

OK !

## ENFORCEMENT DECREE OF THE DESIGN PROTECTION ACT

[Enforcement Date 27. Sep, 2016.] [Presidential Decree No.27515, 27. Sep, 2016., Partial Amendment]

( )042 - 481 - 5766



가

[www.law.go.kr](http://www.law.go.kr)

2018.01.16

## ENFORCEMENT DECREE OF THE DESIGN PROTECTION ACT

[Enforcement Date 27. Sep, 2016.] [Presidential Decree No.27515, 27. Sep, 2016., Partial Amendment]

( ) 042 - 481 - 5766

### Article 1 (Purpose)

The purpose of this Decree is to provide for matters delegated by the Design Protection Act and matters necessary for the enforcement thereof.

### Article 2 (Notification of Applications to Keep Confidential)

If the Commissioner of the Korean Intellectual Property Office determines to keep an application for design registration confidential under the proviso to Article 52 (2) of the Design Protection Act (hereinafter referred to as the "Act"), he/she shall notify the relevant applicant of his/her determination and the grounds therefor.

**Article 3 (Qualifications for Examiners)** (1) A person who can be an examiner under Article 58 (2) of the Act shall be any of the following public officials working for the Korean Intellectual Property Office or one of its affiliates, who shall have completed a training course provided by the International Intellectual Property Training Institute for examiners: Provided, That a person who can be appointed as an examiner designated in an open position pursuant to Article 28 - 4 (1) of the State Public Officials Act shall satisfy the requirements for performing duties prescribed under paragraph (2) of the same Article, and a person who can be appointed as an examiner in a publicly recruited position designated under Article 28 - 5 (1) shall satisfy the requirements for performing duties prescribed under paragraph (2) of the same Article. <Amended by Presidential Decree No. 25926. Dec. 30, 2014; Presidential Decree No. 26217, Apr. 29, 2015>

1. A public official in general service as a member of the Senior Civil Service;
2. At least a Grade - V State public official in general service;
3. A Grade - VI State public official in general service (limited to a person qualified to the grade (a) or (b) professional public official in a fixed term position referred to in attached Table 4 - 2 of the Decree on the Appointment of Public Officials).

(2) Notwithstanding paragraph (1), a public official of a grade equivalent to that qualifiable as an examiner under paragraph (1) (including a public official in general service as a member of the Senior Civil Service) may be qualified as an examiner, if

he/she holds a license for a patent attorney.

(3) Matters necessary for training examiners under paragraph (1) shall be determined by the Commissioner of the Korean Intellectual Property Office.

**Article 4 (Criteria for Designation of Specialized Organizations)** (1) Pursuant to Article 59 (3) of the Act, the Commissioner of the Korean Intellectual Property Office may designate a corporation that meets all the following requirements as a specialized organization: Provided, That the foregoing shall not apply to a corporation, the designation of which as a specialized organization was revoked on the ground specified in Article 60 (1) 1 of the Act or a corporation for whom a person who was an executive of a corporation, the designation of which was revoked on such a ground is currently in service, if two years have not passed since such designation was revoked:

1. The corporation shall have equipment necessary for the performance of the business affairs specified in Article 5 (1);
2. The corporation shall have human resources and organizations exclusively dedicated to the performance of the business affairs specified in Article 5 (1);
3. The corporation shall have a security system for executives, employees, facilities, and equipment for the business affairs specified in Article 5 (1);
4. No executive or employee shall concurrently work for any other organization as an executive or employee in charge of the business affairs under Article 2 of the Patent Attorney Act.

(2) An entity who intends to be designated as a specialized organization shall file an application for designation as a specialized organization with the Commissioner of the Korean Intellectual Property Office, along with documents evidencing the fact that the person meets all the requirements prescribed in paragraph (1).

(3) When a specialized organization designated under paragraph (1) performs any business affair other than search for prior designs, the classification of design products, and arrangement and collection of data for a design examination, it shall ensure that the performance of such business affair does not lead to unfairness in search for prior designs, the classification of design products, or the arrangement and collection of data for a design examination.

(4) Detailed criteria for the equipment, human resources, and organizations to be secured under paragraph (1), specific standards for the security system, and matters necessary for the designation and operation of specialized organizations shall be determined and publicly notified by the Commissioner of the Korean Intellectual Property Office.

**Article 5 (Outsourcing Business Affairs to Specialized Organizations)** (1) Pursuant to Article 59 (1) of the Act, the Commissioner of the Korean Intellectual Property Office may outsource the following business affairs to a specialized organization:

[<Amended by Presidential Decree No. 26217, Apr. 29, 2015>](#)

1. Search for prior designs;
2. Classification of design products;
3. Arrangement and collection of data for design examinations;
4. Translation of international applications for design registration;
5. Other business affairs which the Commissioner of the Korean Intellectual Property Office deems necessary for examining applications for design registration.

(2) A specialized organization to whom the Commissioner of the Korean Intellectual Property Office outsources business affairs under any subparagraph of paragraph (1) shall notify the Commissioner of the Korean Intellectual Property Office of the results of performance of such business affairs promptly.

(3) If the Commissioner of the Korean Intellectual Property Office finds it necessary to conduct an additional search, etc. for the results notified with respect to the performance of business affairs under paragraph (2), he/she may further outsource business affairs specified in any subparagraph of paragraph (1) to the head of a specialized organization, stating the scope of search, etc.

(4) Paragraph (2) shall apply mutatis mutandis where business affairs are re-outsourced under paragraph (3).

**Article 6 (Applications Eligible for Expedited Examination)**

“ An application for design registration specified by Presidential Decree ” in Article 61 (1) 2 of the Act means an application for design registration specified by the Commissioner of the Korean Intellectual Property Office, from among the following:

[<Amended by Presidential Decree No. 25926, Dec. 30, 2014; Presidential Decree No. 27515, Sep. 27, 2016>](#)

1. Applications filed for design registration for the defense industry;
2. Applications filed for design registration directly relating to green technology (referring to technology for minimizing greenhouse gas emissions and pollutants by saving and efficiently using energy and resources throughout the entire course of social and economic activities, such as technology for reduction of greenhouse gas emissions, technology for efficient use of energy, technology for clean production, technology for clean energy, resource circulation and environmentally friendly technology (including related converging technology));
3. Applications filed for design registration directly relating to the promotion of exportation;
4. Applications filed for design registration in relation to the duties of the State or local governments (including applications for design registration with regard to the duties of national or public schools under the Higher Education Act, filed by organizations exclusively dedicated to technological transfer and commercialization in national or public schools under Article 11 (1) of the Technology Transfer and Commercialization Promotion Act);
5. Applications filed for design registration by enterprises confirmed as venture businesses under Article 25 of the Act on Special Measures for the Promotion of Venture Businesses;
6. Applications filed for design registration by enterprises selected as technologically - innovative small and medium enterprises under Article 15 of the Act on the Promotion of Technology Innovation of Small and Medium Enterprises;
7. Applications filed for design registration by enterprises selected as exemplary companies in terms of the employee invention compensation system under Article 11 - 2 of the Invention Promotion Act;
- 7 - 2. Applications filed for design registration by small and medium enterprises being certified as the management of intellectual property under Article 24 - 2 of the Invention Promotion Act;
- 7 - 3. Applications filed for design registration with regard to products selected as good design under Article 6 of the Industrial Design Promotion Act;
8. Applications filed for design registration with regard to outcomes of projects for supporting the development of new technology or projects for quality certification, implemented by the State;

9. Applications for design registration that form the basis of a priority claim under a treaty (limited to where a design - related procedure is pending in a foreign intellectual property authority with respect to a priority claim based on the relevant application for design registration);
10. Applications filed for registering a design on which the applicant has been working or prepares to work;
11. Applications filed for design registration directly relating to electronic commerce;
12. Applications filed for design registration under an agreement between the Commissioner of the Korean Intellectual Property Office and the head of a foreign intellectual property authority on an expedited examination;
13. Applications filed for registering a design, where a person who intends to apply for an expedited examination has requested a specialized organization to search prior designs with regard to the design claimed in a pending application for design registration and to notify the Commissioner of the Korean Intellectual Property Office of the results thereof.

**Article 7 (Application for Expedited Examination, etc.)** (1) A person who intends to apply for an expedited examination shall file an application for an expedited examination with the Commissioner of the Korean Intellectual Property Office in a form prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(2) Upon receipt of an application for an expedited examination under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall determine whether to permit an expedited examination.

(3) Matters necessary for determinations as to whether to permit an expedited examination under paragraph (2) shall be determined and publicly notified by the Commissioner of the Korean Intellectual Property Office.

**Article 8 (Qualification for Administrative Patent Judges)** (1) To be qualified for an administrative patent judge under Article 130 (2) of the Act, a person shall be a Grade - IV or higher - ranking State public official in general service, working for the Korean Intellectual Property Office or one of its affiliates, or a public official in general service as a member of the Senior Civil Service Corps, who shall have completed a training course provided by the International Intellectual Property Training Institute for administrative patent judges and shall meet either of the

requirements:

1. A person who has worked for the Korean Intellectual Property Office as an examiner for at least two years;
2. A person who has worked for the Korean Intellectual Property Office as an examiner and then for the Intellectual Property Tribunal as a Grade - V or higher - ranking State public official in general service or a public official in general service as a member of the Senior Civil Service Corps in direct charge of administrative patent trials for at least two years in total.

(2) Notwithstanding the provisions of paragraph (1), a public official of a grade equivalent to that qualifiable as an administrative patent judge under paragraph (1) (including a public official in general service as a member of the Senior Civil Service Corps) may be qualified as an administrative patent judge, if he/she holds a license for a patent attorney.

(3) Matters necessary for training administrative patent judges under paragraph (1) shall be determined by the Commissioner of the Korean Intellectual Property Office.

**Article 9 (Service, etc. of Documents)** (1) Documents to be served under Article 209 of the Act shall be dispatched by registered mail, except in cases where the relevant party or his/her agent receives the documents in person at the Korean Intellectual Property Office or the Intellectual Property Tribunal or receives the documents via an information and communications network.

(2) When a document is served under paragraph (1), the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall keep the receipt or records thereof in files as follows:

1. If the relevant party or his/her agent receives a document in person at the Korean Intellectual Property Office or the Intellectual Property Tribunal: A receipt with the date of receipt and the name of the recipient stated thereon;
2. If the relevant party or his/her agent receives a document via an information and communications network: The records in a file stored in the electronic information processing system operated by the Korean Intellectual Property Office or the Intellectual Property Tribunal for dispatching documents;
3. If a document is dispatched by registered mail: The receipt of registered mail.

(3) A certified copy of a judgment or decision on a petition to oppose registration of partially - examined design or to an administrative patent trial or retrial, or of a judgment or decision on a ruling to grant a non - exclusive license or on the revocation of design registration shall be served by special delivery provided as one of options of postal services under Article 15 (3) of the Postal Service Act: Provided, That such certified copy may be served on a person via an information and communication network, if the person has filed a report on the use of electronic documents in accordance with Article 31 (1) of the Act.

(4) Except as otherwise expressly provided for in the Act or this Decree, service of a document shall be made by serving a certified copy of the document on the recipient, or a certified copy or abstract of a proceeding report shall be delivered, if a proceeding report has been prepared in lieu of the submission of the document to be served.

(5) Documents to be served on a minor, a quasi - incompetent under the limited guardianship (limited to where such person has a legal representative for the relevant design right or any right to the relevant design), or an incompetent under the adult guardianship shall be served on his/her legal representative.

(6) If at least two persons jointly exercise a power of attorney, service shall be made on one of such attorneys.

(7) A document to be served on a person confined in a correctional facility, such as a prison or detention facility, shall be served on the head of the facility.

(8) If at least two persons are the relevant party or its agent, and they have reported their document service agent, selected by and from among them, to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal, service shall be made on such agent.

(9) Documents shall be served as the address or place of business of each recipient: Provided, That service shall be made at a place reported by a recipient for service (limited to service within the Republic of Korea) to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal, if the recipient has reported such place of service.

(10) When a place of service is changed, the recipient shall report on the change to the Commissioner of the Korean Intellectual Property Office without delay.



(11) If a recipient refuses to accept service of a document without just cause and it is impossible to serve it on him/her, the document shall be deemed served on the date of dispatch.

(12) Any document other than those specified to be served under the Act, shall be served by a means specified by the Commissioner of the Korean Intellectual Property Office.

**Article 10 (Design Gazette)** (1) The Design Gazette published under Article 212 (1) of the Act shall be classified into the Design Gazette for Registration and the Design Gazette for Publication.

(2) Pursuant to Article 90 (3) and 212 (4) of the Act, the following matters shall be published in the Design Gazette for Registration: Provided, That the matters specified in subparagraphs 7 through 9 with respect to a confidential design under Article 43 of the Act shall be published after the end of a period of confidentiality requested by an applicant for design registration to designate:

1. The name and address of the design right - holder (the name and the place of business of the corporation, if the design right - holder is a corporation);
2. The product or category of products in relation to which the design is to be used;
3. The fact that it is for registration of an examined design or partially - examined design;
4. The name and address of the creator;
5. The design registration application number and the filing date of the application for design registration;
6. The design registration number and the design registration date;
7. Drawings or photographs (including photographs of a sample);
8. The features of the creation;
9. A description of the design;
10. The following information:
  - (a) For a design that forms a part of a product (hereinafter referred to “ partial design ” ): The fact that the application is for registration of a partial design;
  - (b) For a design claimed in an application for registration of related designs and registered under Article 35 of the Act: An indication of the basic design;

- (c) For a design registered as one of the designs claimed in an application filed for registration of multiple designs under Article 41 of the Act: The serial number of the design;
- (d) For a design claimed in an application filed for design registration with a priority claim under a treaty and registered under Article 51 (1) of the Act: The filing date of the application on which the priority claim is based;
- (e) For a design claimed in an application for design registration and published under Article 52 of the Act: The publication of the application and the date of publication;

11. Other matters deemed necessary to publish by the Commissioner of the Korean Intellectual Property Office.

(3) The following matters shall be published in the Design Gazette for Publication with respect to applications for design registration, upon receipt of a request for publication under Article 52 (1) of the Act or when an application for design registration is published under the main body of Article 56 of the Act:

1. The name and address of the design right - holder (the name and place of business of the corporation, if the design right - holder is a corporation);
2. The product or category of products in relation to which the design is to be used;
3. Whether registration is of an examined design or partially - examined design;
4. The name and address of the creator;
5. The design registration application number and the filing date of the application for design registration;
6. The design registration number and the design registration date;
7. Drawings or photographs (including photographs of a sample);
8. The features of the creation;
9. A description of the design;
10. The following information:
  - (a) For a partial design: The fact that the application is for registration of a partial design;
  - (b) For a design claimed in an application for registration of related designs and registered under Article 35 of the Act: An indication of the basic design;
  - (c) For a design claimed in an application filed for registration of multiple designs under Article 41 of the Act: The serial number of the design;

(d) For a design claimed in an application filed for design registration under Article 51 (1) of the Act: The filing date of the application on which the priority claim is based (if an application is to be published before submitting documents evidencing the priority claim under Article 51 (4), the fact shall also be stated therein);

(e) For an application published under Article 56 of the Act: The fact that a decision or an administrative ruling to reject applications for design registration pursuant to the latter part of Article 46 (2) has become final and conclusive because at least two applicants who filed an application for registration of an identical or similar design respectively on the same date failed, or were unable to, reach agreement;

11. Other matters the Commissioner of the Korean Intellectual Property Office deems necessary to publish with respect to applications for design registration.

(4) Upon receipt of a request from a design right - holder, an applicant for design registration, or a creator, if a requesting person is a natural person, the Commissioner of the Korean Intellectual Property Office may publish only part of the requesting person ' s address when the address shall be published under paragraph (2) or (3).

(5) The method and procedure for making a request under paragraph (4) and the extent of an address to be published shall be determined by the Commissioner of the Korean Intellectual Property Office.

#### **Article 11 (Handling of Personally Identifiable Information)**

If the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal deems it unavoidable for conducting the following administrative affairs, he/she may handle data containing a resident registration number or alien registration number under subparagraph 1 or 4 of Article 19 of the Enforcement Decree of the Personal Information Protection Act:

1. Administrative affairs relating to allocation of identification numbers under Article 29 of the Act;
2. Administrative affairs relating to applications for design registration under Article 37 of the Act;

3. Administrative affairs relating to examination and preservation of evidence under Article 145 of the Act;
4. Administrative affairs relating to submission of documents under Article 213 of the Act;
5. Other administrative affairs relating to the application, petition, requesting, reporting, or submission with respect to an examination, trial, or registration.

**Article 12 (Guidelines for Imposition of Administrative Fines)**

Guidelines for imposition of administrative fines under Article 229 (1) of the Act are as prescribed in the attached Table.

**ADDENDA** <No. 25926, 30. Dec, 2014 >

This Decree enters into force on January 1, 2015.

**ADDENDA** <No. 26217, 29. Apr, 2015 >

This Decree shall enter into force on the date of its promulgation.

**ADDENDA** <No. 27515, 27. Sep, 2016 >

This Decree shall enter into force on the date of its promulgation.