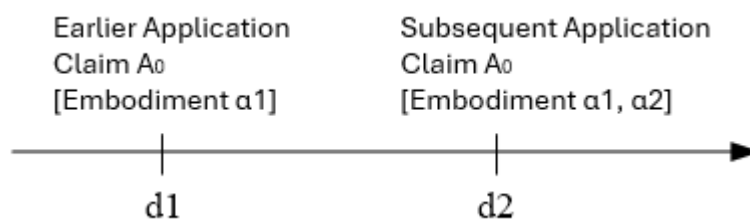
If an earlier application is filed for a patent on invention A, and a subsequent application is filed for a patent on invention A within 12 months of the filing date of the earlier application, claiming domestic priority based

on the earlier application, since the patent term begins to run from the filing date of the subsequent application, the patent term can be delayed by up to one year.



2.6.2 Adding Embodiments to Support the Claims of Earlier Application (Embodiment Supplement Type)

If an application is filed on date d_1 after the invention is initially completed, and the claim(s) is A_0 (e.g., an acid), but the description only recites one embodiment α_1 (e.g., inorganic acid such as hydrochloric acid), this embodiment is insufficient to fully support the scope of A_0 . Upon examination, only the scope limited to that embodiment may be granted. To avoid this unfavorable situation, the applicant may add example α_2 (e.g., organic acid such as acetic acid) to maintain the original scope of A_0 .



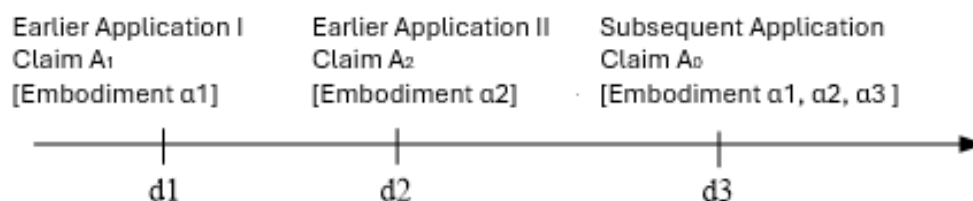
If the scope of the earlier application, A_0 , cannot be adequately supported by embodiment α_1 , A_0 shall be narrowed to the scope supported by α_1 (A_0'). If the subsequent application claims priority based on the earlier application, the portion of the scope of the earlier application A_0 corresponding to A_0' (α_1) shall be examined with priority date d_1 , and the portion α_2 supplemented by the new embodiment shall be examined with priority date d_2 .

2.6.3 Generic Concept Extraction Type

An applicant may file applications sequentially based on the sequence of completed embodiments. For example, claim A_1 of application I recites embodiment α_1 (e.g., hydrochloric acid), and claim A_2 of application II recites embodiment α_2 (e.g., nitric acid). After completing embodiment α_3 (e.g., acetic acid), and realizing that the invention is not limited to any specific acid, the applicant may file application III with claim A_0 reciting the generic concept of “acid,” encompassing embodiments α_1 , α_2 , and α_3 , thus obtaining

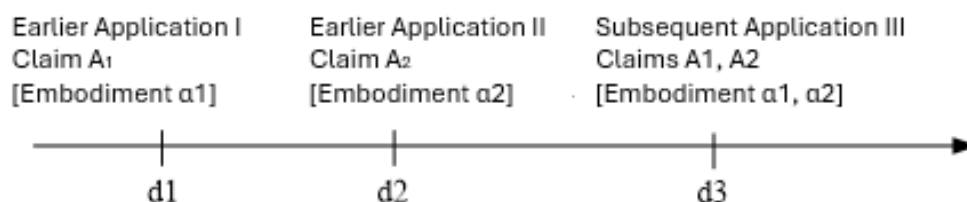
a broader scope of protection.

In the subsequent application, A1 within the claim scope A0 is examined based on the filing date d1, A2 is examined based on the filing date d2, and the remainder of the claim is examined based on the filing date d3.



2.6.4 Consolidation Type for Meeting the Unity of Invention Requirements

For applicants that file separate applications for each of the sequentially completed embodiments, if the applications meet the requirements of unity of invention, for example, if embodiment α₁ of the earlier application I is directed to an invention of product, and embodiment α₂ of the earlier application II is directed to an invention of method for manufacturing the product, the two applications may be consolidated into a subsequent application III, and priority may be claimed.



In the subsequent application, the claim A₁ shall be examined based on the filing date d1, while the claim A₂ be examined based on the filing date d2.

When examining a patent application that claims domestic priority, it is necessary to determine whether the effect of the priority claim can be recognized. In doing so, each claim of the patent application should be examined individually. Whether the priority effect is recognized for each claim will determine its allowance or rejection.

2.7 Notes for Examination

- (1) If the earlier application of invention or utility model is incomplete, and the subsequent application claims priority to the earlier application but describes a completed invention or utility model, such priority claim cannot be recognized; therefore, the patentability requirements shall be examined

based on the filing date of the subsequent application.

- (2) If the earlier application is directed to biological materials or inventions using biological materials, and the subsequent application claims domestic priority, it must be verified whether the biological materials in the earlier application have been deposited in accordance with the provisions of the Patent Act.
- (3) When claiming domestic priority, the earlier application is deemed withdrawn 15 months from its filing date. Even if the applicant claims priority only for a portion of the invention in the earlier application, the earlier application shall be deemed withdrawn in its entirety. If one wishes to retain the unclaimed portion from being deemed withdrawn, that portion of the application may be filed in a divisional application before domestic priority is claimed in the earlier application. In this case, the divisional application cannot serve as a basis of a priority claim, but the amended earlier application can still serve as a basis of domestic priority claim for a subsequent application. After the subsequent application claims domestic priority but before a decision is rendered, if the earlier application is still within the 15-month from its filing date, it may still serve as a basis of a division application for the unclaimed portion, but the division application can no longer be used as the basis for a subsequent domestic priority claim.
- (4) If the earlier application has claimed an exception to the loss of novelty or inventive step, the subsequent application may still claim domestic priority within 12 months from the filing date of the earlier application. Under the domestic priority system, the subsequent application has the effect of replacing the same invention disclosed in the earlier application. Therefore, if the earlier application has claimed an exception to the loss of novelty or inventive step for the same invention, the subsequent application may also claim such the same exception. Thus, the disclosed technical content excluded by the earlier application's claim to the loss of novelty or inventive step shall not be cited as a reference to reject the novelty or inventive step of the same invention in the subsequent application.
- (5) When the earlier application is a divisional application, domestic priority cannot be claimed. However, if a subsequent application has already claimed domestic priority, the applicant may still file a divisional application from the subsequent application, and the divisional application may benefit from the original priority date.
- (6) If, after entering the substantive examination stage, it is discovered that the domestic priority claim fails to meet the formal or substantive requirements,

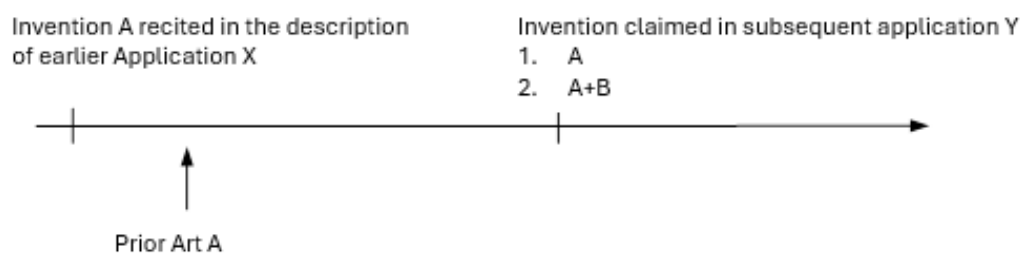
and is therefore not recognized, this may be stated in the decision of refusal. In the case of an allowance, the applicant should first be notified that the domestic priority claim is not recognized, and the decision of allowance should only be issued after the period for seeking administrative remedies has expired without any such action being taken.

- (7) During the substantive examination, whether the claim of domestic priority is accepted should be stated in the final decision. When claiming domestic priority for multiple earlier applications, the patentability requirements for each priority claim should be examined based on its respective priority dates.
- (8) In the case of an earlier application for which domestic priority is claimed, even if an amendment has been submitted before the application is deemed withdrawn, the determination of whether the priority claim is recognized shall still be based on the description, claims, or drawings of the earlier application as of its filing date.

2.8 Exemplary Cases

Example 1.

The situation where claims of application Y, which claims priority based on the description or drawings of an earlier application X, include an invention formed by adding a new technical feature B.

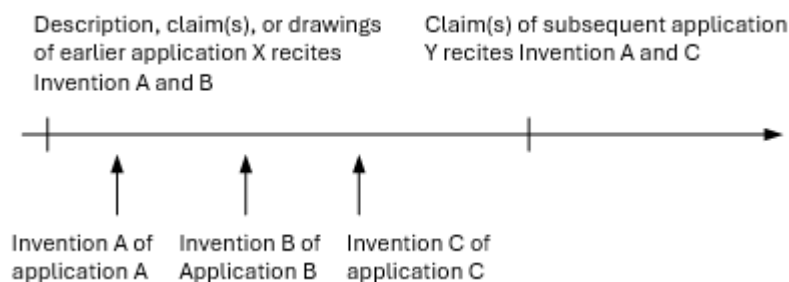


The invention A in claim 1 of subsequent application Y is described in the description of earlier application X. Therefore, the priority claim of the subsequent application can be recognized, and the invention is deemed to have been filed on the filing date of the earlier application X. Therefore, claim 1 cannot be rejected based on prior art A.

The invention A+B in claim 2 of the subsequent application Y is not disclosed in the description of the earlier application X, therefore its priority claim cannot be recognized. If invention A+B lacks an inventive step over invention A, claim 2 may be rejected based on prior art A.

Example 2.

The following example shows cases where Article 23 of the Patent Act applies to applications filed between the filing date of the earlier application and the filing date of the subsequent application claiming priority.



If an invention is described in both the description, claim(s), or drawings of subsequent application Y and the description, claim(s), or drawings of earlier application X, then when subsequent application Y, which claims priority, is published or issued, the invention described in the earlier application X may be deemed to have been published or issued, and Article 23 of the Patent Law shall apply.

Since invention A in application A is described in the description, claim(s), or drawings of the earlier application X and the claim(s) of the subsequent application Y, the earlier application X can be cited as a prior art as grounds for rejection.

Although invention B in application B is described in the description, claim(s), or drawings of the earlier application X, it is not described in the description, claim(s), or drawings of the subsequent application Y. Therefore, the earlier application X cannot be cited as a prior application for rejection.

Although invention C in application C is described in the claim(s) of the subsequent application Y, it is not described in the description, claim(s), or drawings of the earlier application X. Therefore, the earlier application X cannot be cited as a prior application for rejection.

Example 3. Workbench Driving Device**Earlier Application**

[Claim(s)]

A workbench drive device, characterized in comprising a movable stage 12 mounted on a workbench; a concave member 16 fixed to one side of the movable stage 12; a convex member 17 that interlocks with the concave member 16; a driving stage 13 fixed to the convex member 17 capable of linear

movement; and a compressed air supply means for supplying compressed air to an interlocking portion of the convex member or the concave member, whereby the movable stage 12 is driven to perform a tracking motion by the linear movement of the drive stage 13.

[Drawings]

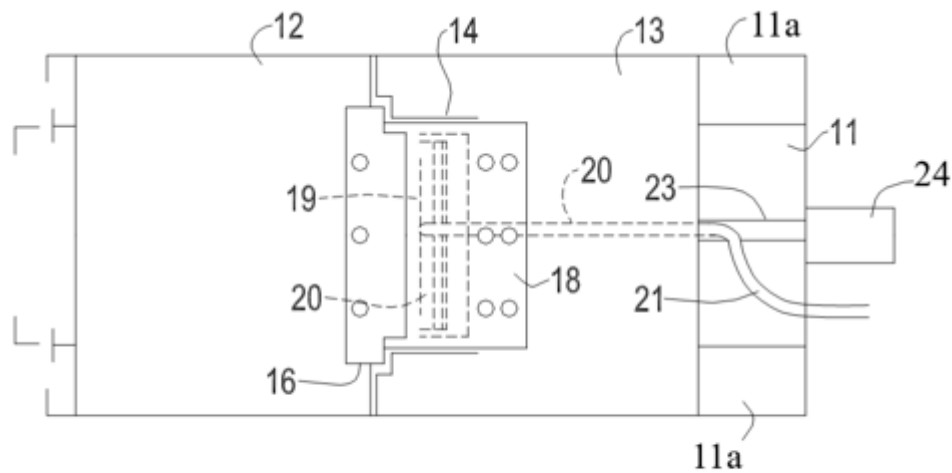


FIG. 1

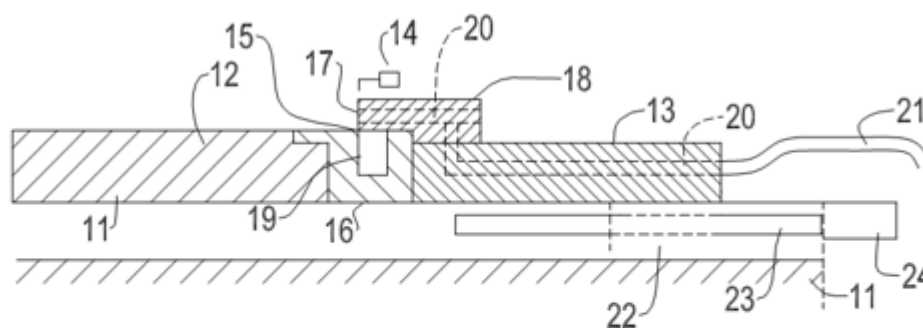


FIG. 2

Subsequent Application

Filed within 12 months of the filing date of the earlier application, and claiming domestic priority over the earlier application.

[Claim(s)]

1. A workbench driving device for a machine tool, comprising a processing stage 12 for holding a workpiece; a driving stage 13 connected to the processing stage 12 through a slidable interlocking

connection with a clearance; a stage driving means connected to the driving stage 13; and a high-pressure air supply means for supplying high-pressure air to a slidable interlocking connection portion 14.

2. The workbench driving device of claim 1, wherein the opposing surfaces of the slidable interlocking connection portion are planar.
3. The workbench driving device of claim 1, wherein the opposing surfaces of the slidable interlocking connection portion are spherical.
4. The workbench driving device of claim 1, wherein the opposing surfaces of the slidable interlocking connection portion are arc-shaped.

[Drawings]

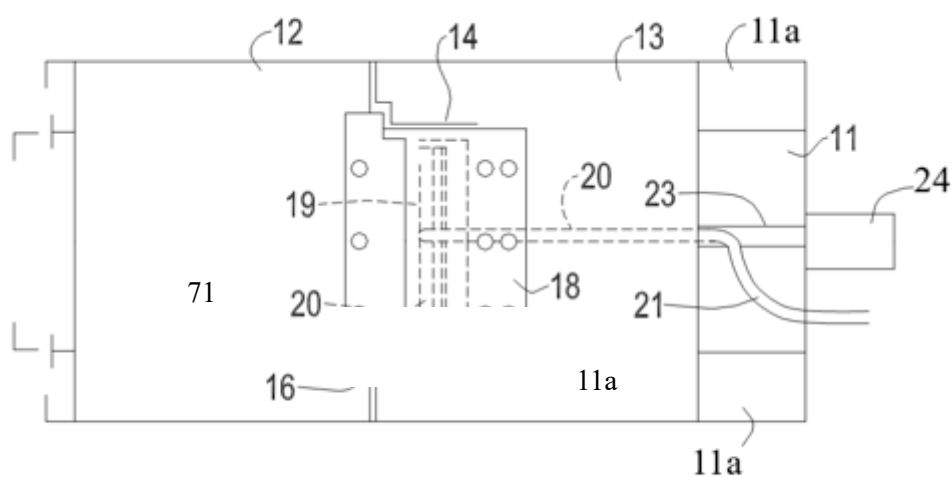


FIG. 1

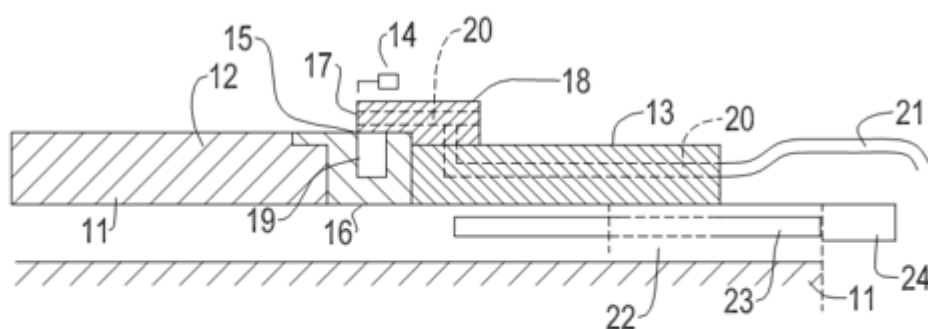


FIG. 2

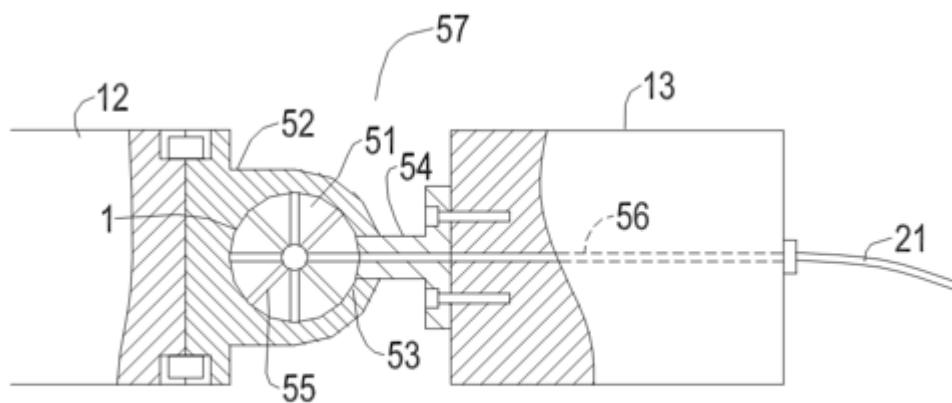


FIG. 3

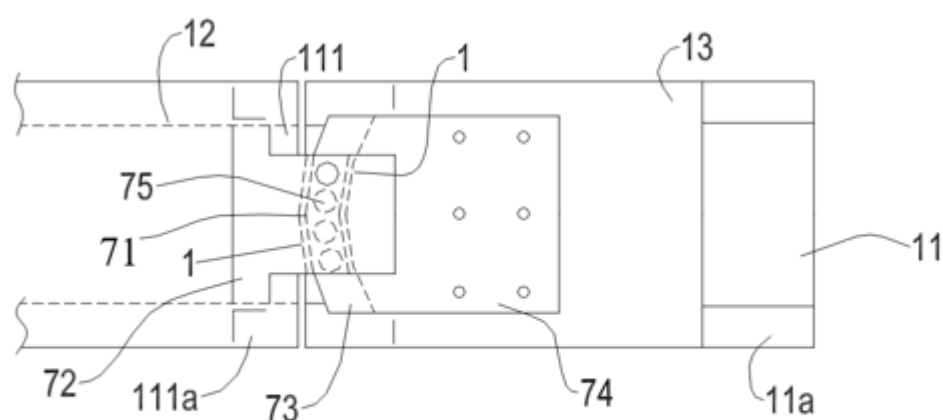


FIG. 4

Determination of the Applicability of Priority

(1) The wording of claim 1 in the subsequent application claiming domestic priority is not entirely identical to the claims in the earlier application. When determining priority applicability, the substantive technical content must be ascertained on the basis of the claim(s), while taking consideration the drawings and the description as a whole. The generic concept invention recited in claim 1 of the subsequent application includes the following:

- (a) An invention where the opposing surfaces of the slidable interlocking connecting parts are planar (claim 2, Figures 1-2).
- (b) An invention where the opposing surfaces of the slidable interlocking connecting parts are spherical (claim 3, Figure 3).
- (c) An invention where the opposing surfaces of the slidable interlocking

connecting parts are arc-shaped (claim 4, Figure 4).

- (2) The invention of (a) can make the driving surface of the processing stage unaffected by tilting, turning, yawing, etc., so as to enable the effect of linear movement.
- (3) The invention of (b) has a soft response to pitch, roll and yaw.
- (4) The invention of (c) also has the effect of being able to move along a curved surface.
- (5) Claims 2, 3, and 4 in the subsequent application are newly added claims.
- (6) Determination of the filing date(s) of each claimed invention:

Although invention (a) is indeed recited in the description, claims, or drawings of the earlier application, inventions (b) and (c) are not recited in the description, claims, or drawings of the earlier application. Therefore, invention (a) of claim 1 is considered to have been filed when the earlier application was filed, while inventions (b) and (c) are considered to have been filed when the subsequent application was filed.

The dependent claim 2 recites an invention corresponding to invention (a) of claim 1, and is therefore considered to have been filed when the earlier application was filed, i.e., the priority is recognized.

The dependent claim 3 recites an invention corresponding to invention (b) of claim 1, which is not disclosed in the description, claims, or drawings of the earlier application, and is therefore considered to have been filed when the subsequent application was filed, i.e., the priority is not recognized.

The dependent claim 4 recites an invention corresponding to invention (c) in claim 1, which is not disclosed in the description, claims, or drawings of the earlier application, and is therefore considered to have been filed when the subsequent application was filed, i.e., the priority is not recognized.

In this case, the claims include both whose priority can be recognized and those that cannot, which is a situation known as partial priority.

Example 4. Amplifier Device

Earlier Application

[Claim(s)]

An amplifier device characterized in that, comprising: an amplifier body 1 for reproducing audio signal; a protective material 3 mounted in front of the amplifier body 1; a light source 5 arranged between the amplifier body 1 and the protective material 3 for illuminating the amplifier body 1; and a controller

8 for detecting audio signal supplied to the amplifier body 1 and generating corresponding output, thereby driving the light source 5 through output of the controller 8.

[Drawings]

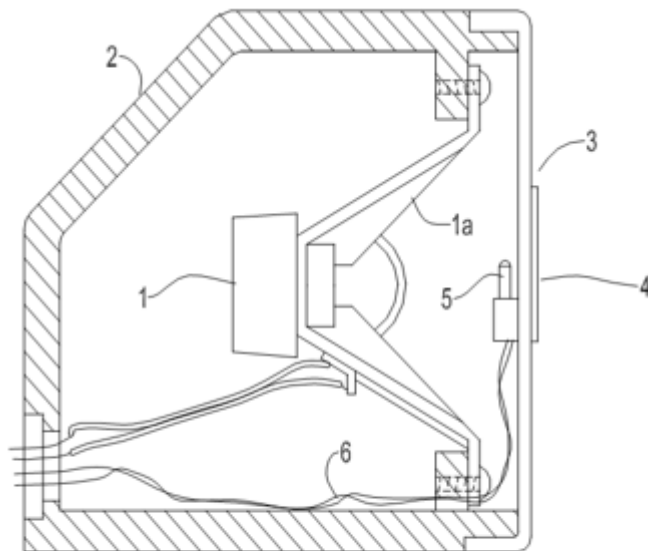


FIG. 1

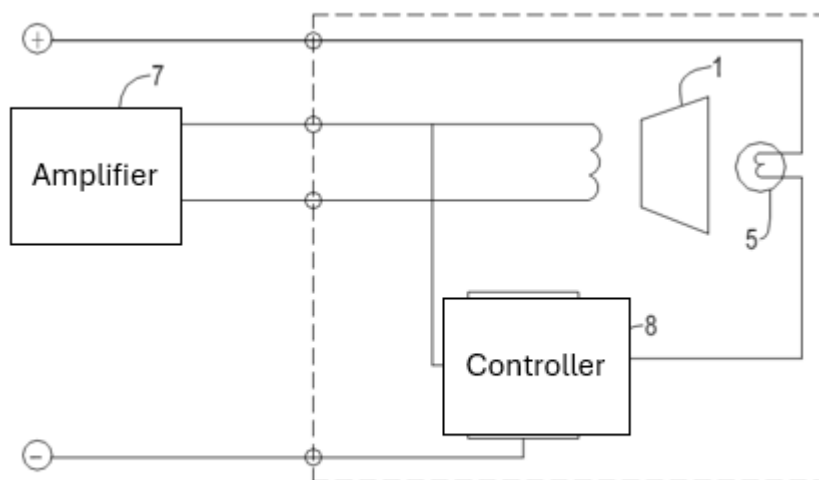


FIG. 2

Subsequent Application

Filed within 12 months of the filing date of the earlier application, and claiming domestic priority over the earlier application.

[Claim(s)]

1. An amplifier device characterized in that, comprising: an amplifier body 1 for reproducing audio signal; a protective material 3 mounted on a front of the amplifier body 1; a light source 5 arranged between the amplifier body 1 and the protective material 3 for illuminating the amplifier body 1; and a controller 8 for detecting audio signal supplied to the amplifier body 1 and generating a corresponding output, thereby driving the light source 5 through output of the controller 8.
2. An amplifier device characterized in that, comprising: a plurality of different amplifier bodies 11, 12, 13, 14 capable of reproducing an audio range; a plurality of light sources 5a, 5b, 5c, 5d respectively illuminating a front of the amplifier bodies 11, 12, 13, 14, arranged opposite to each other in front of the amplifier bodies 11, 12, 13, 14; and controllers 8a, 8b, 8c, 8d that detect audio signal supplied to the plurality of amplifier bodies 11, 12, 13, 14, and output corresponding signal to drive the light sources 5a, 5b, 5c, 5d respectively arranged opposite to each of the amplifier bodies 11, 12, 13, 14, thereby causing changes in the luminosity of the opposing light sources 5a, 5b, 5c, 5d respectively in response to the reproduced audio signal of the plurality of amplifier bodies 11, 12, 13, 14.

[Drawings]

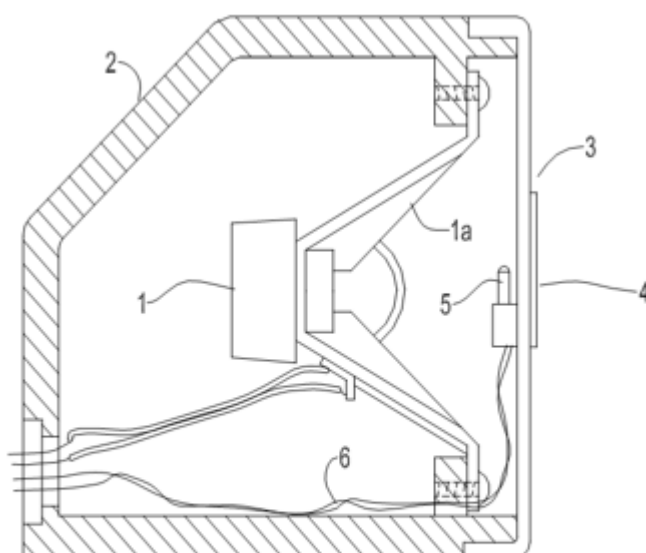


FIG. 1

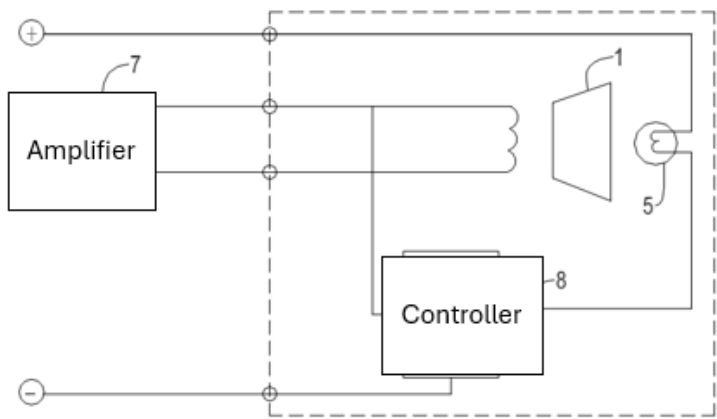


FIG. 2

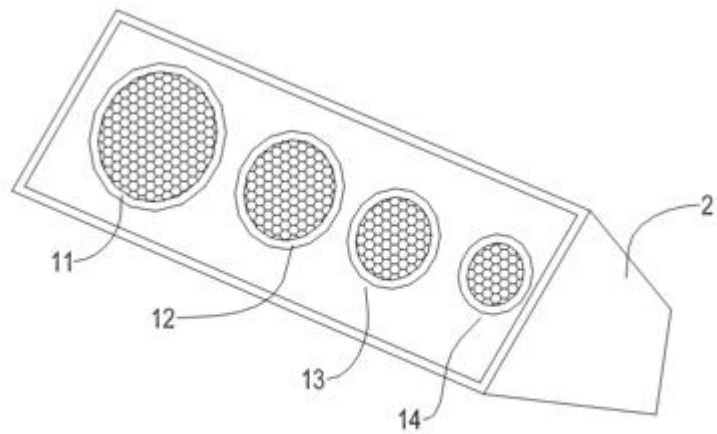


FIG. 3

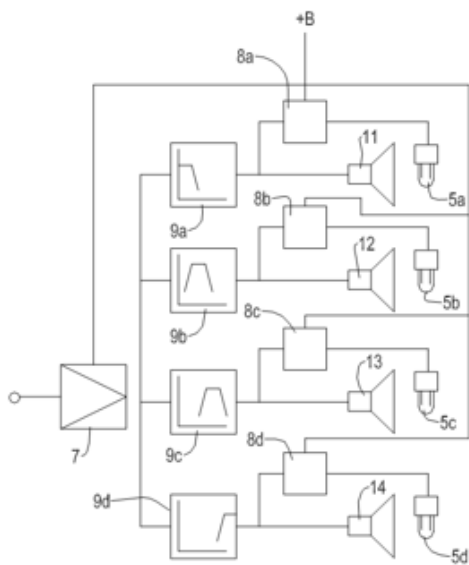


FIG. 4

Determination of the Applicability of Priority

- (1) Claim 1 of the subsequent application is the same as claim 1 of the earlier application. The recited invention is an amplifier equipped with a light source. The luminosity of the light source can be changed by using the audio signal supplied to the amplifier, thereby making the audio visually appealing. It also has the function and effect of being a device for indicating sound volume (Figure 1, Figure 2).
- (2) Claim 2 of the subsequent application is a newly added independent claim. The recited invention has multiple amplifier bodies with different reproducible audio signals, and has light sources that illuminate each amplifier, so that each light source can produce a change in luminous intensity in accordance with the audio signal supplied by each amplifier. In addition to the effect of claim 1, it also has the effect of being used as a sound spectrum analyzer (Figures 3 and 4).
- (3) Determination of the filing date(s) of each claimed invention:

The invention in claim 1 is recited in the description, claim(s), or drawings of the earlier application. Therefore, its filing date may be considered to be the filing date of the earlier application was filed, i.e., priority can be recognized.

While the original description, claim(s), and drawings of earlier application describe a light source having an amplifier and a device for changing the luminous intensity of the light source in response to audio signal supplied to the amplifier, they do not describe a structure consisting of multiple amplifiers capable of reproducing different audio ranges. Therefore, the filing date of the invention in claim 2 should be the filing date of the subsequent application, i.e., priority shall not be recognized.

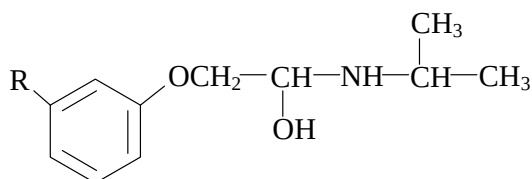
This example also falls under the class of partial priority.

Example 5. Phenoxyethanol amino derivatives

Earlier Application A

[Claim(s)]

A compound having a general formula shown below



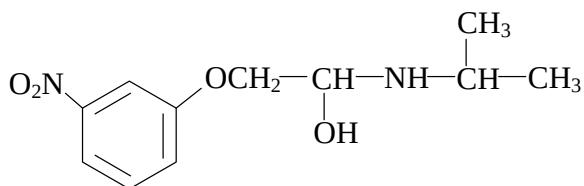
where R is a halogen or an OH group.

(Note: The description of the earlier application A only recites embodiments where R is a halogen or an OH group.)

Earlier application B

[Claim(s)]

A compound having the general formula shown below



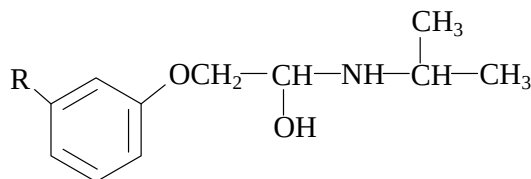
(Note: The description of the earlier application B only recites embodiments of compounds with the above formula.)

Subsequent Application

Filed within 12 months of the filing date of the earlier application, and claiming domestic priority over the earlier application.

[Claim(s)]

A compound having the general formula shown below



where R is a halogen, OH, NO₂, CF₃, or NH₂ group.

(Note: The description of the subsequent application, in addition to describing R as a halogen, OH, or NO₂ group, also describes embodiments of CF₃ and NH₂.)

- (1) The inventions recited in the claims of the subsequent application include:
 - a. Inventions in which R is a halogen.
 - b. Inventions in which R is OH.
 - c. Inventions in which R is NO₂.
 - d. Inventions in which R is CF₃.
 - e. Inventions in which R is NH₂.
- (2) The description of the subsequent application recites embodiments of R being halogen, OH, NO₂, CF₃, or NH₂.
- (3) The description of the earlier application A recites embodiment of R being a halogen or OH group.
- (4) The description of the earlier application B recites embodiment of R being NO₂ group.

(5) Application A was filed prior to Application B.

Inventions a. and b. are recited in the description of Application A.

Invention c. is not recited in the description of Application A, but is recited in the description of Application B.

Inventions d. and e. are not described in the description of either Application A or Application B.

Of the inventions in the subsequent application, inventions a and b can be considered being filed at the time of Application A; invention c can be considered being filed at the time of Application B; and inventions d and e can be considered being filed on the filing date of the subsequent application. In other words, only the priority of inventions a, b, and c can be recognized.

This example involves a mixture of multiple and partial priorities. Since Applications A and B were filed on different dates, the period during which domestic priority can be claimed within 12 months from the filing date of the earlier Application A.