

Restoration is available for unintentional lapse from April 1, 2023



April 5, 2024

Aki Ryuka

Restoration is available for unintentional lapse

Restorations used to require a “legitimate reason” and evidence.

Now, “unintentional” is sufficient, and
no evidence is required.

(If the original due date is on/after April 1, 2023)

Procedures Subject to the Restoration

- ◆ PCT national entry and translation (P, U)
- ◆ Paris priority (P, D, U, T)
- ◆ Examination request (P)
- ◆ Annuity/renewal after the six-month grace period:
(P, D, U, T)

P: Patents D: Designs U: Utility Models T: Trademarks

The time limit for restoration

Priority Restoration:

- 14 months from the priority for Paris route applications,
- 1 month from the translation due date for PCT route.

If the translation of the application was not filed in time, **the restoration of the translation filing must be separately requested.**

Other Restorations:

Earlier of:

- 2 months from the date the restoration action could be taken
- 1 year (6 months for trademarks) from original due date

Office fee for restoration (JPY)

Patents	212,100
Trademarks	86,400
Designs	24,500
Utility Models	21,800

Limitation of restored rights

If patents/trademarks are restored from failure of annuity payment/renewal within the six-month grace period:

- Patent rights are ineffective to the products imported into or, produced or acquired in Japan after the six-month grace period and before the restoration.

Unlike in the US (35USC41(c)(2)), those who worked the patented invention cannot continue the work except for the above products.

- Trademark rights are ineffective against the use of the trademark after the six-month grace period and before the restoration.

Official Example

【書類名】 回復理由書
【提出日】 令和〇〇年 〇月 〇日
【あて先】 特許庁長官 殿
【特許番号】 特許第〇〇〇〇〇〇〇号
【特許権者】
【識別番号】 〇〇〇〇〇〇〇
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【氏名又は名称】 〇〇弁理士法人
【代表者】 〇〇 〇〇

【回復の理由】

不注意により追納期限を失念しており、所定の期間内に納付の手続をすることができませんでした。その後、令和〇年〇月〇日に期限を徒過していることに気がつき、今般、手続をしました。所定の期間内に手続ができなかったのは、故意によるものではありません。

【提出物件の目録】

【物件名】 代理権を証明する書面 1

(212,100円)

特許印紙

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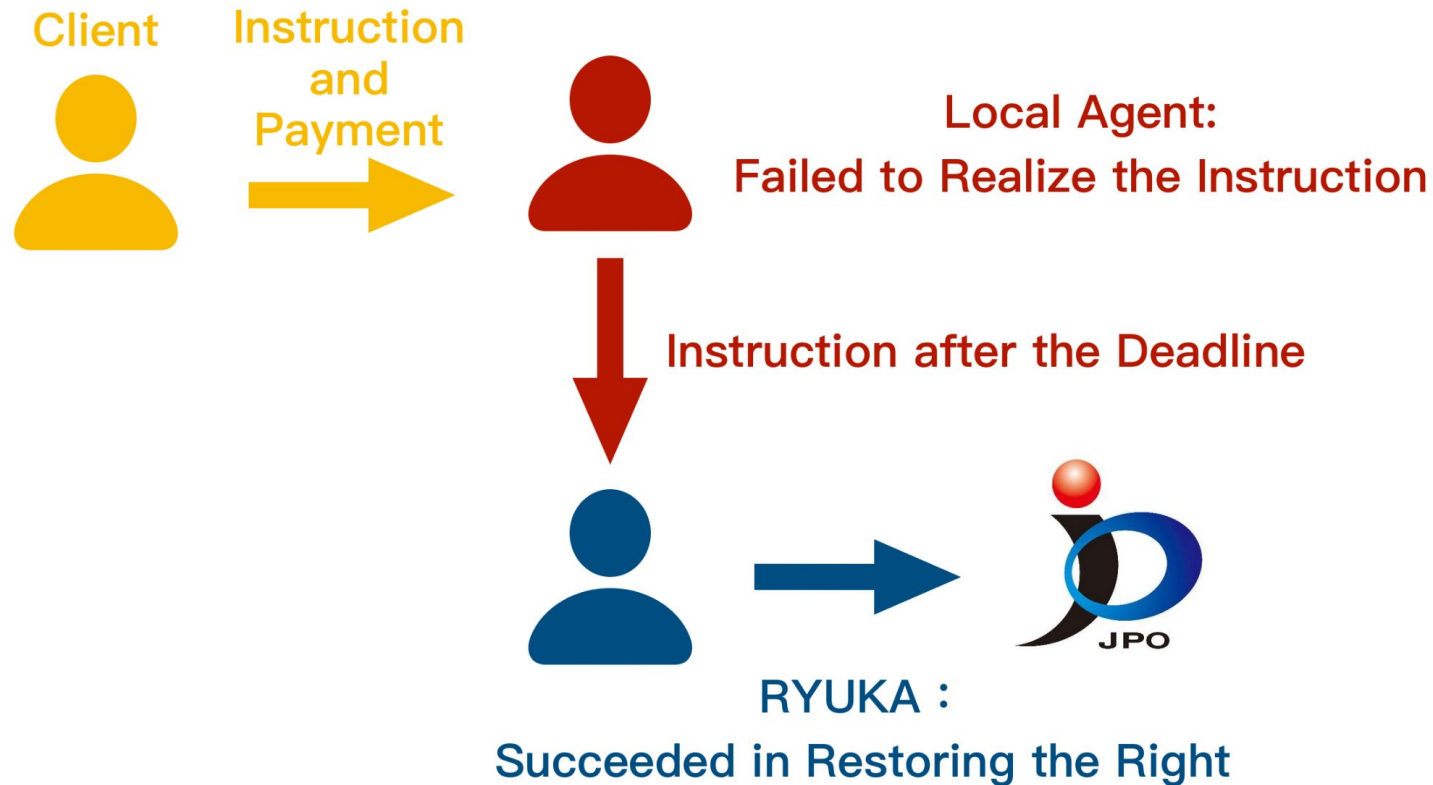
The official example shows that the applicant only needs to state:

"Due to our **carelessness**, we missed the deadline and failed to complete the procedure within the period."

and it is enough for restoration.

No further details are required.

An Actual Case



⇒ Even missing deadlines caused by human errors can be restored, as long as it is "**unintentional**"

Success Rate

Under the former "**legitimate reason**" standard, the success rate of restoration was extremely low, about **10 to 20%**^(*1) in Japan.

RYUKA succeeded in **one case among three** cases.

If the case went to appeal or lawsuit, the rate was lower. The success rate of restoration in appeal and lawsuit in Japan was **0%**^(*2) during 2015~2020.

*1 Source: JPO (<https://www.jpo.go.jp/system/laws/rule/kaisetu/2022/document/2022-42kaisetsu/05.pdf>)

*2 Source: <https://jpaa-patent.info/patent/viewPdf/3634>

Success Rate

In contrast, other countries using "**unintentional**" standard has success rate of nearly **90%**.

Although JPO has not published any official data under the new standard,
due to the **lower standard in official example and actual cases**, it's expected that the success **rate of success will increase**.

RYUKA's success rate under the "unintentional" standard has been **100% (3 cases among 3)** as of March 28, 2024.