

## **CHAPTER 9. TERM AND EXTINGUISHMENT OF TRADEMARK RIGHTS**

### **Section 1. Term of Trademark Rights**

#### **I. Term**

The term of a trademark right shall be ten years from the date its establishment was registered (Section 19 (1)).

The main reason for fixing the term for trademarks is different from that for patent rights. Creative rights such as patent rights are greatly indebted to the products of a large number of predecessors, even though intellectual products belong to the respective inventors. An exclusive right is provided as compensation for the publication of an invention for a fixed term for balancing the interests of inventors and society. Therefore, any created products should enter the public domain after a certain period. If patent protection continued permanently, the development of the activities of the general public would be limited, and the development of industry, the express purpose of the Patent Law, would never be attained.

However, the term of trademark rights has been fixed for completely different reasons from that of patent rights. Since the trademark registration system has been established in order to prevent unfair competition and to protect business reputation, trademarks may be protected permanently. However, after a certain period, the owner of a trademark right might discontinue his business, or he himself may want to discontinue the use of it because and exchange his trademark for a new one. If there are a number of registered trademarks that have remained unused for a long period, they would interfere with a third party attempting to select a trademark for registration, or they would make the examination process time-consuming. Unused trademarks therefore need to be disposed of. As social conditions may change, the assessment of public interests related to trademarks may also change, and re-examination of trademarks might become necessary. For all of these reasons, the term of trademark rights has been fixed.

The term of a trademark right can be renewed upon filing a request. Without such a request, a trademark right will be terminated. Therefore, trademark rights are regarded as continuing semi-permanently. The term of trademark rights has been reduced from 20 years under the former Law to 10 years in an attempt to dispose of trademarks without any practical meaning ("Chikujō Kaisetsu (Commentaries on the Trademark Law)" p. 1053).

#### **II. Renewal of Term**

##### **1. Renewal of Term of Trademarks**

###### **(1) Nature of Renewal**

The same trademark must always indicate the same origin in order to prevent unfair competition and protect business reputations. Accordingly, the term of trademarks may

be renewed by filing an application. An application for renewal is made not for creating a new trademark right, but for extending the term of the original right (Vol. 9, Daishinin (former Supreme Court), Minshu, p. 744, Jul. 30, 1930; Daishinin, Hanrei (Precedents), p. 876, May 1, 1947). The date of expiration of the renewal term is fixed based on the date of registration of the original trademark without regard to the date of registration of the renewal. The expiration date of the first renewal term is, therefore, the twentieth anniversary of the original registration date.

If the renewal of the mark for only a portion of the original designated goods or designated services were approved, the procedure would become more complicated. Similarly, if a portion of the trademark right were disposed of, the disposal would have the same effect. For this reason, partial renewal of the designated goods or services is not allowed ("Chikujo Kaisetsu (Commentaries on the Trademark Law)" p. 1053).

## (2) 1996 Amendment

The Law as amended in 1996 discontinued substantive examination at the time of renewal and the check on uses of the registered trademark in relation to the provisions of the Trademark Law Treaty. Under the pre-amendment Trademark Law, examination was conducted for ascertaining whether the trademark relevant to the renewal application fell under the grounds for non-registrability in relation to public interest (Section 4 (1) (i) to (iii), (v), (vii) and (xvi)). A check on the uses of the registered trademark was conducted together with this examination (former Trademark Law, Section 19 (2)). However, since the Trademark Law Treaty prohibits "the furnishing of a pledge and/or evidence concerning the use of the mark" and "substantive examination at the time of renewal" (Treaty, Article 13 (4) (iii)), the substantive examination for non-registrability and the use of registered trademarks at the time of renewal were discontinued.

In conjunction with the discontinued procedures, the trial system for invalidation of renewal of trademark rights was abolished (Section 48). As an alternative system, a trial for the invalidation of a trademark registration may be demanded on the grounds that the trademark falls under the grounds for non-registrability in relation to public interest that arises after registration. (However, the substantive examination is still conducted for the renewal of registration of defensive marks, and such renewal is subject to the rules for filing of an application. Regarding the renewal of overlapping registration of a trademark in respect of services, only the first renewal is made subject to the rules for filing of an application.)

## 2. Renewal of Duration of Trademarks

### (1) Time Limit for Filing a Request

A request to renew a trademark registration shall be made within six months prior to the date of expiration of the term (Section 20 (2)). Where the owner of a trademark right is unable to make a request for registration of renewal within the prescribed time limit, he may make such a request belatedly within six months from the expiration of that time limit (Section 20 (3)).

Internationally, problems often occur due to foreigners' misunderstanding that registration of renewal need not be made until the time of expiration. There is also a criticism the protection for the owners of trademark rights in Japan is inadequate compared with legislation in other countries (No. 160, Tokyo High Court, Hanyu, p. 127, Feb. 27, 1964). In addition, since there is an assumption that trademarks in respect of services are more related to medium and small-sized enterprises than trademarks in respect of goods, the time limit for filing a renewal was extended on the occasion of introduction of the system. This requirement as to the time limit was further relaxed by the 1996 amendment of the Law.

Where a request for renewal of registration is not made within the time limit allowed for the owner to make such a request, the trademark right shall be deemed to have been extinguished retroactively from the time of the expiration of the term (Section 20 (4)).

## (2) Restoration of Trademark Rights

As discussed above, if a request for renewal of registration is not made within the time limit, the trademark right is deemed to have been extinguished (Section 20 (4)). However, where the owner of the extinguished trademark right is unable to make a request for registration of the renewal within the time limit "due to reasons outside his control," he may make such a request within 14 days (or, if he resides abroad, within two months) from the date on which the reasons ceased to be applicable but not later than six months following the expiration of said time limit (Section 21 (1)). When a request for registration of renewal is made, the term shall be deemed to have been renewed retroactively from the time of the expiration of the term; namely, the trademark right is restored (Section 21 (2)).

However, the effects of the restored trademark right shall not extend to the following acts after the expiration of the time limit but before the request for renewal of the registration is made (Section 22).

- ① use of the registered trademark with respect to the designated goods or designated services; and
- ② the acts mentioned in each paragraph of Section 37 (acts deemed to be infringement).

"Reasons outside his control" is strictly interpreted as the inability of the owner himself or his agent to file a request due to acts of God or serious illness, etc.

The provisions in the Trademark Examination Guidelines regarding justifiable reasons for non-use of trademarks are quoted for reference as follows:

"Whether there is any justifiable reason for the use of registered trademarks not connected to the designated goods must be judged, comprehensively taking various circumstances into consideration. The following requirements must be met, as a rule, in order to acknowledge the reasons as justifiable."

"The reasons for non-use must be related to the current owner of the trademark right, owner of the right of exclusive use or non-exclusive use (hereinafter referred to as "owner of the trademark right, etc.") at the time of filing for renewal of registration."

"Such reasons shall include, without limitation, earthquake, typhoon, or any other act of God, spreading fire, arson, destruction, or any other act of a third party by intention or negligence, embargo, delay in authorization procedure, or enforcement of governmental authorities."

Section 20 (2) of the former Trademark Law provided that the time limit for a request for renewal of registration shall be within six months prior to the date of expiration of the term. The former Law also provided in Section 20 (3) that where the person filing a request for renewal of registration was unable to make such a request within the prescribed time limit, he may make such a request within 14 days from the date on which the reasons ceased to be applicable but not later than two months from the expiration of that time limit. In one case, the existence of "reasons outside his control" under Section 20 (3) of the former Law was disputed. In this case, the court held: "Reasons outside his control" pursuant to the provision should mean cases where a person who intends to file a request for renewal of trademark registration is unable to file within the time limit, even though he or she took the care normally expected in filing such a request. Such reasons are not limited to inability due to acts of God or other unavoidable situations. Inability due to any subjective or personal reason that occurred to the person who filed the request himself is also included. The person who filed the request in this case was in hospital due to acute nephritis during the period prescribed for filing a request for renewal. He was in a critical condition and complete bed rest was ordered by the doctor. He was not permitted to see any visitor other than his family.

It is acknowledged that, in this situation, his judgment and thinking ability was considerably weakened and he was unable to keep the filing for renewal in his mind. Therefore, the reason for the inability of this person to file a request fell under the "reasons outside his control" set forth in the aforementioned provision (Vol. 8, No. 1, Tokyo District Court, Mutaishu, p. 244, Jun. 28, 1976). In another case, the vice-director of the General Affairs Department of a company, who was in charge of management of industrial property rights such as trademark rights, carelessly missed the time limit for filing for renewal of a registered trademark because he was too busy with other matters. In this case, it was acknowledged that he was busy then, but not too busy to make the filing for renewal impossible within the time limit. In this case, the court did not agree that there existed any "reason outside his control" (Vol. 20, No. 4, Tokyo District Court, Shogetsu, p. 93, Nov. 16, 1973).

### (3) Written Request for Renewal of Registration

Any person desiring to request a renewal of the term of a trademark right (the owner of a trademark right) shall submit a request for renewal to the Commissioner of the Patent Office stating the following (Section 20 (1)):

- (i) the name and the domicile or residence of the requester;
- (ii) the registration number of the trademark registration;
- (iii) other matters fixed by ordinance of the Ministry of Trade and Industry.

#### (4) Renewal of Term of Right Based on Defensive Mark Registration

The 1996 Amendment of the Law simplified the system for registration of renewal, in line with the stipulations of the Trademark Law Treaty, by discontinuing the former application system and adopting a new request system. (Translator's note: The simplified system not requiring identification documents, etc., of the applicant for filing is referred to as the "request" system, and otherwise, as the "application" system.) However, with regard to defensive mark registration, a decision was made to maintain the application system in light of the provisions for renewal under the Trademark Law Treaty (Treaty, Article 21) that were applied to defensive marks, and due to the necessity to protect famous marks.

For these reasons, the provision concerning renewal of the term of a trademark right applied *mutatis mutandis* in Section 68 (3) was deleted, and new provisions concerning renewal of the term of defensive marks were stipulated in Chapter VII (Section 65 (2) and (10)). Consequently, an application for renewal of a registration shall be made within six months prior to the date of the expiration of the term (Section (3)), and, if the application is unable to be made within the time limit due to reasons outside the applicant's control, the application shall be made within 14 days (or, in case of a resident abroad, two months) from the date on which the reasons ceased to be applicable but not later than six months following the expiration of said time limit.

In order to prevent excessive applications for defensive mark registration and an associated increase in the examination workload, the application fee for registration of renewal of defensive marks was prescribed to be twice the normal application fee (Section 76 (2)).

The Patent Office has formulated the Trademark Examination Guidelines that treat the renewal of the term of rights based on defensive mark registration as follows:

"1. If the indications of the name or appellation, or address or domicile of the owner of a trademark right listed in the Trademark Register and the applicant for registration are not identical, the owner and the applicant shall not be regarded as the same person." (E.g., the owner is indicated as "XX Kabushiki Kaisha", while the applicant is indicated as "XX Company" (Trademark Examination Guidelines, p. 74).) This assumption is made for convenience sake. Since these persons are actually the same person, it is enough to change the indication in the Trademark Register in cases of a mere change of the trading name.

Unlike an initial application for trademark registration, a request for renewal of registration does not require any specimens of trademarks, descriptions and indications of designated goods. This is because an application for renewal is not creating a new right but is maintaining an existing right, and therefore, no documentation to establish a right is necessary.

"2. If any mark is indicated or any designated goods or services are stated by mistake in any application for renewal of registration of defensive marks, they shall be treated as if

they were not included in such an application." (Trademark Examination Guidelines, p. 74.) If any trademark specimen (a document that indicates the trademark) is attached to the application, even though it is not required, the specimen shall be treated as if it were not attached (Trademark Examination Guidelines regarding defensive marks, p. 74, 1992).

#### (5) Omission of Substantive Examination and Trial for Invalidation of Trademark Registration

This provision added some new grounds based on post-registration non-registrability to the list of grounds for requesting a trial for invalidation of a trademark registration.

Under the Law prior to the 1996 amendment, a substantive examination was conducted to determine if the registration fell under any of the grounds for non-registrability after registration at the time of renewal; if the renewal was erroneously made, a trial for invalidation of trademark renewal (former Law, Section 48) might be demanded (former Law, Section 19 (2) (i)). The substantive examination system was discontinued and the stipulation as to a trial for invalidation of a renewal registration was deleted. However, if a trademark has become against the public interest, approving the renewal registration of such a trademark contravenes the essential gist of the trademark registration system. Therefore, as an alternative, several grounds were added as Item (v) to the non-registrable grounds as post-registration grounds for demanding a trial for invalidation of trademark registration (Section 46 (1)). [The provision concerning refusal of renewal (former Section 19 (2), Proviso (2)) was deleted in line with the Trademark Law Treaty. However, trademarks not in use for a long period of time were left to generally accepted treatment.]

The supplemental grounds for demanding a trial for invalidation based on post-registration grounds are as indicated below:

- ① Trademarks that are identical to or similar to the national flag, the imperial chrysanthemum crest, a national decoration, a medal of merit, or a foreign national flag; (Section 4 (1) (i))
- ② Trademarks that are identical to or similar to a State coat of arms or other emblem (other than a national flag) of a country party to the Paris Convention (meaning the Paris Convention for the Protection of Industrial Property) a Member of the World Trade Organization or a contracting party to the Trademark Law Treaty, which have been designated by the Minister of Trade and Industry (4 (1) (ii));
- ③ Trademarks that are identical to or similar to a mark indicating the United Nations or any other international organization and designated by the Minister of Trade and Industry; (4 (1) (iii))
- ④ Trademarks comprising a mark identical to or similar to an official seal or sign that indicates supervision or certification by the Government of Japan or by the Government of a country party to the Paris Convention or a Member of the World Trade Organization or a contracting party to the Trademark Law Treaty, or by a local public

entity and that has been designated by the Minister of Trade and Industry, which are used on goods or services identical to or similar to the goods or services in respect of which such seal or sign is used; (4 (1) (v))

⑤ Trademarks liable to contravene public order or morality; (4 (1) (vii)) and

⑥ Trademarks liable to be misleading as to the quality of the goods or services. (4 (1) (xvi))

In addition to those mentioned in each of the preceding subparagraphs, trademarks that are used as generic names (trademarks that do not enable consumers to recognize the goods or services) and other grounds of registrability under Section 3 are not examined. (Whether the trademark has become a generic name or not depends on the time when it is used.) Accordingly, the registration of these trademarks remains effective.

There is no period for exclusion with regard to the time for demanding a trial for invalidation. Therefore, interested persons may demand such a trial at any time. Where a trial decision to invalidate a trademark registration has become final and conclusive, the trademark right shall be deemed not to have existed from the time the trademark registration began to fall under the provisions concerning non-registrability (Proviso of Section 46-2 (1)). In cases where the time at which the registered trademark began to fall under Section 46 (1) (v) cannot be identified, the trademark right shall be deemed not to have existed from the date of the registration (date of announcement of registration) of a demand for a trial to invalidate the trademark registration (Section 46-2 (2)).

#### (6) Payment of Fee for Registration of Renewal

Any person who obtains renewal of a trademark registration shall pay a registration fee (Section 40 (2)) at the time of the request for renewal of registration (Section 41-3). In this case, the registration fee may be paid in installments (Section 41-2 (2)).

A person who applies for renewal of registration of the term of a trademark right shall pay, as the registration fee, an amount equivalent to the registration fee multiplied by the number of classes of the classification of goods and services covered (Section 40 (2)). After the amendment, the number of such classes of the classification of goods and services may be reduced for renewal registration. In this case, the registration fee may be reduced according to the number of reduced classes.

If a person makes a request for renewal of registration belatedly, i.e. within six months from the expiration of the time limit, he shall pay, in addition to the registration fee due (Section 40 (2)), a surcharge equivalent in amount to the registration fee (Section 43 (1) and (3)).

#### (7) Registration of Renewal of Term

When the registration fee or the first installment thereof has been paid, the renewal of the term of the trademark right shall be registered (Section 23 (1)). The renewal takes

effect by this registration. Upon registration, the following particulars shall be published in the Trademark Gazette:

- (i) the name and the domicile or residence of the owner of the trademark right;
- (ii) the registration number and date of the registration of renewal; and
- (iii) other necessary particulars (Section 23 (3)). The Trademark Registration Order stipulates the details of the registration procedure.

The term of a trademark right may be renewed by a request for renewal of registration at the time the initial term expires or when any renewal term expires (Section 19 (2)). When a request for renewal of the term of the trademark right is made belatedly after the expiration of the time limit under Section 20 (3), the term shall be deemed to have been renewed by registration upon expiration of the term (Section 20 (3) and Section 19 (3)). The submission of documents to identify an applicant that were at one time required for filing a request for renewal of registration is no longer necessary under the current request for renewal system (Section 20 (2) of the former Trademark Law was deleted). If the request form is incomplete, it can be corrected later, and normally, the renewal is made almost automatically. When a request for registration of renewal is made by the owner of an extinguished trademark right, the term shall be deemed to have been renewed retroactively from the time of the expiration of the term (Section 21 (2)).

(8) Transitional Measures (measures concerning renewal of registration at the time of introduction of service mark registration)

It was stipulated that the examination of the likelihood of confusion over source with respect to overlapping registrations of service marks should be conducted at the time an application for renewal of the term of the trademark was filed. Although the "overlapping registrations of trademarks" was acknowledged at the time when the service mark registration system was introduced on April 1, 1992, as special measures, the stipulation required examinations to be conducted so as to avoid adverse effects caused by such overlapping registrations. If there was any likelihood of causing confusion over source with another overlapping registered trademark, the application for renewal registration was refused (Law as amended in 1991, Supplementary Provision, Section 8). However, the stipulation was amended and a substantive examination was discontinued due to the provisions of the Trademark Law Treaty. Although the Treaty prohibited substantive examination and "checking on" the use of a registered trademark at the time of renewal, a provision was formulated to allow an examination to be conducted only once at the time of the renewal of registration in order to avoid any adverse effects) taking the circumstances in Japan into consideration) (Trademark Treaty, Section 22 (6)). Therefore, the likelihood of confusion over the source of designated goods or services shall be examined on the occasion of the first renewal of registration with regard to overlapping trademark registration. (The Law as amended in 1991, Supplementary Provisions, Section 8 was deleted, and Sections 11 to 19 of Supplementary Provisions were formulated and added to the Law as amended in 1996.)

Transitional measures concerning renewal registration are provided in the Supplementary Provisions as follows: At the time of enforcement of the 1996 Amendment, examinations related to applications for renewal of the term of trademark



rights and rights based on defensive mark registration pending at the Patent Office, payment of registration fees, and registration procedures shall continue to follow precedent (The 1991 Amendment, Supplementary Provisions, Section 7 (1) and (4)).

## **Section 2. Extinguishment of Trademark Rights**

### **I. Extinguishment of Trademark Rights**

Extinguishment of a trademark right means that a trademark right that has come into effect loses effect due to the occurrence of certain events. The events that cause extinguishment shall include: (i) expiration of the term; (ii) cancellation of registration, or a ruling for such cancellation; (iii) non-existence of an heir; and (iv) surrender.

Additionally, there is a procedural extinguishment through trials for cancellation of trademarks (Sections 51, 52, 52-2, 53, 53-2).

Where a trial decision that the trademark registration is to be invalidated has become final and conclusive, the trademark right shall be deemed never to have existed, or not to have existed from the time when any extinguishing event occurred (Section 46 (2)).

Some argue that invalidation of registration was not a reason for extinguishment of a trademark right on the grounds that invalidation is different in nature from cancellation of registration, or that the trademark right could not be extinguished because it had never existed (Yoshiwara/Takahashi, p. 164; Adachi, "Patent Law", p. 108). Others argue that invalidation was a reason for extinguishment of a trademark right on the grounds that the right tentatively existed until being invalidated (Toyosaki, p. 277, Amino p. 829, Nakayama/Fifty Lectures, p. 143).

Cancellation due to non-payment of fees and extinguishment through trials will be discussed in a subsequent chapter. Although discontinuance of business was a reason for extinguishment under the former Law, which regarded a trademark and business as inseparable (Vol. 18, No. 9, Supreme Court, Minshu, p. 1992, Nov. 26, 1964), it is no longer regarded as a reason for extinguishment under the current Law (The Trademark Law of Germany has recently been amended just as the Law of Japan was amended).

### **II. Reason for Extinguishment of Trademark Rights**

#### **1. Expiration of Term**

Although a trademark right is, in effect, semi-permanent, the term is fixed for a certain period; namely, ten years from the date of registration of the establishment of the right, with the intent to dispose of unused rights, and the trademark right remains in effect on the assumption that its term may be renewed upon expiration of the current term. Should the procedure for renewal not be taken, the trademark right is extinguished upon expiration of the term (Section 19). However, a trademark right can remain in effect semi-permanently, if the owner of the trademark right uses it in an appropriate way, without failing to follow the procedure for renewal of registration (Section 19 (2) and Section 23).

## 2. Cancellation of Trademark Registration

In the event that a trademark registration has been cancelled due to non-use (Section 50), acts that cause confusion over goods or services (Sections 51, 52-2 & 53), or acts conducted by an agent or representative for a person who has the right to a foreign trademark without the authorization of such person (Section 53-2), the trademark right will be extinguished (Sections 50 to 55).

## 3. Absence of Heir

A trademark right shall be extinguished when there is no person claiming to be an heir within the period for publication prescribed by Section 958 of the Civil Code (Section 35; Patent Law, Section 76). This is an exception to the principle of the Civil Code that any inherited property shall revert to the National Treasury. Trademark rights, by contrast, are terminated, because it is considered more reasonable that trademark rights should be used by the general public rather than revert to the State. In a case where a trademark right belongs to an estate in bankruptcy or it is the subject of a claim, it is not extinguished (Kaneko/Someno, p. 205; Toyosaki p. 205; Amino p. 830; Nakayama, Fifty Lectures, p. 143).

If, in a case where a trademark is jointly owned, one of the joint owners without an heir has died, his share shall revert to the other joint owner(s) (Civil Code, Sections 255 and 264).

## 4. Surrender of Trademark Rights

Because a trademark right is a proprietary right, it may be surrendered. A portion of a trademark connected to certain designated goods or designated services may be surrendered (Section 69; in this case, the number of designated goods and designated services covered by the trademark will be reduced). Where there is an exclusive licensee, pledgee, or non-exclusive licensee, a person who has the right to the trademark may surrender his trademark right only with the consent of other such persons so as not to harm interested persons by the surrender (Section 35; Section 97 (1)). If, in a case where a trademark is jointly owned, one of the joint owners has surrendered his share, the share shall revert to the other joint owners (Civil Code, Sections 255 and 264).

Extinguishment by surrender of a trademark right shall be of no effect unless it is registered, so as not to extend unexpected damages to a third party (Section 35; Patent Law, Section 98 (1) (i)). However, there is no stipulation concerning the retroactivity and other effects of the act of surrender, and this issue is left to interpretation. Generally, it is said that surrender shall not be interpreted as retroactive.

After a trial decision supporting the examiner's decision to refuse a trademark application due to similarity to a registered trademark of another person, the right to the registered trademark was surrendered and the registration was cancelled. In that case, the court held as follows: The legitimacy of the trial decision should generally be judged in reference to the time of the trial decision. However, in view of the provisions of Section 35 of the Law and Section 98 (1) (i), the effect of the surrender of a trademark right does not apply retroactively to the time prior to the trial decision, and if the registered trademark in comparison is extinguished by surrender after the decision, it

should not affect the appropriateness of the trial decision (Vol. 11, No. 2, Tokyo High Court, Mutaishu, p. 505, Oct. 25, 1979). In another case, the court commented as follows based on the same grounds: After the conclusion of oral proceedings at a trial for invalidation of a trademark registration, which previously invalidated a later filed trademark registration due to similarity to a prior trademark registration, the right to the prior trademark registration was surrendered. After the ruling was made dismissing the demand for invalidation, the cancellation of the prior trademark registration due to the surrender was registered. Because the effect of the surrender of a trademark is not applied retroactively, the demand for invalidation of trademark registration on the grounds of violation of Section 4 (1) (xi) of the Law remains effective, even if the right to the prior trademark registration was subsequently surrendered. Accordingly, the court held that the surrender of the trademark did not have any effect on the legitimacy of the ruling (Vol. 19, No. 3, Osaka District Court, Mutaishu, p. 389, Oct. 14, 1987; Vol. 21, No. 1, Osaka High Court, Mutaishu, p. 88, Mar. 3, 1989).

Moreover, in the same case, the owner of the right to the prior trademark registration requested compensation for unfair profits gained by the infringer to the persons who used the junior (later filed) trademark after the ruling supporting the trial decision invalidating the later filed trademark registration. The effect of the surrender of a trademark is not retroactive and, in addition, the trademark right is deemed never to have existed if a trial decision invalidating the trademark registration has become final and conclusive pursuant to Section 46 of the Law. Therefore, the court held that the compensation for unfair profits could be admitted, even if the owner of the trademark right surrendered such right before the ruling supporting invalidation as such became final and conclusive (Vol. 21, No. 1, Osaka High Court, Mutaishu, p. 88, Mar. 3, 1989).