

발 간 등 록 번 호

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# INDUSTRIAL PROPERTY LAWS OF THE REPUBLIC OF KOREA

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Korean Intellectual Property Office



특허청

KOREAN INTELLECTUAL PROPERTY OFFICE

발 간 등 록 번 호

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2007

# C*ONTENTS*

*INDUSTRIAL PROPERTY LAWS OF  
THE REPUBLIC OF KOREA  
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● PATENT ACT .....	1
● UTILITY MODEL ACT .....	127
● TRADEMARK ACT .....	161
● INDUSTRIAL DESIGN PROTECTION ACT .....	251
● UNFAIR COMPETITION PREVENTION AND TRADE SECRET PROTECTION ACT .....	315
● SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT DESIGN ACT .....	331







**PATENT ACT**

Military Act No. 950, Promulgated on December 31, 1961  
As last amended by Act No. 8462, May 17, 2007

**TABLE OF CONTENTS**

**CHAPTER I : General Provisions**

Article 1	Purpose .....	13
Article 2	Definitions .....	13
Article 3	Capacity of Minors etc .....	13
Article 4	Associations etc. Other than a Legal Entity .....	13
Article 5	Patent Administrator for Nonresidents .....	14
Article 6	Scope of Power of Attorney .....	14
Article 7	Proof of Power of Attorney .....	14
Article 7bis	Ratification Regarding Defect in Legal Capacity, etc. ....	14
Article 8	Continuation of Power of Attorney .....	15
Article 9	Independence of Representation .....	15
Article 10	Replacement of Agents etc. ....	15
Article 11	Representation of Two or More Persons .....	16
Article 12	<i>Mutatis Mutandis</i> Application of the Civil Procedure Act .....	16
Article 13	Venue of Nonresidents .....	16
Article 14	Calculation of Time Limits .....	16
Article 15	Extension of Time Limits etc. ....	17
Article 16	Invalidation of Procedure .....	17
Article 17	Subsequent Completion of Procedure .....	18
Article 18	Succession of Procedural Effects .....	18
Article 19	Continuation of a Procedure by a Successor .....	18
Article 20	Interruption of a Procedure .....	18
Article 21	Resumption of an Interrupted Procedure .....	19
Article 22	Request for a Resumption .....	19
Article 23	Suspension of a Procedure .....	20
Article 24	Effects of an Interruption or Suspension .....	20
Article 25	Capacity of Foreigners .....	20
Article 26	Effects of a Treaty .....	21
Article 27	Deleted .....	21
Article 28	Effective Date of Submitted Documents .....	21

Article 28 <i>bis</i> Entry of Identification Number .....	22
Article 28 <i>ter</i> Procedure for Filing Patent Applications by Electronic Means .....	22
Article 28 <i>quater</i> Report on Use of Electronic Documents and Electronic Signatures .....	23
Article 28 <i>quinquies</i> Notification etc. through a Communication Network .....	23

## **CHAPTER II : Requirements for Patent Registration and Patent Applications**

Article 29 Requirements for Patent Registration .....	24
Article 30 Inventions Not Considered to be Publicly Known etc. ....	25
Article 31 Deleted .....	25
Article 32 Unpatentable Inventions .....	25
Article 33 Persons Entitled to Obtain a Patent .....	26
Article 34 Patent Application Filed by an Unentitled Person and Protection of the Lawful Holder of a Right .....	26
Article 35 Patent Granted to an Unentitled Person and Protection of the Lawful Holder of a Right .....	26
Article 36 First-to-File Rule .....	26
Article 37 Transfer of the Right to Obtain a Patent etc. ....	27
Article 38 Succession to the Right to Obtain a Patent .....	27
Article 39 Deleted .....	28
Article 40 Deleted .....	28
Article 41 Inventions Necessary for National Defense etc. ....	28
Article 42 Patent Application .....	29
Article 43 Abstract .....	31
Article 44 Joint Applications .....	31
Article 45 Scope of a Patent Application .....	31
Article 46 Amendment of Procedure .....	31
Article 47 Amendment of Patent Application .....	31
Article 48 Deleted .....	32
Article 49 Deleted .....	32
Article 50 Deleted .....	32
Article 51 Rejection of an Amendment .....	32
Article 52 Divisional Application .....	33
Article 53 Converted Application .....	33
Article 54 Priority Claim Under Treaty .....	34
Article 55 Priority Claim Based on a Patent Application etc. ....	35
Article 56 Withdrawal of an Earlier Application etc. ....	37



**CHAPTER III : Examination**

Article 57	Examination by Examiner .....	37
Article 58	Search for Prior Art etc. ....	38
Article 58bis	Cancellation of the Designation of a Specialized Search Organization .....	38
Article 59	Request for an Examination of a Patent Application .....	38
Article 60	Procedure for Requesting an Examination .....	39
Article 61	Preferential Examination .....	39
Article 62	Decision to Refuse a Patent .....	40
Article 63	Notification of Reasons for Refusal .....	40
Article 63bis	Provision of Information on Patent Applications .....	40
Article 64	Laying Open of Application .....	41
Article 65	Effects of Laying Open of Application .....	41
Article 66	Decision to Grant a Patent .....	42
Article 67	Formalities for a Decision of Patentability .....	42
Article 68	<i>Mutatis Mutandis</i> Application of Provisions Concerning Trial to Examination .....	42
Article 69	Deleted .....	42
Article 70	Deleted .....	42
Article 71	Deleted .....	43
Article 72	Deleted .....	43
Article 73	Deleted .....	43
Article 74	Deleted .....	43
Article 75	Deleted .....	43
Article 76	Deleted .....	43
Article 77	Deleted .....	43
Article 78	Suspension of Examination or Litigation Trials .....	43
Article 78bis	Deleted .....	43

**CHAPTER IV : Patent Fees and Patent Registrations etc.**

Article 79	Patent Fees .....	43
Article 80	Payment of Patent Fees by Interested Party .....	44
Article 81	Late Payment of Patent Fees etc .....	44
Article 81bis	Remaining Payment of Patent Fees .....	44
Article 81ter	Restoration etc. of a Patent Application and Patent Right by Late Payment or Remaining Payment of Patent Fees .....	45
Article 82	Official Fees .....	46

Article 83	Reduction or Exemption of Patent Fees or Official Fees .....	46
Article 84	Refund of Patent Fees etc. ....	47
Article 85	Patent Register .....	47
Article 86	Issuance of a Patent Registration Certificate .....	48

**CHAPTER V : Patent Right**

Article 87	Registration of the Establishment of a Patent Right and the Publication of Registration .....	48
Article 88	The Term of a Patent Right .....	49
Article 89	Extension of the Term of a Patent Right .....	49
Article 90	Application to Register an Extension of the Term of a Patent Right	49
Article 91	Decision of Refusal to Extend the Term of a Registered Patent .....	50
Article 92	Decision etc. on Registration for Extending the Term of a Patent Right .....	51
Article 93	<i>Mutatis Mutandis</i> Application of Provisions .....	51
Article 94	Effects of Patent Right .....	51
Article 95	Effects of Patent Right the Term of which has been Extended .....	51
Article 96	Limitations on a Patent Right .....	52
Article 97	Scope of Protection of Patented Invention .....	52
Article 98	Relation to Patented Invention etc. of Another Person .....	52
Article 99	Assignment and Joint Ownership of a Patent Right .....	52
Article 100	Exclusive License .....	53
Article 101	Effects of Registration of a Patent Right and an Exclusive License ..	53
Article 102	Nonexclusive License .....	54
Article 103	Nonexclusive License by Prior Use .....	54
Article 104	Nonexclusive License Due to Working before Registration of a Request for an Invalidation Trial .....	54
Article 105	Nonexclusive License after a Design Right Expires .....	55
Article 106	Expropriation of Patent Right etc. ....	56
Article 107	Adjudication for the Grant of a Nonexclusive License .....	56
Article 108	Submission of Response .....	58
Article 109	Solicitation of Opinion from the Intellectual Property Rights Dispute Committee and the Heads of Relevant Authorities .....	58
Article 110	Formality of Adjudication .....	59
Article 111	Transmittal of Certified Copies of Adjudication .....	59
Article 111 <i>bis</i>	Amendment of Adjudication Documents .....	59
Article 112	Deposit of Remuneration .....	60
Article 113	Lapse of Adjudication .....	60

Article 114 Cancellation of an Adjudication .....	60
Article 115 Restriction on Reasons for Objections to an Adjudication .....	61
Article 116 Cancellation of a Patent Right .....	61
Article 117 Deleted .....	61
Article 118 Effects of Registration of a Nonexclusive License .....	61
Article 119 Restriction on Abandonment of a Patent Right etc. ....	61
Article 120 Effects of Abandonment .....	62
Article 121 Pledge .....	62
Article 122 Nonexclusive License Incidental to Transfer of Patent Right by Exercise of a Pledge Right .....	62
Article 123 Subrogation of Pledge Right .....	62
Article 124 Extinguishment of a Patent Right in the Absence of a Successor .....	62
Article 125 Report on Working a Patent .....	62
Article 125bis The Title of Execution on Amount of Compensation and Remuneration .....	63

#### **CHAPTER VI : Protection of Patentee**

Article 126 Injunction etc. against an Infringement .....	63
Article 127 Acts of Infringement .....	63
Article 128 Presumption etc. of the Amount of Damages .....	63
Article 129 Presumption of the Patented Process to Manufacture .....	64
Article 130 Presumption of Negligence .....	65
Article 131 Recovery of the Reputation of a Patentee etc. ....	65
Article 132 Submission of Documents .....	65

#### **CHAPTER VII : Trial**

Article 132bis Intellectual Property Tribunal .....	65
Article 132ter Trial against a Decision to Refuse or Patent etc. ....	65
Article 132quater Deleted .....	66
Article 133 Invalidation Trial of a Patent .....	66
Article 133bis Correction of a Patent during an Patent Invalidation Trial .....	67
Article 134 Invalidation Trial of Registration for Extension of the Term of a Patent Right .....	67
Article 135 Trial to Confirm the Scope of a Patent Right .....	68
Article 136 Trial for a Correction .....	68
Article 137 Trial for Invalidation of Correction .....	69

Article 138 Trial for Granting a Nonexclusive License .....	70
Article 139 Request for a Joint Trial etc. ....	71
Article 140 Formal Requirements of a Request for a Trial .....	71
Article 140 <i>bis</i> Formal Requirements of a Request for a Trial on a Decision to Refuse or Revoke a Patent etc. ....	72
Article 141 Rejection of a Request for a Trial .....	73
Article 142 Rejection of a Request for a Trial Containing Incurable Defects .....	73
Article 143 Trial Examiners .....	73
Article 144 Designation of Trial Examiners .....	74
Article 145 Presiding Trial Examiner .....	74
Article 146 Collegial Body for a Trial .....	74
Article 147 Submission of a Response etc. ....	74
Article 148 Exclusion of a Trial Examiner .....	75
Article 149 Request for Exclusion .....	75
Article 150 Recusal of a Trial Examiner .....	75
Article 151 Indication of Grounds for Exclusion or Recusal .....	75
Article 152 Decision on a Request to Exclude or Recuse .....	75
Article 153 Suspension of Trials .....	76
Article 153 <i>bis</i> Trial Examiners Recusing Themselves .....	76
Article 154 Trial Proceedings etc. ....	76
Article 155 Intervention .....	77
Article 156 Request for an Intervention and Decision .....	77
Article 157 Taking and Preserving Evidence .....	78
Article 158 Continuation of Trial Proceedings .....	78
Article 159 <i>Ex Officio</i> Trial Examination .....	78
Article 160 Combination or Separation of a Trial or Ruling .....	79
Article 161 Withdrawal of a Request for a Trial .....	79
Article 162 Ruling on a Trial .....	79
Article 163 <i>Res Judicata</i> .....	80
Article 164 Trials and Litigation .....	80
Article 165 Costs of a Trial .....	81
Article 166 Title of Enforcement of Costs or Remuneration .....	81
Article 167 Deleted .....	81
Article 168 Deleted .....	81
Article 169 Deleted .....	81
Article 170 <i>Mutatis Mutandis</i> Application of Provisions on Examination to Trial against a Ruling of Refusal to Grant a Patent .....	82
Article 171 Special Provisions for a Trial against a Ruling of Refusal to Grant a Patent .....	82
Article 172 Effect of Examination or Opposition Proceedings .....	82

Article 173 Reexamination Before a Trial .....	82
Article 174 <i>Mutatis Mutandis</i> Application of Provisions on Examination to the Reexamination Before a Trial .....	83
Article 175 Termination of a Reexamination .....	83
Article 176 Reversal of a Ruling of Refusal etc. ....	83
Article 177 Deleted .....	84

### **CHAPTER VIII : Retrial**

Article 178 Request for a Retrial .....	84
Article 179 Request for a Retrial on Account of Collusion .....	84
Article 180 Period for Requesting a Retrial .....	84
Article 181 Restriction on Effects of a Patent Right Restored by a Retrial .....	85
Article 182 Nonexclusive License for Prior User of a Patent Right Restored by a Retrial .....	85
Article 183 Nonexclusive License for Person Deprived of a Nonexclusive License by a Retrial .....	86
Article 184 <i>Mutatis Mutandis</i> Application of Provisions on Trial to Retrial .....	86
Article 185 <i>Mutatis Mutandis</i> Application of the Civil Procedure Act .....	86

### **CHAPTER IX : Litigation**

Article 186 Action on Trial Decision etc. ....	86
Article 187 Qualification for Defendant .....	87
Article 188 Notification of Institution of Action and Transmittal of Document .....	87
Article 188 <i>bis</i> Exclusion or Recusal of a Technical Examiner .....	88
Article 189 Revoking a Trial Decision or Ruling .....	88
Article 190 Action against Decision on Amount of Compensation or Remuneration .....	88
Article 191 Defendant in an Action Related to Compensation or Remuneration .....	88
Article 191 <i>bis</i> Compensation for Patent Attorneys and Costs of Litigation .....	89

### **CHAPTER X : International Applications under the Patent Cooperation Treaty**

#### **Part I. International Application Procedure**

Article 192 Persons Capable of International Application .....	89
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Article 193 International Application .....	89
Article 194 Recognition etc. of the Filing Date of an International Application ..	90
Article 195 Invitation to Amendment .....	91
Article 196 International Application Considered to have been Withdrawn .....	91
Article 197 Representative etc. ....	92
Article 198 Fees .....	92
Article 198 <i>bis</i> International Search and International Preliminary Examination .....	92

**Part II. Special Provisions on International Patent Applications**

Article 199 Patent Application Based on an International Application .....	93
Article 200 Special Provision Concerning Inventions Not Considered to be Publicly Known etc. ....	93
Article 201 Translation of International Patent Applications .....	93
Article 202 Special Provisions on Claim of Priority .....	94
Article 203 Submission of Documents .....	95
Article 204 Amendment after Receipt of the International Search Report .....	96
Article 205 Amendment before Establishment of the International Preliminary Examination Report .....	97
Article 206 Special Provision on Patent Administrator for Nonresidents .....	97
Article 207 Special Provision on the Time and Effect of Laying Open an Application .....	98
Article 208 Special Provision on Amendment .....	98
Article 209 Restriction on Timing of Application for Conversion .....	99
Article 210 Time Restriction on a Request for an Examination .....	99
Article 211 Order Concerning Submission of Documents Cited in the International Search Report etc. ....	99
Article 212 Deleted .....	100
Article 213 Special Provisions on an Invalidation Trial of a Patent .....	100
Article 214 International Application Considered to be a Patent Application by Decision .....	100

**CHAPTER XI : Supplementary Provisions**

Article 215 Special Provisions for a Patent or Patent Right with Two or More Claims .....	101
Article 215 <i>bis</i> Special Provisions for Registering a Patent Application with Two or More Claims .....	101

Article 216 Inspection of Documents etc. ....	101
Article 217 Prohibition on Opening or Removing Documents Related to a Patent Application, Examination, Trial, Retrial or the Patent Register .....	102
Article 217 <i>bis</i> Agency for Digitizing Patent Documents .....	102
Article 218 Transmittal of Documents .....	103
Article 219 Transmittal by Public Notification .....	103
Article 220 Transmittal of Documents to Nonresidents .....	104
Article 221 Patent Gazette .....	104
Article 222 Submission of Documents etc. ....	104
Article 223 Patent Indication .....	104
Article 224 Prohibition of False Indication .....	104
Article 224 <i>bis</i> Restriction on Objections .....	105

**CHAPTER XII : Penal Provisions**

Article 225 Offense of Infringement .....	105
Article 226 Offense of Perjury .....	106
Article 227 Offense of False Marking .....	106
Article 228 Offense of Fraud .....	106
Article 229 Offense of Divulging Secrets .....	106
Article 229 <i>bis</i> Officers and Employees of Special Searching Agency as Public Officials and Irrefutable Presumption .....	106
Article 230 Dual Liability .....	106
Article 231 Confiscation etc. ....	107
Article 232 Administrative Fine .....	107

<b>ADDENDA</b> .....	108
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**CHAPTER I  
GENERAL PROVISIONS**

**Article 1 Purpose**

The purpose of this Act is to encourage, protect and utilize inventions, thereby improving and developing technology, and to contribute to the development of industry.

**Article 2 Definitions**

The definitions of terms used in this Act are as follows:

- (i) "invention" means the highly advanced creation of a technical idea using the rules of nature;
- (ii) "patented invention" means an invention for which a patent has been granted; and
- (iii) "working" means any of the following acts:
  - (a) acts of manufacturing, using, assigning, leasing, importing or offering for assignment or lease (including displaying for assignment or lease) an invented product;
  - (b) acts of using an invented process; and
  - (c) acts of using, assigning, leasing, importing or offering for assignment or lease a product manufactured by an invented process for manufacturing a product, in addition to the acts mentioned in subparagraph (b).

**Article 3 Capacity of Minors etc.**

(1) Minors, quasi-incompetents and incompetents may not initiate a procedure for filing an application, requesting an examination or any other patent-related procedure (referred to as "a patent-related procedure") unless represented by a legal representative. However, this provision does not apply where a minor or quasi-incompetent can perform a legal act independently.

(2) The legal representative referred to in paragraph (1) may act without the consent of the family council in any trial or retrial procedure initiated by another party.

(3) deleted

**Article 4 Associations etc. Other than a Legal Entity**

A representative or an administrator designated by an association or a foundation that is not a legal entity may request an examination of a patent application, or appear as a plaintiff or defendant in a trial or a retrial in the name of the association or foundation.

**Article 5 Patent Administrator for Nonresidents**

(1) A person who has neither a residential nor business address in the Republic of Korea (referred to as "a nonresident") may not, except when the nonresident (or a representative of the nonresident if a legal entity) is sojourning in the Republic of Korea, initiate any patent-related procedure or appeal any decision taken by an administrative agency in accordance with this Act or any decree under this Act, unless the person is represented by an agent (referred to as "a patent administrator") who has a residential nor business address in the Republic of Korea.

(2) A patent administrator shall, within the scope of powers conferred on the patent administrator, represent the principal in all procedures related to a patent and in any appeal against a decision taken by an administrative agency in accordance with this Act or any decree under this Act.

(3) Deleted.

(4) Deleted.

**Article 6 Scope of Power of Attorney**

Unless expressly empowered, a representative instructed to initiate a patent-related procedure before the Korean Intellectual Property Office by a person whose residential or business address is in the Republic of Korea may not change, abandon or withdraw an application for a patent, withdraw an application to register an extension for the term of a patent right, abandon a patent right, withdraw a petition, withdraw a request for a motion, make or withdraw a priority claim under Article 55(1), request a trial under Article 132<sup>ter</sup> or appoint a sub-representative.

**Article 7 Proof of Power of Attorney**

The power of attorney for an agent (including a patent administrator) who is initiating a patent-related procedure must be confirmed in writing.

**Article 7bis Ratification Regarding Defect in Legal Capacity, etc.**

Where the correct party or legal representative ratifies any procedure initiated by a person with no legal capacity or authority of legal representation or by a person to whom the authority required to initiate the patent-related procedure has been delegated defectively, the ratified procedure is deemed to have been initiated at the time the procedure was originally initiated.

**Article 8 Continuation of Power of Attorney**

The power of attorney of an agent representing a person initiating a patent-related procedure is not extinguished upon the death or loss of legal capacity of the principal, the extinguishment of a legal entity of the principal due to a merger, the termination of the duty of trust of the principal, the death or loss of legal capacity of the legal representative or the modification or extinguishment of the power of attorney.

**Article 9 Independence of Representation**

Where two or more agents of a person initiating a patent-related procedure have been designated, each of them may independently represent the principal before the Korean Intellectual Property Office or the Intellectual Property Tribunal.

**Article 10 Replacement of Agents etc.**

(1) Where the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner considers that a person initiating a patent-related procedure is not qualified to conduct the procedure or make oral statements and so on, the Commissioner or presiding trial examiner may order *ex officio* the appointment of an agent to conduct the procedure.

(2) Where the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner considers that an agent representing a person initiating a patent-related procedure is not qualified to conduct the procedure or make oral statements and so on, the Commissioner or presiding trial examiner may order *ex officio* the replacement of the agent.

(3) The Commissioner of the Korean Intellectual Property Office or the presiding trial examiner may, in the case referred to in paragraphs (1) or (2) of this Article, order the appointment of a patent attorney to conduct the procedure.

(4) The Commissioner of the Korean Intellectual Property Office or the presiding trial examiner may invalidate any action taken before the Korean Intellectual Property Office or the Intellectual Property Tribunal by a person initiating a patent-related procedure referred to in paragraph (1) of this Article or by an agent referred to in paragraph (2) of this Article before the appointment or the replacement of an agent referred to in paragraphs (1) or (2), respectively, after issuing the order referred to in paragraphs (1) or (2).

### **Article 11 Representation of Two or More Persons**

(1) Where two or more persons jointly initiate a patent-related procedure, any of them may represent the joint initiators except for actions falling under any of the following subparagraphs, unless they have appointed a common representative and have notified the Korean Intellectual Property Office or the Intellectual Property Tribunal of the appointment of the representative:

- (i) change, abandonment or withdrawal of a patent application or withdrawal of an application to register an extension for the term of a patent right;
- (ii) withdrawal of a petition; claim or withdrawal of a priority claim under Article 55(1);
- (iii) withdrawal of a request; and
- (iv) a request for a trial under Article 132<sup>ter</sup>.

(2) Where a common representative has been appointed and notification has been given under the proviso of paragraph (1), written proof that the representative has been appointed must be presented.

### **Article 12 *Mutatis Mutandis* Application of the Civil Procedure Act**

Notwithstanding provisions in this Act expressly related to agents, Part I, Section 2, Subsection 4 of the Civil Procedure Act applies *mutatis mutandis* to agents under this Act.

### **Article 13 Venue of Nonresidents**

If a nonresident appoints a patent administrator to administer a patent right or other right related to a patent, the residential or business address of the patent administrator is deemed to be that of the nonresident. Where a patent administrator has not been appointed, the location of the Korean Intellectual Property Office is regarded as the seat of the property under Article 11 of the Civil Procedure Act.

### **Article 14 Calculation of Time Limits**

A time limit in this Act or in any decrees under this Act is calculated as follows:

- (i) the first day of a period is not counted unless the period starts at midnight;
- (ii) when a period is expressed in months or years, it is counted according to the calendar;
- (iii) when the start of a period does not coincide with the beginning of a calendar month or year, the period expires in the final month or year of the day preceding the date that corresponds to the starting date of the period; however, if no corresponding date occurs in the final month, the period expires on the last day of that month; and

(iv) when the last day of a period for executing a patent-related procedure falls on an official holiday(including Saturday and Labor Day, as designated by the Labor Day Designation Act), the period expires on the first working day after the holiday.

#### **Article 15 Extension of Time Limits etc.**

(1) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may extend, for the benefit of a person residing in an area that is remote or difficult to access, the period for demanding a trial under Article 132*ter*, upon a request or *ex officio*.

(2) The Commissioner of the Korean Intellectual Property Office, the President of the Intellectual Property Tribunal, a presiding trial examiner or an examiner who has designated a period for a patent-related procedure to be initiated under this Act may shorten or extend the period upon a request or extend the period *ex officio*. In such cases, the Commissioner of the Korean Intellectual Property Office and so on shall decide whether to shorten or extend the period in a way that does not unlawfully violate the interests of the parties involved in the relevant procedure.

(3) A presiding trial examiner or an examiner who has designated a date for initiating a patent related procedure under this Act may change the date upon a request or *ex officio*.

#### **Article 16 Invalidation of Procedure**

(1) Where a person who has been instructed to make an amendment under Article 46 fails to do so within the designated period, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may invalidate the patent-related procedure. However, where a person who has been instructed to make an amendment for not paying the fees for requesting an examination under Article 82(2) fails to pay the fees for requesting an examination, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may invalidate the amendment to the description attached to the patent application.

(2) Where a patent-related procedure is invalidated under paragraph (1), if the delay is considered to have been caused by unavoidable reasons, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may revoke the disposition of invalidation at the request of the person instructed to make the amendment, provided the request is made within fourteen days of the date on which

the reasons for the delay cease to exist and not more than a year after the designated period expired.

(3) Where the disposition of invalidation is revoked under the proviso of paragraph (1) or paragraph (2), the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall issue a copy of the disposition notification to the person who was instructed to make an amendment.

#### **Article 17 Subsequent Completion of Procedure**

Where a person who has initiated a patent-related procedure fails to observe either the period for requesting a trial under Article 132*ter* or the period for demanding a retrial under Article 180(1) for unavoidable reasons, the person may complete the procedure within the fourteen-day period immediately after the date on which the reasons ceased to exist, if not more than one year has elapsed since the designated period expired.

#### **Article 18 Succession of Procedural Effects**

The effects of a patent-related procedure or other patent-related right extend to the successor in title.

#### **Article 19 Continuation of a Procedure by a Successor**

Where a patent right or other patent-related right is transferred while a patent-related procedure is pending before the Korean Intellectual Property Office or the Intellectual Property Tribunal, the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner may require the successor in title to continue the patent-related procedure.

#### **Article 20 Interruption of a Procedure**

A patent-related procedure pending before the Korean Intellectual Property Office or the Intellectual Property Tribunal that falls under any of the following subparagraphs, is interrupted, unless a representative is authorized to conduct the procedure:

- (i) when the party involved has died;
- (ii) when the legal entity involved has ceased to exist due to a merger;
- (iii) when the party involved has lost the ability to conduct the procedure;
- (iv) when the legal representative of the party involved has died or lost the power of attorney;
- (v) when the commission of a trustee given by the trust of the party involved has terminated; or

(vi) where the representative under the proviso of Article 11(1) has died or been disqualified.

(vii) Where a person who becomes a relevant party in the person's own name on behalf of another person with certain qualifications, such as a trustee in a bankruptcy, is disqualified or dies.

### **Article 21 Resumption of an Interrupted Procedure**

Where a procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal is interrupted in the manner referred to in Article 20, a person who falls under any of the following subparagraphs shall resume the procedure:

- (i) under Article 20(i), a deceased person's successor, administrator of inheritance or other person legally authorized to pursue the procedure; however, a successor may not resume the procedure until the right to succession is no longer subject to renunciation;
- (ii) under Article 20(ii), the legal entity established by or existing after the merger;
- (iii) under Article 20(iii) and (iv), the party whose ability to carry out the necessary procedure has been restored or any person who becomes the legal representative of the party;
- (iv) under Article 20(v), a new trustee; and
- (v) under Article 20(vi), a new representative or each joint initiator involve
- (vi) under Article 20(vii), a person with the same qualifications.

### **Article 22 Request for a Resumption**

(1) An opposing party may request a resumption of an interrupted procedure under Article 20.

(2) Where a request for the resumption of an interrupted procedure under Article 20 is made, the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner shall notify the opposing party.

(3) If no grounds are considered to exist for granting a request for the resumption of an interrupted procedure under Article 20, the Commissioner of the Korean Intellectual Property Office or the trial examiner shall dismiss the request *ex officio* by decision after examining the request.

(4) The Commissioner of the Korean Intellectual Property Office or the trial examiner shall decide, upon a request for resumption, whether to permit the resumption of an interrupted procedure after a certified copy of the decision or trial decision has been sent.

(5) If a person referred to in Article 21 does not resume an interrupted procedure, the Commissioner of the Korean Intellectual Property Office or the trial examiner shall *ex officio* order the resumption of the procedure within a designated period.

(6) If no request for resumption is made within the period designated in paragraph (5), the resumption is deemed to have been made on the day after the designated period expires.

(7) Having determined that a resumption has been made in accordance with paragraph (6), the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner shall notify the parties involved.

### **Article 23 Suspension of a Procedure**

(1) If the Commissioner of the Korean Intellectual Property Office or the trial examiner is unable to carry out duties due to a natural disaster or other unavoidable circumstances, any procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal is suspended until the impediments cease to exist.

(2) If a party is unable to pursue a procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal on account of impediments of indefinite duration, the Commissioner of the Korean Intellectual Property Office or the trial examiner may order a suspension by decision.

(3) The Commissioner of the Korean Intellectual Property Office or the trial examiner may cancel the decision issued under paragraph (2).

(4) If a procedure is suspended under paragraphs (1) or (2), or a decision is canceled under paragraph (3), the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner shall notify the parties involved.

### **Article 24 Effects of an Interruption or Suspension**

The interruption or suspension of a patent-related procedure pending in the Korean Intellectual Property Office suspends the running of a term and the entire term starts to run again from the date of the notification of the continuation or resumption of the procedure.

### **Article 25 Capacity of Foreigners**

Foreigners who have neither a residential nor business address in the Republic of Korea



are not entitled to enjoy patent rights or other patent-related rights, except under any of the following circumstances:

- (i) where their country allows nationals of the Republic of Korea to enjoy patent rights or other patent-related rights under the same conditions as its own nationals;
- (ii) where their country allows nationals of the Republic of Korea to enjoy patent rights or other patent-related rights under the same conditions as its own nationals when the Republic of Korea allows their country's nationals to enjoy patent rights or other patent-related rights; or
- (iii) where they may enjoy patent rights or other patent-related rights according to a treaty or the equivalent of a treaty (referred to as "a treaty").

#### **Article 26 Effects of a Treaty**

Where a treaty contains a patent-related provision that differs from this Act, the treaty prevails.

#### **Article 27 Deleted**

#### **Article 28 Effective Date of Submitted Documents**

(1) Applications, demands or other documents (which in this Article includes articles) submitted to the Korean Intellectual Property Office or the Intellectual Property Tribunal under this Act, or any decree under this Act, are effective from the date on which they are delivered to the Korean Intellectual Property Office or the Intellectual Property Tribunal.

(2) Where applications, demands or other documents are submitted by mail to the Korean Intellectual Property Office or the Intellectual Property Tribunal, they are deemed to have been delivered to the Korean Intellectual Property Office or the Intellectual Property Tribunal on the date stamped by the mail service, if the date stamp is clear. Where the date stamp is unclear, they are deemed to have been delivered on the date on which the mail was submitted to a post office, if the date is verified by a receipt. However, this provision does not apply if written applications to register a patent right and other related rights and documents concerning an international application under Article 2(vii) of the Patent Cooperation Treaty (referred to as "an international application") are submitted by mail.

(3) Deleted.

(4) Notwithstanding paragraphs (1) and (2), details concerning the submission of docu-

ments with regard to the delay of mail, loss of mail or interruption of the mail service are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 28bis Entry of Identification Number**

(1) A person who initiates a patent-related procedure prescribed by ordinance of the Ministry of Commerce, Industry and Energy (excluding any person to whom an identification number has already been granted under paragraphs (2) or (3)) shall apply to the Korean Intellectual Property Office or the Intellectual Property Tribunal for an identification number.

(2) Where a person applies for the identification number referred to in paragraph (1), the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall grant an identification number and notify the person.

(3) Where a person who initiates a patent-related procedure under paragraph (1) fails to apply for an identification number, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall *ex officio* grant an identification number and notify the person.

(4) Where a person to whom an identification number has been granted under paragraphs (2) or (3) initiates a patent-related procedure, the person shall enter the identification number in any document prescribed by ordinance of the Ministry of Commerce, Industry and Energy; however, notwithstanding this Act or any decree under this Act, the person may not enter a residential address (or a business address if a legal entity) in such a document.

(5) Paragraphs (1) to (4) apply *mutatis mutandis* to an agent of a person who initiates a patent related procedure.

(6) An application for the grant of an identification number, the grant and notification of the grant or other necessary matters are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 28ter Procedure for Filing Patent Applications by Electronic Means**

(1) A person who initiates a patent-related procedure may, in accordance with the methods prescribed by ordinance of the Ministry of Commerce, Industry and Energy, convert a written application for a patent or other documents presented to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal under this Act into an electronic document, and may present it by means of any communication network or on a floppy disk.

(2) An electronic document presented under paragraph (1) has the same effect as other documents presented under this Act.

(3) The content of an electronic document presented through a communication network under paragraph (1) is, if the presenter confirms a receipt number through the communication network, considered to be the same as the content of the receipted file saved on a computer system operated by the Korean Intellectual Property Office or the Intellectual Property Tribunal.

(4) The kinds of documents capable of being presented by electronic means under paragraph (1) and the methods of such presentation or other necessary matters are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 28<sup>quater</sup> Report on Use of Electronic Documents and Electronic Signatures**

(1) A person who intends to initiate a patent-related procedure by means of electronic documents shall report in advance the intended use of electronic documents to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal, and shall affix an electronic signature for identification.

(2) An electronic document presented under Article 28<sup>ter</sup> is considered to have been filed by the person who affixes an electronic signature under paragraph (1).

(3) Matters necessary for reporting on the intended use of electronic documents and the methods of signing the electronic signature prescribed under paragraph (1) are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 28<sup>quinquies</sup> Notification etc. through a Communication Network**

(1) When giving notification and transmitting (referred to as "a notification") any pertinent documents to a person who reports the intended use of electronic documents under Article 28<sup>quater</sup>(1), the Commissioner of the Korean Intellectual Property Office, the President of the Intellectual Property Tribunal, a presiding trial examiner, a trial examiner, a presiding examiner or an examiner may do so through a communication network.

(2) Notification of any pertinent documents through a communication network under paragraph (1) has the same effect as notification given in writing.

(3) Where the notification of any pertinent documents under paragraph (1) is saved in

a file of a computer system operated by a person who receives the notification, the notification is considered to be the same as the contents saved in a file of a computer system operated by the Korean Intellectual Property Office or the Intellectual Property Tribunal for the transmission of documents.

(4) Matters necessary for the classification and methods of notification through a communication network under paragraph (1) are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

## **CHAPTER II**

### **REQUIREMENTS FOR PATENT REGISTRATION AND PATENT APPLICATIONS**

#### **Article 29 Requirements for Patent Registration**

(1) Inventions that have industrial applicability are patentable unless they fall under either of the following subparagraphs:

- (i) inventions publicly known or worked in the Republic of Korea before the filing of the patent application; or
- (ii) inventions described in a publication distributed in the Republic of Korea or in a foreign country before the filing of the patent application or inventions published through electric telecommunication lines as prescribed by Presidential Decree.

(2) Notwithstanding paragraph (1), where an invention referred to in each subparagraph of paragraph (1) could easily have been made before the filing of a patent application by a person with ordinary skill in the art to which the invention pertains, the patent for such an invention may not be granted.

(3) Notwithstanding paragraph (1), where an application is filed for an invention that is identical to an invention or device described in the description or drawing(s) originally attached to another patent application that has already been laid open or published, or where the invention is identical to a utility model application that has already been published, the patent may not be granted. However, if the inventor of the concerned patent application and the inventor of the other patent or utility model application are the same person, or if the applicant of the concerned patent application and the applicant of the other patent or utility model application are the same person at the time of filing, the patent may be granted.

(4) In applying paragraph (3), where the other patent or utility model application under

paragraph (3) is an international application considered to be either a patent application under Article 199(1) of this Act or a utility model application under Article 34(1) of the Utility Model Act (including an international application considered to be a patent application under Article 214(4) of this Act or a utility model application under Article 40(4) of the Utility Model Act), "laid open" reads "laid open or was the subject of an international publication under Article 21 of the Patent Cooperation Treaty", and "an invention or device described in the description or drawing(s) originally attached" reads "an invention or device described in the description, claim(s) or drawing(s) of the international application as of the international filing date and in the translated version".

**Article 30 Inventions Not Considered to be Publicly Known etc.**

(1) Where a person who has a right to obtain a patent files a patent application for an invention within six months of date on which the invention falls under any of the following subparagraphs, the invention is considered not to fall under any of the subparagraphs of Article 29(1) when Article 29(1) or (2) applies to the invention; however, this provision does not apply where the patent application is laid open or the patent registration is published in the Republic of Korea or a foreign country under a treaty or law:

- (i) when a person with the right to obtain a patent causes the invention to fall under either subparagraph of Article 29(1); However, this provision does not apply where a patent application is laid open or a patent registration is published in the Republic of Korea or a foreign country under a treaty or law.
- (ii) when, against the intention of a person with the right to obtain a patent, the invention falls under either subparagraph of Article 29(1)
- (iii) deleted

(2) A person who intends to take advantage of paragraph (1)(i) shall submit a written statement of that intention to the Commissioner of the Korean Intellectual Property Office when filing a patent application; the person shall also submit a document proving the relevant facts to the Commissioner of the Korean Intellectual Property Office, within thirty days of the filing date of the patent application.

**Article 31 Deleted**

**Article 32 Unpatentable Inventions**

Notwithstanding Article 29(1) to (2), an invention likely to contravene public order or morality or to injure public health may not be patented.

### **Article 33 Persons Entitled to Obtain a Patent**

(1) A person who makes an invention or the person's successor is entitled to obtain a patent under this Act. However, employees of the Korean Intellectual Property Office and the Intellectual Property Tribunal may not obtain patents during their employment at the office or tribunal except by inheritance or bequest.

(2) Where two or more persons jointly make an invention, they are entitled to jointly own the patent.

### **Article 34 Patent Application Filed by an Unentitled Person and Protection of the Lawful Holder of a Right**

Where a patent cannot be granted because an application was filed by a person who is not the inventor or a successor to the right to obtain a patent (referred to as "an unentitled person") under Article 33(1) as prescribed in Article 62(ii), a subsequent application filed by the lawful holder of the right is deemed to have been filed on the filing date of the earlier application filed by the unentitled person. This provision does not apply, however, if the subsequent application is filed by the lawful holder of the right more than thirty days after the date on which the application filed by the unentitled person was rejected.

### **Article 35 Patent Granted to an Unentitled Person and Protection of the Lawful Holder of a Right**

Where a trial decision to revoke a patent becomes final for lack of entitlement to obtain a patent under Article 33(1) as prescribed in Article 133(1)(ii), a subsequent application filed by the lawful holder of the right is deemed to have been filed on the application filing date of the invalidated patent. However, this provision does not apply if the subsequent application is filed more than two years after the publication date of the first application or more than thirty days after the trial decision becomes final.

### **Article 36 First-to-File Rule**

(1) Where two or more applications related to the same invention are filed on different dates, only the applicant of the application with the earlier filing date may obtain a patent for the invention.

(2) Where two or more applications related to the same invention are filed on the same date, only the person agreed upon by all the applicants after consultation may obtain

a patent for the invention. If no agreement is reached or no consultation is possible, none of the applicants may obtain a patent for the invention.

(3) Where a patent application has the same subject matter as a utility model application and the applications are filed on different dates, paragraph (1) applies *mutatis mutandis*. In addition, where the two applications are filed on the same date, paragraph (2) applies *mutatis mutandis*.

(4) In the application of paragraphs (1) to (3), where a patent application or a utility model application is invalidated, withdrawn, or abandoned, or a decision is made to reject the application, or a ruling of rejection becomes final, the application is deemed to have never been filed. However, this provision does not apply where a decision is made to reject the patent application or the utility model application or where a ruling of rejection becomes final in accordance with the latter part of paragraph (2) (including cases in which the provision applies *mutatis mutandis* under paragraph (3)).

(5) For the purposes of paragraphs (1) to (3), a patent application or utility model application filed by a person who is not the inventor, creator or successor in title to the right to obtain the patent or utility model registration is deemed never to have been filed.

(6) When paragraph (2) applies, the Commissioner of the Korean Intellectual Property Office shall instruct the applicants to report on the results of the consultation within a designated period. If the report is not submitted to the Commissioner of the Korean Intellectual Property Office within the designated period, the applicants are deemed not to have reached an agreement within the meaning of paragraph (2).

#### **Article 37 Transfer of the Right to Obtain a Patent etc.**

(1) The right to obtain a patent may be transferred.

(2) The right to obtain a patent may not be the subject of a pledge.

(3) Where a patent right is jointly owned, the owners may not assign their individual share without the consent of the other owners.

#### **Article 38 Succession to the Right to Obtain a Patent**

(1) Succession to the right to obtain a patent before filing the patent application is not effective against third persons unless the successor in title files the patent application.

(2) Where two or more applications for a patent are filed on the same date on the basis of a right to obtain a patent for the same invention derived by succession from the same person, the succession to the right to obtain the patent by any person other than the person agreed upon by all the patent applicants is not effective.

(3) Paragraph (2) also applies where a patent application and a utility model application are filed on the same date on the basis of the right to obtain a patent and utility model registration for the same invention and device derived by succession from the same person.

(4) Succession to the right to obtain a patent after filing a patent application does not take effect unless a notice of change of applicant is filed, except for inheritance or other general succession.

(5) Upon inheritance or other general succession of the right to obtain a patent, the successor in title shall immediately notify the Commissioner of the Korean Intellectual Property Office.

(6) Where two or more notifications of change of applicant are made on the same date, on the basis of a right to obtain a patent for the same invention that has been derived by succession from the same person, a notification made by any person other than the person agreed upon after consultations among all the persons who made notifications is not effective.

(7) Article 36(6) applies *mutatis mutandis* to the cases under paragraphs (2), (3) or (6).

**Article 39 Deleted**

**Article 40 Deleted**

**Article 41 Inventions Necessary for National Defense etc.**

(1) If an invention is necessary for national defense, the Government may order an inventor, an applicant or an agent not to file a patent application for the invention in the foreign patent offices concerned or to keep the invention confidential. However, if such persons obtain permission from the Government, they may file an application in foreign patent offices.

(2) If an invention filed with the Korean Intellectual Property Office is considered necessary for national defense, the Government may refuse to grant a patent and, for reasons of national defense such as in time of war, incident or other similar emergency, may expropriate the right to obtain a patent.



(3) The Government shall pay reasonable compensation for losses arising from its prohibition of filing a patent application in a foreign patent office or from the maintenance of secrecy under paragraph (1).

(4) The Government shall pay reasonable compensation if a patent is not granted or the right to obtain a patent is expropriated under paragraph (2).

(5) When a person violates an order prohibiting the filing of an application for an invention in a foreign patent office or an order to maintain secrecy under paragraph (1), the person's right to obtain a patent for that invention is deemed to be abandoned.

(6) When a person violates an order to maintain secrecy under paragraph (1), the person's right to request payment of compensation for the loss arising from maintaining secrecy is deemed to be abandoned.

(7) Matters related to such procedures as prohibiting the filing of an application in foreign patent offices, trials for maintaining secrecy under paragraph (1) or for expropriation or payment of compensation under paragraphs (2) to (4) are prescribed by Presidential Decree.

#### **Article 42 Patent Application**

(1) A person seeking to register a patent shall file a patent application with the Commissioner of the Korean Intellectual Property Office, stating the following:

- (i) the name and address of the applicant (and, if a legal entity, the name and address of the business);
- (ii) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (iii) deleted;
- (iv) the title of the invention;
- (v) the name and address of the inventor;
- (vi) deleted.

(2) A patent application under paragraph (1) must be accompanied by an abstract, drawing(s) (if necessary) and a description stating the following:

- (i) the title of the invention;
- (ii) a brief explanation of the drawing(s);
- (iii) a detailed explanation of the invention; and
- (iv) the patent claim(s).

(3) The detailed explanation of an invention referred to paragraph (2)(iii) must specify the invention clearly and in detail as prescribed by ordinance of the Ministry of Commerce, Industry and Energy so that a person with ordinary skill in the art to which the invention pertains may easily replicate the invention.

(4) The claim(s) under paragraph (2)(iv) must describe the matter for which protection is sought in one or more claims (referred to as "claim(s)") and the claim(s) must comply with each of the following subparagraphs:

- (i) the claim(s) must be supported by a detailed explanation of the invention;
- (ii) the claim(s) must define the invention clearly and concisely; and
- (iii) deleted

(5) Notwithstanding paragraph (2), a patent applicant may, at the time the application is filed, omit the statement on the patent claim(s), required under paragraph (2)(iv), from the description that accompanies the patent application. In such cases, the applicant shall amend the description to enter the patent claim(s) by either of the following deadlines:

- (i) the date marking the elapse of one year and six months from the date that falls under any of the subparagraphs of Article 64(1); or
- (ii) the date marking the elapse of three months from the date on which notification is given under Article 60(3) for a request to examine a patent application before the deadline stipulated in subparagraph (i) of this paragraph (however, where the notification is given more than one year and three months after the date that falls under any subparagraph of Article 64(1), the date marking the elapse of one year and six months from that date).

(6) When stating patent claim(s) under paragraph (2)(iv), the applicant shall state all the factors that are considered necessary to specify the invention, such as the structure, method, functions, materials, or a combination of these factors, for the purpose of clarifying which matters are subject to protection.

(7) Where a patent applicant has filed a patent application but fails to subsequently amend the description to include a statement of the patent claim(s) by the relevant deadline stipulated in subparagraph (5)(i) or (ii), the application is deemed to have been withdrawn on the date immediately following the relevant deadline.

(8) Necessary matters concerning the description of the patent claim(s) under paragraph 2(iv) are prescribed by Presidential Decree.

(9) Necessary matters concerning the method of describing an abstract under paragraph(2) are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 43 Abstract**

An abstract under Article 42(2) may not be interpreted to define the scope of an invention for which protection is sought but it serves as technical information.

#### **Article 44 Joint Applications**

Where the right to obtain a patent is jointly owned under Article 33(2), the owners shall jointly apply for the patent application.

#### **Article 45 Scope of a Patent Application**

(1) A patent application must relate to a single invention only. However, a group of inventions that form a single general inventive concept may be the subject of a patent application.

(2) The requirements for a patent application under paragraph (1) are prescribed by Presidential Decree.

#### **Article 46 Amendment of Procedure**

The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall order an amendment to a patent-related procedure within a designated period if the procedure falls under any of the following subparagraphs:

- (i) where the procedure does not comply with Articles 3(1) or 6;
- (ii) where the procedure does not comply with the formalities prescribed in this Act or by Presidential Decree; or
- (iii) where fees required under Article 82 have not been paid.

#### **Article 47 Amendment of Patent Application**

(1) An applicant may amend the description or drawing(s) attached to a patent application within the period designated in any of the subparagraphs of Article 42(5) or before the examiner issues a certified copy of a decision to grant a patent under Article 66. However, in the following circumstances, if the applicant makes an amendment, the amendment must be made within the periods designated in the following subparagraphs:

- (i) where an applicant first receives notification of the reasons for refusal under Article 63 (referred to as "a notice of the reasons for refusal") or receives a notice of the reasons for refusal that does not apply under paragraph (ii), the period is that designated for submitting arguments against the notice of the reasons for refusal;

- (ii) where an applicant receives a notice of the reasons for refusing an amendment made in response to a notice of the reasons for refusal issued under paragraph (i), the period is that designated for submitting arguments in response to the notice; or
- (iii) where an applicant requests a trial against a decision to refuse a patent under Article 132*ter*, the period is thirty days after the filing date of the request.

(2) An amendment to a description or drawing(s) under paragraph (1) must be within the scope of the features disclosed in the description or drawing(s) originally attached to the application.

(3) An amendment to the claim(s) made under paragraphs (1)(ii) and (iii) must be limited to the scope prescribed in any of the following subparagraphs, and where an amendment is made under subparagraph (iii), it must be limited to the scope indicated by the examiner in the notice of the reasons for refusal:

- (i) to narrow a claim;
- (ii) to correct a clerical error; or
- (iii) to clarify an ambiguous description.

(4) An amendment made within the period designated in paragraph 1(ii) and (iii) must meet the following requirements:

- (i) an amendment to a description or drawing(s) must neither substantially expand nor modify the scope of the claim(s); and
- (ii) the matters described in the claim(s) after an amendment must have been patentable when the patent application was filed.

**Article 48 Deleted**

**Article 49 Deleted**

**Article 50 Deleted**

**Article 51 Rejection of an Amendment**

(1) Where an amendment under Article 47(1)(ii) is considered to violate paragraphs (2) to (4) of Article 47, the examiner shall reject the amendment by decision.

(2) A decision to reject an amendment under paragraph (1) must be in writing and must state the reasons for the decision.

(3) An appeal may not be made against a decision to reject under paragraph (1), except in an appeal against the final rejection of the patent under Article 132*ter*.

### **Article 52 Divisional Application**

(1) An applicant who has filed a patent application comprising two or more inventions may divide the application into two or more applications within the scope of description or drawing(s) originally attached to the patent application within the amendment period prescribed under Article 47(1).

(2) A divided patent application under paragraph (1) (referred to as "a divisional application") is deemed to have been filed when the original patent application was filed. However, when any of the following subparagraphs applies to the divisional application, the divisional application is deemed to have been filed when the divisional application was filed:

- (i) where Article 29(3) of this Act or Article 5(3) of the Utility Model Act applies because the divisional application falls under another patent application under Article 29(3) of this Act or a patent application under Article 5(3) of the Utility Model Act;
- (ii) where Article 30(2) applies;
- (iii) where Article 54(3) applies; or
- (iv) where Article 55(2) applies.

(3) A person who files a divisional application under paragraph (1) shall indicate the purpose of the divisional application as well as the patent application that forms the basis of the division.

(4) When filing a divisional application, a person claiming priority under Article 54 shall file the documents prescribed in paragraph (4) of Article 54 with the Commissioner of the Korean Intellectual Property Office within three months of filing the divisional application, regardless of the period prescribed in paragraph (5) of Article 54.

### **Article 53 Converted Application**

(1) A person who applies for a utility model registration may convert the utility model application to a patent application within the scope of matters stated in the description or drawing(s) originally attached to the utility model application. However, the person may not convert the application if thirty days have elapsed since the date on which the person received a certified copy of the initial decision to refuse registration.

(2) Any application that is converted under paragraph (1) of this Article (referred to as "a converted application") is deemed to have been filed on the date on which the utility model application was filed unless it falls under either of the following subparagraphs:

- (i) where Article 29(3) of this Act or Article 4(3) of the Utility Model Act applies because the application is identified as another patent application under Article 29(3) of this Act or a patent application under Article 4(3) of the Utility Model Act
- (ii) where Article 30(2) of this Act applies;
- (iii) where Article 54(3) of this Act applies; or
- (iv) where Article 55(2) of this Act applies.

(3) A person who files an application converted under paragraph (1) of this Article shall state the purpose of the conversion and indicate the utility model application that forms the basis of the conversion in the converted application.

(4) The utility model application that forms the basis of a converted application is deemed to be withdrawn when the converted application is filed.

(5) Where the period stipulated in Article 132<sup>ter</sup> of this Act is extended under Article 15(1) of this Act, which applies *mutatis mutandis* under Article 3 of the Utility Model Act, the thirty-day period stipulated in the proviso of paragraph (1) is extended by the period of the extension given under Article 15(1).

(6) When applying for a converted application, a person claiming priority under Article 54 shall submit the documents stipulated in Article 54(4) to the Commissioner of the Korean Intellectual Property Office within three months of applying for the converted application, regardless of the period stipulated in Article 54(5).

#### **Article 54 Priority Claim Under Treaty**

(1) If a national of a country that recognizes under a treaty the right of priority for a patent application filed by a national of the Republic of Korea claims the right of priority for a patent application in the Republic of Korea based on the earlier application for the same invention in the national's country or in another country that recognizes the treaty, the filing date of the earlier application in the foreign country is deemed to be the filing date in the Republic of Korea under Articles 29 and 36. Where a national of the Republic of Korea who has filed a patent application in a country that recognizes under a treaty the right of priority for patent applications filed by nationals of the Republic of Korea claims the right of priority for a patent application in the Republic of Korea based on the earlier application for the same invention in that country, this provision also applies.

(2) A person claiming the right of priority under paragraph (1) shall file a patent application claiming the right of priority within one year from the filing date of the earlier application.

(3) A person claiming the right of priority under paragraph (1) shall specify the claim, the name of the country in which the earlier application was filed and the filing date of the application in the patent application that the person files in the Republic of Korea.

(4) A person who has claimed the right of priority under paragraph (3) shall submit to the Commissioner of the Korean Intellectual Property Office the documents prescribed in paragraph (i) or the written statement prescribed in paragraph (ii). However, the written statement referred to in paragraph (ii) must be submitted only if the country is prescribed by ordinance of the Ministry of Commerce, Industry and Energy:

(i) a written statement setting forth the filing date of the application and a copy of the description and drawing(s) certified by the government of the country where the earlier application was filed; or

(ii) a written statement setting forth the file number of the application in the country where the earlier application was filed.

(5) Documents under paragraph (4) must be submitted within one year and four months of the earliest date prescribed in the following subparagraphs:

(i) the date on which the application was first filed in a country that is a party to a treaty;

(ii) the filing date of an earlier application that would be the basis for claiming a priority right if a patent application contains other priority claims under Article 55(1); or

(iii) the filing date of the application that is to be the basis for claiming a priority right if a patent application contains other priority claims under paragraph (3).

(6) Where a person who has claimed the right of priority under paragraph (3) fails to submit the document prescribed under paragraph (4) within the designated period under paragraph (5), the claim to the right of priority loses its effect.

(7) A person who is eligible to claim the right of priority under paragraph (1) and who complies with the requirements of paragraph (2) may amend or add the priority claim(s) within one year and four months of the earliest date prescribed under paragraph (5).

#### **Article 55 Priority Claim Based on a Patent Application etc.**

(1) An applicant for a patent may claim the right of priority for an invention claimed in a patent application disclosed in the description or drawing(s) originally attached to an earlier patent or utility model application (referred to as "an earlier application") for which the person has the right to obtain a patent or utility model registration, except in any of the following cases:

(i) where the patent application concerned is filed more than one year after the filing date of the earlier application;

- (ii) where the earlier application is a divisional application under Article 52(2) (including those cases to which this Article applies *mutatis mutandis* under Article 11 of the Utility Model Act) or a converted application under Article 53 of this Act or Article 10 of the Utility Model Act;
- (iii) where the earlier application has been abandoned, invalidated, withdrawn or rejected when the patent application is filed;
- (iv) where an examiner's decision to grant or refuse a patent or a utility model, or a trial decision on the earlier application has become final; or
- (v) deleted.

(2) A person claiming the right of priority under paragraph (1) shall simultaneously make the claim with the patent application, and identify the earlier application in the patent application.

(3) If a patent application that contains a priority claim under paragraph (1) describes inventions that have been disclosed in the description or drawing(s) originally attached to an earlier application that is the basis for claiming a priority right, the patent application is considered to have been filed when the earlier application was filed under Articles 29(1) or (2), and 29(3) (main sentence), 30(1), 36(1) to (3), 47(4)(ii), 96(1)(iii), 98, 103, 105(1) and (2), 129 and 136(4) (including cases that apply *mutatis mutandis* to Article 133*bis*(4)) of this Act, Articles 7(3) to (4) and 25 of the Utility Model Act or Articles 45 and 52(3) of the Industrial Design Act. However, this provision excludes inventions disclosed in the description or drawing(s) submitted when filing an application whose priority is claimed for an earlier application where the earlier application contains a priority claim under paragraph (1) of this Article or under Article 4D(1) of the Paris Convention for the Protection of Intellectual Property.

(4) For inventions described in the description or drawing(s) originally attached to a patent application containing a priority claim under paragraph (1) and disclosed in the description or drawing(s) originally attached to an earlier application that is the basis for claiming a priority right (excluding inventions disclosed in the description or drawing(s) submitted when filing an application whose priority is claimed for an earlier application where that earlier application contains a priority claim under paragraph (1) of this Article or under Article 4D(1) of the Paris Convention for the Protection of Intellectual Property), the laying open of the earlier application for public inspection is considered to have been effected when the publication of the patent right registration or the laying open of the patent application for public inspection was effected under the main sentence of Article 29(3) of this Act and the main sentence of Article 4(3) of the Utility Model Act. In this case, where the earlier application is an international application deemed to be a patent application under Article 199(1) of this Act or deemed to be a utility model application under Article 34(1) of the Utility Model Act (including an international application considered to be a patent application or a utility model application under Article 214(4) of this Act or Article 40(4) of the Utility Model Act), "an invention or



device described both in the description, claim(s) or drawing(s) of the international application as of the international filing date and in the translated version" in Article 29(4) of this Act reads "an invention or device described in the description, claim or drawing(s) of the international application as of the international filing date".

(5) A person who is eligible to claim the right of priority under paragraph (1) and who complies with the requirements referred to in paragraph (2) may amend or add the priority claim(s) within one year and four months of the filing date of the earlier application (the earliest filing date if two or more earlier applications exist).

#### **Article 56 Withdrawal of an Earlier Application etc.**

(1) Where an application is filed claiming the right of priority from an earlier application under Article 55(1), the earlier application is deemed to have been withdrawn when priority is claimed for an earlier utility model application, and when more than one year and three months has elapsed after the filing date of the earlier patent application, unless the earlier application falls under any of the following subparagraphs:

- (i) if the earlier application has been abandoned, invalidated, withdrawn or rejected;
- (ii) if an examiner's decision of patentability or a trial decision rejecting the application has become final;
- (iii) if priority claims based on the earlier application concerned have been withdrawn; or
- (iv) deleted.

(2) The applicant of a patent application containing a priority claim under Article 55(1) may not withdraw the priority claim more than one year and three months after the filing date of the earlier application.

(3) Where a patent application containing a priority claim under Article 55(1) is withdrawn within one year and three months of the filing date of an earlier application, the priority claim is deemed to have been withdrawn simultaneously.

### **CHAPTER III EXAMINATION**

#### **Article 57 Examination by Examiner**

(1) The Commissioner of the Korean Intellectual Property Office shall have applications for patents examined by an examiner.

(2) The qualifications for examiners are prescribed by Presidential Decree.

**Article 58 Search for Prior Art etc.**

(1) If considered necessary for the examination process, the Commissioner of the Korean Intellectual Property Office may designate a specialized search organization and request it to search for prior art, grant an international patent classification, and conduct other tasks prescribed by Presidential Decree.

(2) If considered necessary for the examination process, the Commissioner of the Korean Intellectual Property Office may request the cooperation and advice of a government agency, an organization specialized in the technology concerned or an expert with profound knowledge and experience in patent matters, and may pay them allowances or expenses for their cooperation or advice within the limits of the budget of the Korean Intellectual Property Office.

(3) Necessary matters concerning the designation of specialized search organizations, such as the standards for designation, and implementation procedures, such as those related to prior art searches and the granting of international patent classifications, under paragraph (1) are prescribed by Presidential Decree.

**Article 58bis Cancellation of the Designation of a Specialized Search Organization**

(1) Where a specialized search organization designated in accordance with Article 58(1) falls under subparagraph (1) of this paragraph, the Commissioner of the Korean Intellectual Property Office shall cancel the designation; furthermore, if such an organization falls under subparagraph (2) of this paragraph, the Commissioner shall cancel the designation or order a suspension of the organization's business within a designated period of six months:

- (i) where the search organization obtained designation through false or unfair means;
- (ii) where the standards for designating the search organization fail to comply with the designation standards referred to in Article 58(3).

(2) When intending to cancel the designation of a specialized search organization, the Commissioner of the Korean Intellectual Property Office shall hold a public hearing.

(3) Necessary matters concerning the standards and procedures for canceling the designation of a specialized search organization or suspending its business are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 59 Request for an Examination of a Patent Application**

(1) A patent application is examined only when a person files a request for an examination.

(2) Where a patent application has been filed, a person may request the Commissioner of the Korean Intellectual Property Office for an examination of the patent application within five years of the filing date of the application. However, a patent applicant may not request an examination of a patent application unless a description of the claim(s) is attached to the patent application.

(3) For a divisional application under Article 52(2) or a dual application under Article 53(2), a person may request an examination even after the expiry of the period prescribed in paragraph (2) within thirty days of the filing date of the division or the dual application.

(4) A request for an examination may not be withdrawn.

(5) Where a request for an examination has not been made within the periods prescribed in paragraphs (2) or (3), the patent application concerned is deemed to have been withdrawn.

#### **Article 60 Procedure for Requesting an Examination**

(1) A person requesting an examination of an application shall submit a written request to the Commissioner of the Korean Intellectual Property Office, stating the following:

- (i) the name and address of the person making the request (and, if a legal entity, the name and address of the business);
- (ii) deleted; and
- (iii) the identification of the patent application for which the request for an examination is made.

(2) Where a request for an examination has been made before publication of an application, the Commissioner of the Korean Intellectual Property Office shall publish the gist of the request in the Patent Gazette when the application is laid open. Where a request for an examination has been made after the laying open of the application, the Commissioner shall immediately publish the gist of the request in the Patent Gazette.

(3) Where a request for an examination has been made by a person other than the applicant, the Commissioner of the Korean Intellectual Property Office shall notify the applicant.

#### **Article 61 Preferential Examination**

The Commissioner of the Korean Intellectual Property Office may direct an examiner to examine an application in preference to another if the former falls under either of the following subparagraphs:

- (i) where a person other than the applicant is considered to commercially and industrially work the invention claimed in the patent application after the laying open of the application; or
- (ii) where urgent processing of the patent application is considered necessary as prescribed by Presidential Decree.

#### **Article 62 Decision to Refuse a Patent**

An examiner shall refuse a patent application for any of the following reasons (referred to as "the reasons for refusal"):

- (i) where the invention is unpatentable under Articles 25, 29, 32, 36(1) to (3) or 44;
- (ii) where the application is filed by a person who does not have the right to obtain a patent under Article 33(1) or where the invention is unpatentable under the proviso of Article 33(1);
- (iii) where the application violates a treaty;
- (iv) where the application does not comply with the requirements of Articles 42(3), (4), (8) or 45; or
- (v) where the application is amended beyond the scope of Article 47(2);
- (vi) where the application is divided beyond the scope of Article 52(1); or
- (vii) where the application is converted beyond the scope of Article 53(1).

#### **Article 63 Notification of Reasons for Refusal**

An examiner who refuses a patent application under Article 62 shall notify the applicant of the reasons and give the applicant an opportunity to submit a written statement of arguments within a designated period. However, this provision does not apply if the examiner intends to make a decision of rejection under Article 51(1) as applied under Article 47(1)(ii).

(2) When an examiner notifies an applicant of the reasons for rejecting a patent application for two or more claims in accordance with the main sentence of paragraph (1), the examiner shall specify each rejected claim in detail as well as the reasons for the rejection of those claims.

#### **Article 63bis Provision of Information on Patent Applications**

After a patent application has been filed, any person may provide the Commissioner of the Korean Intellectual Property Office with evidence of a reason to reject the patent application. However, this provision does not apply if the requirements stipulated in Articles 42(8) and 45 are not satisfied.

### **Article 64 Laying Open of Application**

(1) By ordinance of the Ministry of Commerce, Industry and Energy, the Commissioner of the Korean Intellectual Property Office shall lay open a patent application in the Patent Gazette more than one year and six months after the date prescribed in any of the following subparagraphs or, upon request of the applicant, within one year and six months of the prescribed date; however, this provision does not apply if, in accordance with the first sentence of Article 42(5), excluding each subparagraph of that article, a statement of the patent claim(s) was not included in the description that accompanied the patent application, or if the patent registration was published in accordance with Article 87(3).

(i) where a patent application contains a priority claim under Article 54(1), the priority date;

(ii) where a patent application contains a priority claim under Article 55(1), the filing date of the earlier application as prescribed in Article 55(1);

(iii) the earliest filing date among the filing dates of two or more applications that are the basis for claiming a priority right in a patent application under Articles 54(1) or 55(1); or

(iv) where a patent application does not fall under any of subparagraphs (i) to (iii), the filing date of the patent application.

(2) Deleted.

(3) Article 87(4) applies *mutatis mutandis* to the laying open of applications under paragraph (1).

(4) Matters to be published in the Patent Gazette for the laying open of applications under paragraph (1) are prescribed by Presidential Decree.

### **Article 65 Effects of Laying Open of Application**

(1) After an application is laid open, an applicant may warn a person who has commercially or industrially worked the filed invention, in writing indicating that a patent application for the invention has been filed.

(2) An applicant may demand a person who has commercially or industrially worked the filed invention, after being warned as provided in paragraph (1) or knowing that the invention has been laid open, to pay compensation in an amount equivalent to what the applicant would have normally received for working the invention from the date of the warning or the date on which the person knew that the patent application of the invention had been laid open to the date on which the patent right was registered.

(3) The right to demand compensation as provided in paragraph (2) may be exercised only after the registration of the patent right.

(4) Exercising the right to demand compensation under paragraph (2) does not preclude exercising the patent right.

(5) Articles 127, 129 and 132 of this Act, or Articles 760 and 766 of the Civil Act apply *mutatis mutandis* to the exercise of the right to demand compensation under paragraph (2). In such a case, "the time when the damaged party or his legal representative became aware of such damage and of the identity of the person causing it" in Article 766(1) of the Civil Act reads "the date of registration of the involved patent right".

(6) Where a patent application is abandoned, invalidated or withdrawn after the laying open of the application, or a decision to refuse or a decision to invalidate a patent under Article 133 (unless prescribed under subparagraph (iv) of Article 133(1)) has become final, the right under paragraph (2) is deemed never to have existed.

#### **Article 66 Decision to Grant a Patent**

Where an examiner does not find any reason to refuse a patent application, the examiner shall grant the patent.

#### **Article 67 Formalities for a Decision of Patentability**

(1) A decision to either grant or refuse a patent (referred to as "a decision of patentability") must be in writing and must state the reasons for the decision.

(2) Where a decision of patentability has been made, the Commissioner of the Korean Intellectual Property Office shall transmit a certified copy of the decision to the patent applicant.

#### **Article 68 *Mutatis Mutandis* Application of Provisions Concerning Trial to Examination**

Article 148(i) to (v) and (vii) applies *mutatis mutandis* to the examination of a patent application.

**Article 69 Deleted**

**Article 70 Deleted**

**Article 71 Deleted**

**Article 72 Deleted**

**Article 73 Deleted**

**Article 74 Deleted**

**Article 75 Deleted**

**Article 76 Deleted**

**Article 77 Deleted**

**Article 78 Suspension of Examination or Litigation Trials**

- (1) The examination procedure of a patent application may, if necessary, be suspended until a trial becomes conclusive or litigation trials have been completed.
- (2) The court may, if necessary, suspend the trials until the examiner's decision on a patent application becomes final.
- (3) An appeal may not be made against a suspension under paragraphs (1) and (2).

**Article 78bis Deleted**

**CHAPTER IV  
PATENT FEES AND PATENT REGISTRATIONS ETC.**

**Article 79 Patent Fees**

- (1) A patentee or a person seeking to register a patent right under Article 87(1) shall pay the patent fees.
- (2) The patent fees under paragraph (1) as well as the method and period for payment and other necessary matters are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 80 Payment of Patent Fees by Interested Party**

(1) Regardless of the intent of a person liable to pay patent fees, any interested party may pay the patent fees.

(2) An interested party who has paid the patent fees under paragraph (1) may demand reimbursement of expenses to the extent that the person liable to pay is currently making a profit.

**Article 81 Late Payment of Patent Fees etc.**

(1) A patentee or a person seeking to register a patent right has a period of six months after the expiry of the payment period prescribed under Article 79(2) to pay the late patent fees.

(2) Where patent fees are paid late under paragraph (1), an amount equivalent to twice the patent fees must be paid.

(3) Where a patentee or a person seeking to register a patent right fails to pay the additional patent fees within the period under paragraph (1) (or fails to pay the remaining portion within the period of remaining payment when the period of remaining payment designated in Article 81*bis*(2) has not expired but the period for late payment has expired), the patent application is deemed to have been abandoned and the patent right concerned is deemed to have been extinguished retroactively from the expiry date of the period for paying the patent fees.

**Article 81*bis* Remaining Payment of Patent Fees**

(1) Where a patentee or a person seeking to register a patent right fails to pay any portion of the patent fees within the period of payment under Articles 79(2) or 81(1), the Commissioner of the Korean Intellectual Property Office shall order payment of the remaining balance.

(2) A person ordered to pay the remaining balance under paragraph (1) has a period of one month after the date on which the order was received to pay the remaining portion of the patent fees.

(3) A person who pays the remaining portion under paragraph (2) shall pay an amount equivalent to twice the remaining balance when the remaining payment falls under either of the following subparagraphs:



- (i) where the remaining portion of the patent fees is paid after the expiry of the payment period under Article 79(2); or
- (ii) where the remaining portion of the patent fees is paid after the expiry of the late payment period under Article 81(1).

**Article 81<sup>ter</sup> Restoration etc. of a Patent Application and Patent Right by Late Payment or Remaining Payment of Patent Fees**

(1) Where a patentee or a person seeking to register a patent right fails to pay the patent fees within the period of late payment under Article 81(1) or fails to pay the remaining portion within the period of remaining payment under Article 81<sup>bis</sup>(2) for unavoidable reasons, the patentee or the person may pay late patent fees or pay the remaining balance within fourteen days of the date on which the reasons for the delay cease to exist, but not later than six months after the expiry date for either the period of late payment or the period of remaining payment, whichever comes later.

(2) Notwithstanding Article 81(3), a person who has paid late or remaining patent fees under paragraph (1) is considered not to have abandoned the patent application, and the concerned patent right is deemed to have existed retroactively on the date on which the period for paying the patent fees expired.

(3) Where the patent right of a patented invention that is being worked is extinguished because of a failure to pay the patent fees within the period of late payment under Article 81(1) or the remaining portion of fees within the period of remaining payment under Article 81<sup>bis</sup>(2), the patentee may apply to restore the extinguished right by paying an amount equivalent to three times the value of the patent fees referred to in Article 79 within three months of the expiry of the period of late payment or the period of remaining payment. In such cases, the patent right is considered to have existed retroactively at the time the period for paying the patent fees expired.

(4) The effects of a patent application or a patent right under paragraph (2) or paragraph (3) do not extend to another person's working of the patented invention in the period from the date on which the period for late payment of the patent fees expires to the date of the payment or remaining payment of the patent fees (referred to as "the period of limited effect").

(5) During the period of limited effect, where a person has been commercially and industrially working or preparing to work an invention in good faith in the Republic of Korea and the invention pertains to a patent application or patent right referred to in paragraph (2) or paragraph (3), the person is entitled to have a nonexclusive license

for the patent that pertains to the invention of the patent application, within the scope of the objective of the invention or the business related to the invention that the person is working or preparing to work.

(6) A person granted a nonexclusive license under paragraph (5) shall pay reasonable remuneration to the patentee or exclusive licensee.

#### **Article 82 Official Fees**

(1) A person initiating a patent-related procedure shall pay the official fees.

(2) Where the number of claims is increased because of amendments to the description after a request for an examination made by a person other than the applicant, the applicant shall pay the fees for the request for an examination corresponding to the increased number of claims.

(3) The official fees under paragraph (1), the method and period for payment and other necessary matters are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 83 Reduction or Exemption of Patent Fees or Official Fees**

(1) Notwithstanding Articles 79 and 82, the Commissioner of the Korean Intellectual Property Office shall grant an exemption from the payment of patent fees or official fees in the following cases:

- (i) official fees or patent fees that correspond to patent applications or patent rights belonging to the State; or
- (ii) fees related to requests for an invalidation trial made by an examiner under Articles 133(1), 134(1) or 137(1).

(2) Notwithstanding Articles 79 and 82, where a patent application related to the invention of an entitled person under Article 5 of the National Basic Livelihood Security Law or a person prescribed by ordinance of the Ministry of Commerce, Industry and Energy has been filed, the Commissioner of the Korean Intellectual Property Office may reduce or exempt from payment the fees prescribed by ordinance of the Ministry of Commerce, Industry and Energy and the patent registration fees for the first three years.

(3) A person taking advantage of the reduction or exemption of patent fees or official fees under paragraph (2) shall submit the documents prescribed by ordinance of the Ministry of Commerce, Industry and Energy to the Commissioner of the Korean Intellectual Property Office.

**Article 84 Refund of Patent Fees etc.**

(1) Patent fees and official fees that have been paid may not be refunded unless requested by a person who has paid the fees in any of the following cases:

- (i) the patent fees or official fees were paid by mistake;
- (ii) a portion corresponding to the patent fees for the years after the year in which a decision to invalidate the patent became final;
- (iii) a portion corresponding to the patent fees for the years after the year in which a decision to invalidate the registration of the patent term extension became final; or
- (iv) the patent application fees and examination request fees for a patent application that was withdrawn or abandoned within one month of the filing of the patent application (including a divisional application, a converted application, or request for a preferential patent examination).

(2) Where patent fees and official fees have been paid by mistake in any of the cases specified in paragraph (1), the Commissioner of the Korean Intellectual Property Office shall issue a notification to the relevant party.

(3) A person may not request a refund under the proviso of paragraph (1) of this Article if more than three years have lapsed since the person received the notification referred to in paragraph (2) of this Article.

**Article 85 Patent Register**

(1) The Commissioner of the Korean Intellectual Property Office shall keep the Patent Register at the Korean Intellectual Property Office and shall register the following matters:

- (i) the establishment, transfer, extinguishment, restoration, restriction on disposal or extension of the term of a patent right;
- (ii) the establishment, maintenance, transfer, modification, extinguishment, or restriction on disposal of an exclusive or nonexclusive license; and
- (iii) the establishment, transfer, modification, extinguishment or restriction on the disposal of a pledge on a patent right or on an exclusive or nonexclusive license.

(2) All or parts of the Patent Register under paragraph (1) may be stored on magnetic tapes and so on.

(3) Necessary information related to the matters, procedures and so on of registration not stipulated in paragraphs (1) or (2) are prescribed by Presidential Decree.

(4) The description and drawing(s) of a patent application and documents prescribed by Presidential Decree are considered to be part of the Patent Register.

**Article 86 Issuance of a Patent Registration Certificate**

- (1) When a patent right has been registered, the Commissioner of the Korean Intellectual Property Office shall issue a patent registration certificate to the patentee.
- (2) Where a patent registration certificate does not coincide with the patent register or other documents, the Commissioner of the Korean Intellectual Property Office shall re-issue the patent registration certificate with amendments, or issue new letters patent upon request or *ex officio*.
- (3) When a decision on a trial for amendment under Article 136(1) has become final, the Commissioner of the Korean Intellectual Property Office shall issue a new patent registration certificate in accordance with the trial decision.

**CHAPTER V  
PATENT RIGHT**

**Article 87 Registration of the Establishment of a Patent Right and the Publication of Registration**

- (1) A patent right enters into effect upon the establishment of the patent registration.
- (2) The Commissioner of the Korean Intellectual Property Office shall register the establishment of a patent right in any of the following cases:
  - (i) when the patent fees have been paid under Article 79(1);
  - (ii) when the patent fees have been paid late under Article 81(1);
  - (iii) when the remaining balance of the patent fees has been paid under Article 81*bis*(2);
  - (iv) when the patent fees have been paid or the remaining balance of the patent fees has been paid under Article 81*ter*(1); or
  - (v) when an exemption has been granted for the payment of patent fees under Article 83(1)(i) and (ii).
- (3) Where a registration has been made under paragraph (2), the Commissioner of the Korean Intellectual Property Office shall publish the grant of the patent with the relevant information in the Patent Gazette.
- (4) The publication of a patent registration for an invention required to be treated confidentially must be reserved until the invention is declassified; upon declassification, the registration must be published immediately.

(5) The Commissioner of the Korean Intellectual Property Office shall provide the application documents and the attached application materials for public inspection for the three-month period after the date on which the registration is published.

(6) Matters to be published in the Patent Gazette concerning the publication of registration under paragraph (3) are prescribed by Presidential Decree.

#### **Article 88 The Term of a Patent Right**

(1) The term of a patent right commences upon registration of the patent right under Article 87(1) and ends twenty years after the filing date of the patent application.

(2) Where a patent is granted to the lawful holder of a right under Articles 34 and 35, the term of the patent right under paragraph (1) is calculated from the day after the date on which the unentitled person files the patent application.

(3) Deleted.

(4) Deleted

#### **Article 89 Extension of the Term of a Patent Right**

Notwithstanding Article 88(1), where authorization or registration under other laws or regulations is required to work a patented invention and an extended period has been taken to complete the activity test, safety tests and so on necessary to obtain the authorization or registration (referred to as "an authorization"), and where the authorization is prescribed by Presidential Decree, the term of the patent right may be extended by a period up to five years during which the patented invention could not have been worked.

#### **Article 90 Application to Register an Extension of the Term of a Patent Right**

(1) A person seeking to register an extension for a patent right under Article 89 (referred to as "an applicant for registration of extension") shall submit an application to register an extension of the patent right term to the Commissioner of the Korean Intellectual Property Office, stating the following:

(i) the name and address of the applicant for registration of extension (and, if a legal entity, the name and address of the business);

(ii) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);

- (iii) the number of the patent for which the extension is sought and the scope of the claim(s) of that patent;
- (iv) the period of extension sought;
- (v) the requirements for authorization under Article 89; and
- (vi) the grounds for extension as prescribed by ordinance of the Ministry of Commerce, Industry and Energy (accompanied by materials substantiating the grounds).

(2) An application to register an extension for the term of a patent right must be filed within three months after the date on which the authorization under Article 89 was obtained; however, the application may not be filed when the unexpired length of the term prescribed in Article 88 is less than six months.

(3) Where a patent is jointly owned, an application to register an extension for the term of the patent right must be made in the name of all the owners.

(4) Where an application to register an extension for the term of a patent right has been filed, the term is deemed to have been extended, unless a decision of refusal to extend the term of a registered patent under Article 91(1) has become final.

(5) Where an application to register an extension for the term of a patent right has been filed, the Commissioner of the Korean Intellectual Property Office shall publish the information prescribed in paragraph (1) in the Patent Gazette.

(6) An applicant may amend the matter of paragraph (1)(iii) to (vi) in an application to register the extension (except the patent number of the patent right to be extended, as referred to in subparagraph (iii)) if the amendment is made before the examiner transmits a certified copy of the decision for registration or refusal of the extension.

#### **Article 91 Decision of Refusal to Extend the Term of a Registered Patent**

(1) An examiner shall refuse to extend the term of a patent right when it falls under any of the following subparagraphs:

- (i) where an authorization under Article 89 is considered unnecessary for working a patented invention;
- (ii) where a patentee or a person who has an exclusive or registered nonexclusive license under the patent right has not obtained authorization under Article 89;
- (iii) where the term for which an extension is sought exceeds the period in which the patented invention could not have been worked;
- (iv) where the applicant for registration of an extension is not the patentee; or
- (v) where the application to register an extension violates Article 90(3);
- (vi) deleted.

(2) The period referred to in paragraph (1)(iii) does not include any period that has elapsed for reasons attributable to the patentee.

#### **Article 92 Decision etc. on Registration for Extending the Term of a Patent Right**

(1) Where an examiner finds no grounds under any subparagraph of Article 91(1) to refuse an application to extend the term of a patent right, the examiner shall grant the extension.

(2) Where a decision to extend has been made under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall register the extension of the term of the patent right in the Patent Register.

(3) Where the registration under paragraph (2) has been made, the information prescribed in the following subparagraphs must be published in the Patent Gazette:

- (i) the name and address of the patentee (if the patentee is a legal entity, the title and address of the business);
- (ii) the patent number;
- (iii) the date of registration of the extension;
- (iv) the period of the extension; and
- (v) the contents of the authorization and so on under Article 89.

#### **Article 93 *Mutatis Mutandis* Application of Provisions**

Articles 57(1), 63, 67 and 148(i) to (v) and (vii) apply *mutatis mutandis* to the examination of an application to register an extension for the term of a patent right.

#### **Article 94 Effects of Patent Right**

A patentee has an exclusive right to work a patented invention commercially and industrially unless the patent right is the subject of an exclusive license, in which case the exclusive licensee has an exclusive right to work the patented invention under Article 100(2).

#### **Article 95 Effects of Patent Right the Term of which has been Extended**

The effects of a patent right whose term has been extended do not extend to any other acts except working the patented invention for products whose authorization was the basis for registering the extension (or where the authorization was obtained for a specific use of the product, for products adapted to the specific use).

### **Article 96 Limitations on a Patent Right**

- (1) The effect of a patent right does not extend to any of the following subparagraphs:
- (i) working a patented invention for research or experimental purposes;
  - (ii) vessels, aircraft or vehicles merely passing through the Republic of Korea, or machinery, instruments, equipment or other accessories used on the vessels, aircraft or vehicles; or
  - (iii) articles existing in the Republic of Korea when the patent application was filed.
- (2) The effects of a patent right for the invention of products used for diagnosis, therapy, alleviation, medical treatment or prevention of human disease (referred to as "medicines") that are manufactured by mixing two or more medicines, or for the invention of processes for manufacturing medicines by mixing two or more medicines, do not extend to acts of dispensing medicines under the Pharmaceutical Affairs Act or to medicines manufactured by such acts.

### **Article 97 Scope of Protection of Patented Invention**

The scope of protection conferred by a patented invention is determined by the subject matter described in the claim(s).

### **Article 98 Relation to Patented Invention etc. of Another Person**

Where working a patented invention would infringe another person's patented invention, registered utility model or registered design or similar design under an application filed before the filing date of the patent application concerned, or where a patent right conflicts with another person's design right or trademark right under an application for design or trademark registration filed before the filing date of the patent application concerned, the patentee, exclusive licensee or nonexclusive licensee may not work the patented invention commercially or industrially without a license from the owner of the earlier patent, utility model right, design right or trademark right.

### **Article 99 Assignment and Joint Ownership of a Patent Right**

- (1) A patent right may be assigned.
- (2) Where a patent right is jointly owned, the owners may not assign or pledge their individual share without the consent of the other owners.
- (3) Where a patent right is jointly owned, and unless otherwise agreed in a contract



of the owners, an owner may individually work the patented invention without the consent of the other owners.

(4) Where a patent right is jointly owned, an owner may not grant an exclusive license or a nonexclusive license of the patent right without the consent of the other owners.

#### **Article 100 Exclusive License**

(1) A patentee may grant an exclusive license of the patent right to others.

(2) An exclusive licensee granted an exclusive license under paragraph (1) has the exclusive right to work the patented invention commercially or industrially to the extent allowed in the license contract.

(3) Except when a license is transferred by inheritance or other general succession, an exclusive licensee may not transfer a license with the underlying business of the licensee without the consent of the patentee.

(4) An exclusive licensee may not establish a pledge or grant a nonexclusive license on an exclusive license without the consent of the patentee.

(5) Article 99(2) to (4) applies *mutatis mutandis* to an exclusive license.

#### **Article 101 Effects of Registration of a Patent Right and an Exclusive License**

(1) Unless the relevant patent right or exclusive license is registered, the following patent-related procedures have no effect:

- (i) the transfer (except through inheritance or other general succession) or extinguishment by abandonment, or restriction on the disposal of a patent right;
- (ii) the grant, transfer (except through inheritance or other general succession), modification, extinguishment (except through confusion) or restriction on the disposal of a patent right or exclusive license; or
- (iii) the establishment, transfer (except through inheritance or other general succession), modification, extinguishment (except through confusion) or restriction on the disposal of a pledge on a patent right or exclusive license.

(2) The Commissioner of the Korean Intellectual Property Office must be notified immediately of the inheritance or other general succession related to a patent right, an exclusive license or a pledge under paragraph (1).

**Article 102 Nonexclusive License**

- (1) A patentee may grant to others a nonexclusive patent license.
- (2) A nonexclusive licensee is entitled to work the patented invention commercially or industrially to the extent prescribed in this Act or allowed by the license contract.
- (3) A nonexclusive license granted under Article 107 may only be transferred with the underlying business.
- (4) A nonexclusive license under Article 138 of this Act, Article 32 of the Utility Model Act or Article 70 of the Industrial Design Act must be transferred with the patent right, utility model right or design right concerned and is extinguished when the concerned patent, utility model or design right concerned is extinguished.
- (5) A nonexclusive license other than those described in paragraphs (3) and (4) may not be transferred without the consent of the patentee (or the patentee and the exclusive licensee for a nonexclusive license on an exclusive license), unless the transfer is made with the underlying business or through inheritance or other general succession.
- (6) A pledge may not be established on a nonexclusive license other than those under paragraphs (3) and (4) without the consent of the patentee (or the patentee and the exclusive licensee for a nonexclusive license on an exclusive license).
- (7) Article 99(2) and (3) applies *mutatis mutandis* to a nonexclusive license.

**Article 103 Nonexclusive License by Prior Use**

When filing a patent application, a person who has made an invention without prior knowledge of the contents of an invention described in an existing patent application, or who has learned how to make the invention from such a person and has been working the invention commercially or industrially in the Republic of Korea in good faith or has been making preparations to work the invention is entitled to have a nonexclusive license on the patent right for the invention under the patent application. The nonexclusive license must be limited to the invention being worked, or for which preparations for working have been made, and to the purpose of such working or preparations.

**Article 104 Nonexclusive License Due to Working before Registration of a Request for an Invalidation Trial**

- (1) Where a person has been commercially or industrially working an invention in the

Republic of Korea, or has been making preparations to work the invention, before the registration of a request for an invalidation trial of the concerned patent or utility model, without knowing that the patented invention is subject to invalidation, the person is entitled, under any of the following circumstances, to have a nonexclusive license on that patent right or a nonexclusive license on the exclusive license to the patent right existing when the patent or utility model registration was invalidated; however, the nonexclusive license must be limited to the invention or device being worked or for which preparations for working are being made, and to the purpose of such working or preparations:

- (i) the original patentee, where one of two or more patents granted for the same invention has been invalidated;
- (ii) the original owner of a utility model right, where a patented invention and a device registered as a utility model are the same and the utility model registration has been invalidated;
- (iii) the original patentee, where the patent has been invalidated and a patent for the same invention has been granted to an entitled person;
- (iv) the original owner of a utility model right, where the utility model registration has been invalidated and a patent for the same invention as the device has been granted to an entitled person; or
- (v) in the cases referred to in subparagraphs (i) to (iv), a person who, at the time of registering a request for an invalidation trial of an invalidated patent right or utility model right, has been granted an exclusive license, a nonexclusive license or a non-exclusive license on the exclusive license and the license has been registered; however, a person falling under Article 118(2) is not required to register the license.

(2) A person granted a nonexclusive license under paragraph (1) shall pay reasonable remuneration to the patentee or exclusive licensee.

#### **Article 105 Nonexclusive License after a Design Right Expires**

(1) Where a design right under an application that resulted in the granting of a registration filed on or before the filing date of a patent application conflicts with the patent right and the term of the design right has expired, the owner of the design right is entitled, to the extent of the design right, to have a nonexclusive license on the patent right or the exclusive license that existed when the design right expired.

(2) Where a design right under an application that resulted in the grant of a registration filed on or before the filing date of a patent application conflicts with the patent right and the term of the design right has expired, a person who at the expiry of the term has an exclusive license on the expired design right or nonexclusive license to the design right or the exclusive license, under Article 118(1) of this Act as applied under Article

61 of the Industrial Design Act, is entitled to have a nonexclusive license on the patent right concerned or on the exclusive license existing when the design right expired, to the extent of the expired right.

(3) A person granted a nonexclusive license under paragraph (2) shall pay reasonable remuneration to the patentee or exclusive licensee.

#### **Article 106 Expropriation of Patent Right etc.**

(1) Where a patented invention falls under either of the following subparagraphs in time of war, uprising, or other similar emergency, the government may expropriate the patent right (in the case of subparagraph (i) only), work the patented invention or require a person other than the government to work the patented invention:

(i) where the working of the patented invention is necessary for national defense; or  
(ii) where the noncommercial working of the patented invention is necessary for the public interest.

(2) Where a patent right is expropriated, the rights to the invention other than the patent right are extinguished.

(3) If the Government expropriates a patent right, or the Government or a person other than the Government works the patented invention under paragraph (1), the Government or that person shall pay reasonable remuneration to the patentee, exclusive licensee or nonexclusive licensee.

(4) Matters necessary for expropriating and working a patent right as well as remuneration for these acts are prescribed by Presidential Decree.

#### **Article 107 Adjudication for the Grant of a Nonexclusive License**

(1) Where a patented invention falls under any of the following subparagraphs, a person who intends to work the patented invention may request the Commissioner of the Korean Intellectual Property Office to make an adjudication (referred to as "an adjudication") for the establishment of a nonexclusive license, provided no agreement is reached despite having a consultation (referred to as "a consultation" in this Article) under reasonable conditions with the patentee or exclusive licensee on the grant of a nonexclusive license for the patented invention or a consultation is impossible to arrange; however, the person may request an adjudication even in the absence of a consultation if the patented invention is to be worked noncommercially for the public interest or in any case that falls under subparagraph (iv):

- (i) where the patented invention has not been worked for more than three consecutive years in the Republic of Korea, except for natural disasters, unavoidable circumstances or other justifiable reasons prescribed by Presidential Decree;
- (ii) where the patented invention has not continuously been worked commercially or industrially in the Republic of Korea on a substantial scale during a period of three years or more without justification, or where the domestic demand for the patented invention has not been satisfied to an appropriate extent and under reasonable conditions;
- (iii) where working the patented invention noncommercially is necessary for the interests of the public; or
- (iv) where working the patented invention is necessary to remedy a practice determined to be unfair after the judicial or administrative process
- (v) where working the patented invention is necessary for the export of medicine to a country (referred to as "an importing country") that intends to import the medicine (including effective ingredients that are necessary for the production of the medicine and diagnostic kits necessary for the use of the medicine) in order to treat diseases that threaten the health of the majority of its citizens.

(2) Paragraph (1)(i) and (ii) of this Article does not apply unless a period of four years has elapsed after the filing date of the application for the patented invention.

(3) In adjudicating the authorization of a nonexclusive license, the Commissioner of the Korean Intellectual Property Office shall consider the necessity of each request.

(4) When the Commissioner of the Korean Intellectual Property Office makes an adjudication under subparagraphs (i) to (iii) or (v) of paragraph (1), the following conditions apply to the person for whom the adjudication was made:

- (i) where the adjudication is made under subparagraphs (i) to (iii) of paragraph (1), the nonexclusive license must be implemented for the primary purpose of meeting domestic demand; and
- (ii) where the adjudication is made under subparagraph (v) of paragraph (1), all the medicine produced under the terms of the adjudication must be exported to importing countries.

(5) The Commissioner of the Korean Intellectual Property Office shall ensure that reasonable consideration is given to every adjudication. When making an adjudication under subparagraph (iv) or (v) of paragraph (1), the Commissioner of the Korean Intellectual Property Office may consider the factors in each of the following subparagraphs:

- (i) where an adjudication is made under subparagraph (iv) of paragraph (1), the need to rectify unfair transactions; and
- (ii) where an adjudication is made under subparagraph (v) of paragraph (1), the economic value generated in importing countries by the working of the patented invention.

(6) For semiconductor technology, a request for adjudication may be made only in the cases set forth in subparagraph (1)(iii) (where the noncommercial working of the patented invention is permitted in a limited way for the interests of the public) and (1)(iv).

(7) An importing country is limited to a country which is either a World Trade Organization (WTO) member country that has notified the WTO of the following particulars or a non-WTO member country listed in a Presidential decree, and which has notified the Republic of Korea of the following particulars:

- (i) the name of the medicine and the quantity required by an importing country;
- (ii) where the importing country is not one of the least developed countries listed in a resolution of the General Assembly of the United Nations, confirmation by the importing country that it has insufficient or no manufacturing capability to produce the medicine concerned; and
- (iii) where the medicine concerned is patented in the importing country, confirmation by the importing country that it has granted or intends to grant a compulsory license.

(8) The term medicine in paragraph (1)(v) of this Article refers to any of the definitions in the following subparagraphs:

- (i) patented medicine;
- (ii) medicine manufactured by means of a patented process;
- (iii) patented effective ingredients necessary for the production of the medicine; or
- (iv) patented diagnostic kits necessary for the production of the medicine.

(9) The documents for submission and other necessary matters concerning a request for adjudication are prescribed by Presidential Decree.

#### **Article 108 Submission of Response**

Where a request for an adjudication has been made, the Commissioner of the Korean Intellectual Property Office shall transmit a copy of the written request to the patentee or exclusive licensee mentioned in the request and to any other persons with a registered right related to the patent, and shall give them an opportunity to submit a response within a designated period.

#### **Article 109 Solicitation of Opinion from the Intellectual Property Rights Dispute Committee and the Heads of Relevant Authorities**

Before adjudicating, the Commissioner of the Korean Intellectual Property Office may solicit an opinion from the Intellectual Property Rights Dispute Committee established under Article 41 of the Invention Promotion Act and the heads of relevant authorities and seek assistance from relevant administrative authorities or interested parties.

### **Article 110 Formality of Adjudication**

- (1) An adjudication must be in writing and must state the reasons for the adjudication.
- (2) The following matters must be specified in an adjudication under paragraph (1):
  - (i) the scope and duration of the nonexclusive license; and
  - (ii) the remuneration for the license and the method and time of payment
  - (iii) where the adjudication is made under Article 107(1)(v), the address of a Web site that publishes information on the following: the patented invention the medicine supplied by the patentee, exclusive licensee, or nonexclusive licensee (unless the license is granted by an adjudication) any externally discernable packaging and markings and any other matters decided in the adjudication; and
  - (iv) where a person who is the subject of an adjudication works the patented invention, any other matters of compliance with laws or treaties.
- (3) Except in justifiable circumstances, the Commissioner of the Korean Intellectual Property Office shall decide on an adjudication within six months of the request date for an adjudication.
- (4) Except in justifiable circumstances, where a request for adjudication under Article 107(1)(v) falls under paragraphs (7) and (8) of Article 107 and all the documents stipulated in Article 107(9) have been submitted, the Commissioner of the Korean Intellectual Property Office shall make an adjudication for the establishment of a nonexclusive license.

### **Article 111 Transmittal of Certified Copies of Adjudication**

- (1) Where an adjudication is made, the Commissioner of the Korean Intellectual Property Office shall transmit a certified copy of the adjudication to the parties and to any other persons with a registered right related to the patent.
- (2) Where a certified copy of an adjudication has been transmitted to the parties under paragraph (1), a consultation on the terms as specified in the adjudication is deemed to have been held by the parties.

### **Article 111bis Amendment of Adjudication Documents**

- (1) Where any change is required in the written adjudication regarding the matters referred to in Article 110(2)(iii), the person who requested the adjudication may submit to the Commissioner of the Korean Intellectual Property Office a request for the change and any evidentiary documents that confirm the reasons for the change.

(2) Where the Commissioner of the Korean Intellectual Property Office acknowledges the reasonableness of a request made under paragraph (1) for a change in a written adjudication, the Commissioner may change the matter specified in the written adjudication. In such cases, the Commissioner shall hear the opinions of the interested parties.

(3) Article 111 of this Act applies *mutatis mutandis* to paragraph (2) of this Article.

#### **Article 112 Deposit of Remuneration**

Under any of the following circumstances, a party obligated to pay remuneration under Article 110(2)(ii) shall deposit the remuneration:

- (i) where the party entitled to receive the remuneration refuses the remuneration or is unable to receive it;
- (ii) where an action under Article 190(1) has been brought concerning the remuneration; or
- (iii) where the patent right or exclusive license is the subject of a pledge, unless the pledgee has consented.

#### **Article 113 Lapse of Adjudication**

Where a person granted an adjudication on an authorization fails to pay or deposit the remuneration (or the first installment of the payment, if the payment is to be made periodically or by installments) under Article 110(2)(ii) by the time the payment is due, the adjudication loses its effect.

#### **Article 114 Cancellation of an Adjudication**

(1) Where a person is granted an adjudication on an authorization under either of the following circumstances, the Commissioner of the Korean Intellectual Property Office may cancel the adjudication *ex officio* or upon the request of any interested party. However, for subparagraph (ii), such action must protect the lawful interests of the non-exclusive licensee:

- (i) where working the patented invention is not within the purpose of the adjudication; or
- (ii) where the grounds for adjudicating the authorization of a nonexclusive license disappear and are considered unlikely to reoccur.
- (iii) where the matters stated in the adjudication document under Article 110(2)(iii) or (iv) are violated without justifiable reasons.

(2) Articles 108, 109, 110(1) and 111(1) apply *mutatis mutandis* to paragraph (1) of this Article.



- (3) A nonexclusive license is extinguished upon cancellation of the ruling under paragraph (1) of this Article.

**Article 115 Restriction on Reasons for Objections to an Adjudication**

Where a request for an administrative trial has been filed under the Administrative Trial Act or a revocation action has been brought under the Administration Litigation Act for an adjudication, the remuneration determined in the adjudication may not be a basis for objection.

**Article 116 Cancellation of a Patent Right**

(1) Where a patented invention has not been continuously worked in the Republic of Korea for a period of two years or more from the date of an adjudication under Article 107(1)(i), the Commissioner of the Korean Intellectual Property Office may cancel the patent right, *ex officio*, or upon the request of any interested party.

(2) Articles 108, 109, 110(1) and 111(1) apply *mutatis mutandis* to paragraph (1) of this Article.

(3) When a patent right under paragraph (1) of this Article is cancelled, the patent right is extinguished.

**Article 117 Deleted**

**Article 118 Effects of Registration of a Nonexclusive License**

(1) When a nonexclusive license has been registered, it is also effective against any person who subsequently acquires the patent right or an exclusive license.

(2) A nonexclusive license granted under Articles 81~~ter~~(5), 103 to 105, 122, 182 and 183 of this Act and Article 10(1) of the Invention Promotion Act has the same effect as prescribed under paragraph (1) of this Article even if it has not been registered.

(3) The transfer, modification, extinguishment or restriction on disposal of a nonexclusive license or the establishment, transfer, modification, extinguishment or restriction on disposal of a pledge related to a nonexclusive license is not effective against a third party unless it is registered.

**Article 119 Restriction on Abandonment of a Patent Right etc.**

(1) A patentee may not abandon a patent right without the consent of the exclusive li-

censee, pledgee or nonexclusive licensee under Articles 100(4) or 102(1) of this Act and Article 8(1) of the Invention Promotion Act.

(2) An exclusive licensee may not abandon an exclusive license without the consent of the pledgee or nonexclusive licensee under Article 100(4).

(3) A nonexclusive licensee may not abandon a nonexclusive license without the consent of the pledgee.

#### **Article 120 Effects of Abandonment**

When a patent right or an exclusive or nonexclusive license is abandoned, the patent right or a license to the patent right is extinguished.

#### **Article 121 Pledge**

Where a patent right or an exclusive or nonexclusive license is the subject of a pledge, the pledgee may not work the patented invention except as otherwise provided by contract.

#### **Article 122 Nonexclusive License Incidental to Transfer of Patent Right by Exercise of a Pledge Right**

If a patentee works a patented invention before the establishment of a pledge on the patent right, the patentee is entitled to have a nonexclusive license on the patented invention even if the patent right is transferred by an auction; however, the patentee shall pay reasonable remuneration to the person to whom the patent right is transferred by an auction and so on.

#### **Article 123 Subrogation of Pledge Right**

A pledge may be exercised against the remuneration allowed under this Act or against remuneration or goods to be received for working the patented invention; however, an attachment order must be obtained before the payment or delivery of the remuneration or goods.

#### **Article 124 Extinguishment of a Patent Right in the Absence of a Successor**

A patent right is extinguished if no successor exists at the time of succession.

#### **Article 125 Report on Working a Patent**

The Commissioner of the Korean Intellectual Property Office may require a patentee,

exclusive licensee or nonexclusive licensee to report whether the patented invention has been worked, the extent of such working and so on.

**Article 125bis The Title of Execution on Amount of Compensation and Remuneration**

A final ruling by the Commissioner of the Korean Intellectual Property Office on the amount of the compensation or remuneration to be paid under this Act has the same effect as an enforceable title of execution; an official of the Korean Intellectual Property Office shall give the legal writ, which has the force of execution.

**CHAPTER VI  
PROTECTION OF PATENTEE**

**Article 126 Injunction etc. against an Infringement**

(1) A patentee or exclusive licensee may demand a person who is infringing or is likely to infringe on a patent right of the patentee or exclusive licensee to discontinue or refrain from the infringement.

(2) A patentee or an exclusive licensee acting under paragraph (1) may demand the destruction of articles by which an act of infringement was committed (including products obtained by the act of infringement in cases of a process invention for manufacturing the products), the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

**Article 127 Acts of Infringement**

Either of the following acts is considered to infringe a patent right or an exclusive license:

- (i) an act of making, assigning, leasing, importing or offering for assignment or lease articles used exclusively for producing an invented product; or
- (ii) an act of making, assigning, leasing, importing or offering for assignment or lease articles used exclusively for working an invented process.

**Article 128 Presumption etc. of the Amount of Damages**

(1) Where a patentee or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a patent right or exclusive license by transferring infringing articles, the amount of damages is calculated as the number of transferred articles multiplied by the profit per unit of the articles that the patentee

or exclusive licensee might have sold in the absence of the infringement. The compensation may not exceed the amount calculated as follows: the estimated profit per unit multiplied by the number of products that the patentee or exclusive licensee could have produced subtracted by the number of articles sold. However, where the patentee or exclusive licensee was unable to sell the product for circumstances other than infringement, a sum based on the number of articles subject to these circumstances must be deducted.

(2) Where a patentee or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a patent right or exclusive license, the profits gained by the infringer as a result of the infringement are presumed to be the amount of damage suffered by the patentee or exclusive licensee.

(3) Where a patentee or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a patent right or exclusive license, the pecuniary amount that the patentee would normally be entitled to receive for working the patented invention may be claimed as the amount of damage suffered by the patentee.

(4) Notwithstanding paragraph (3), where the amount of actual damages exceeds the amount referred to in paragraph (3), the amount in excess may also be claimed as compensation for damage. When awarding damages, the court may consider whether the person who infringed the patent right or the exclusive license acted with willfulness or gross negligence.

(5) In litigation related to a patent right or exclusive license, where the court recognizes that the nature of the case makes it difficult to provide evidence proving the amount of damage that has occurred, notwithstanding paragraphs (1) to (4), the court may determine a reasonable amount based on an examination of the evidence and on a review of all the arguments.

#### **Article 129 Presumption of the Patented Process to Manufacture**

Where a product is identical to another product manufactured by a patented process, the former is presumed to have been manufactured by the patented process of the latter unless the invention falls under either of the following subparagraphs:

- (i) an invention publicly known or worked in the Republic of Korea before the filing of the patent application; or
- (ii) an invention described in a publication distributed in the Republic of Korea or in a foreign country or an invention made available to the public through electronic telecommunication lines prescribed by Presidential Decree before the filing of the patent application.

**Article 130 Presumption of Negligence**

A person who has infringed a patent right or exclusive license of another person is presumed to have been negligent regarding the act of infringement.

**Article 131 Recovery of the Reputation of a Patentee etc.**

Upon the request of a patentee or exclusive licensee, the court may, in lieu of damages or in addition to the damages, order the person who has injured the business reputation of the patentee or exclusive licensee by intentionally or negligently infringing the patent right or exclusive license to take necessary measures to restore the business reputation of the patentee or exclusive licensee.

**Article 132 Submission of Documents**

In litigation related to the infringement of a patent right or exclusive license, the court may, upon the request of a party, order the other party to submit documents necessary for assessing the damages caused by the infringement, unless the person possessing the documents has a justifiable reason for refusing to submit them.

**CHAPTER VII  
TRIAL**

**Article 132bis Intellectual Property Tribunal**

(1) The Intellectual Property Tribunal is established under the jurisdiction of the Commissioner of the Korean Intellectual Property Office to be responsible for trials and retrials for patents, utility models, designs and trademarks as well as the investigation and research for the trials and retrials.

(2) The Intellectual Property Tribunal is composed of the President and trial examiners.

(3) Matters necessary for the organization, personnel and operation of the Intellectual Property Tribunal are determined by Presidential Decree.

**Article 132ter Trial against a Decision to Refuse a Patent etc.**

Where a person has received a decision to refuse a patent or a decision to refuse an

application to extend the term of a patent right under Article 91, the person may request a trial within the thirty-day period immediately after the date on which the certified copy of the decision was received.

### **Article 132<sup>quater</sup> Deleted**

### **Article 133 Invalidation Trial of a Patent**

(1) Where a patent falls under any of the following subparagraphs, an interested party or an examiner may request a trial to invalidate the patent. If the patent contains two or more claims, a request for an invalidation trial may be made for each claim. However, any person may request an invalidation trial on the grounds that the patent falls under any of the following subparagraphs (except subparagraph (ii)), provided the request is made after the registration date of the patent right and not more than three months after the publication date of the patent right registration:

- (i) where a patent has been granted contrary to Articles 25, 29, 32, 36(1) to (3), 42(3), (4);
- (ii) where a patent has been granted to a person who is not entitled to the patent under the main part of Article 33(1) or a patent is in violation of Article 44;
- (iii) where a patent cannot be granted under the proviso of Article 33(1);
- (iv) where, after the grant of a patent, the patentee is no longer capable of enjoying the patent right under Article 25, or the patent no longer complies with a treaty;
- (v) where a patent cannot be granted in violation of a treaty;
- (vi) where an application has been amended beyond the scope of Article 47(2);
- (vii) where an application has been divided beyond the scope of Article 52(1); or
- (viii) where an application has been converted beyond the scope of Article 53(1).

(2) A trial under paragraph (1) of this Article may be requested even after the extinguishment of a patent right.

(3) Where a trial decision invalidating a patent has become final, the patent right is deemed never to have existed; however, where a patent falls under paragraph (1)(iv) of this Article and a trial decision invalidating the patent has become final, the patent right is deemed not to have existed when the patent first became subject to paragraph (1)(iv) of this Article.

(4) Where a trial under paragraph (1) of this Article has been requested, the presiding trial examiner shall notify the exclusive licensee of the patent right and any other persons with registered rights related to the patent of the contents of the request.

**Article 133bis Correction of a Patent during an Patent Invalidation Trial**

(1) Under Article 133(1), a defendant may request a correction to the description or drawing(s) of a patented invention during the course of an validation trial for reasons provided under Article 47(3) within the period designated under Article 147(1) or the latter part of Article 159(1). Where a presiding trial examiner acknowledges the need to approve a request for the correction of details in a written adjudication even after the elapse of the period designated in Article 147(1) on the grounds of the evidentiary documents submitted by the requester, the presiding trial examiner may approve the request for correction within a designated period.

(2) Where paragraph (1) applies to a request for correction, any earlier request for correction submitted in the course of a related validation trial is deemed to have been withdrawn.

(3) When a correction has been requested under paragraph (1), the presiding trial examiner shall transmit a copy of the written request to the defendant in accordance with Article 133(1).

(4) Articles 136(2) to (5), (7) to (11), 139(3) and 140(1), (2), (5) apply *mutatis mutandis* to a request for a correction under paragraph (1). In their application, the provision "before issuance of a notification of closure of the trial examination under Article 162(3) (where the trial examination is reopened under Article 162(4), before a subsequent notification of the closure of the trial examination is issued under Article 162(3)" in Article 136(9) reads "within the designated term where it would be noticed under Article 136(5)"

(5) Where paragraph (4) applies, Article 136(4) does not apply *mutatis mutandis* to the correction of a claim for which a patent invalidation trial has been requested under Article 133(1).

**Article 134 Invalidation Trial of Registration for Extension of the Term of a Patent Right**

(1) In the following cases, any interested party or examiner may request a trial to invalidate the registration of an extension of the term of a patent right:

- (i) where the extension was registered for an application that did not require any authorization and so on under Article 89 to work the patented invention;
- (ii) where the authorization under Article 89 was not obtained by the patentee, exclusive licensee or registered nonexclusive licensee;
- (iii) where the term extended by the registration of an extension exceeds the period during which the patented invention could not be worked;

- (iv) where the registration of an extension has been effected on an application made by a person other than the patentee;
- (v) where the registration of an extension has been effected on an application that violates Article 90(3); or
- (vi) deleted.

(2) Article 133(2) and (4) applies *mutatis mutandis* to a request for a trial under paragraph (1) of this Article.

(3) Where a trial decision invalidating the registration of extension has become final, the registration of extension of the term is deemed to have never existed. However, where the registration of extension falls under subparagraph (1)(iii), an extension of the term exceeding the period during which the patented invention could not be worked is deemed to be not effective.

#### **Article 135 Trial to Confirm the Scope of a Patent Right**

(1) A patentee, exclusive licensee or an interested person may request a trial to confirm the scope of a patent right.

(2) When requesting a trial under paragraph (1) to confirm the scope of a patent right, if the patent right contains two or more claims, the patentee may request a trial for each claim.

#### **Article 136 Trial for a Correction**

(1) A patentee may request a trial to correct the description or drawing(s) for any of reasons provided under Article 47(3), unless an invalidation trial against the patent is pending before the Intellectual Property Tribunal.

(2) A correction to the description or drawing(s) under paragraph (1) must be limited in scope to the subject matter disclosed in the description or drawing(s) of the patented invention. However, where a clerical error is corrected under Article 47(3)(ii), the correction must be limited to the scope of the subject matter of the description or drawing(s) originally attached to the application.

(3) A correction to the description or drawing(s) under paragraph (1) may not substantially extend or modify the scope of a patent right.

(4) Where Article 47(3)(i) and (ii) applies under paragraph (1), the matters described



in the claim after a correction are deemed to have been patentable when the patent application was filed.

(5) Where a request for a trial for a correction under paragraph (1) does not comply with any subparagraph of Article 47(3), extends beyond the scope of paragraph (2) or violates paragraphs (3) or (4), the trial examiner shall notify the petitioner of the reasons for refusing the request and give the petitioner an opportunity to submit a response within a designated period.

(6) A trial for a correction under paragraph (1) may be requested even after a patent right has been extinguished, unless the patent has been invalidated by a trial decision.

(7) A patentee may not request a trial for a correction under paragraph (1) without the consent of an exclusive licensee, a pledgee or a nonexclusive licensee under Articles 100(4) or 102(1) of this Act and Article 10(1) of the Invention Promotion Act.

(8) Where a trial decision allowing the description or drawing(s) of a patented invention to be corrected becomes final, the patent application, the laying open of the decision and the registration of the patent right are deemed to have been made on the basis of the corrected description or drawing(s).

(9) A petitioner may amend the corrected description or drawing attached to the written request prescribed in Article 140(5) only before issuance of a notification of closure of the trial examination under Article 162(3) (where the trial examination is reopened under Article 162(4) before a subsequent notification of the closure of the trial examination is issued under Article 162(3)).

(10) Where a decision has been made to allow a correction of the description or drawing(s) of a patented invention, the President of the Intellectual Property Tribunal shall notify the Commissioner of Korean Intellectual Property Office of the corrected subject matter.

(11) Where a notification is issued under paragraph (10), the Commissioner of Korean Intellectual Property Office shall publish it in the Patent Gazette.

#### **Article 137 Trial for Invalidation of Correction**

(1) An interested party or an examiner may request a trial for an invalidation of a correction, where the correction of the description or drawing(s) of a patented invention under Articles 133*bis*(1) or 136(1) violates either of the following:

- (i) any subparagraph of Article 47(3); or
- (ii) Article 136(2) to (4) (including an application under Articles 133*bis*(4)).

(2) Article 133(2) and (4) applies *mutatis mutandis* to a request for a trial under paragraph (1) of this Article.

(3) A defendant in an invalidation trial under paragraph (1) may request a correction to the description or drawing(s) of a patented invention under any subparagraph of Article 47(3) within the period designated under Article 147(1) or the latter part of Article 159(1).

(4) Article 133*bis*(3) and (4) applies *mutatis mutandis* to a request for a correction under paragraph (3). In such cases, "Article 133(1)" in Article 133*bis*(3) reads "Article 137(1)".

(5) Where a trial decision to correct the description or drawing(s) is to be invalidated under paragraph (1) has become final, the correction is deemed never to have been made.

### **Article 138 Trial for Granting a Nonexclusive License**

(1) If a patentee, exclusive licensee or nonexclusive licensee seeks permission to exercise the right under Article 98, and if the other party concerned refuses permission without justifiable reasons or permission is impossible to obtain, the patentee, exclusive licensee or nonexclusive licensee may request a trial for the grant of a nonexclusive license with the scope necessary to work the patented invention.

(2) Where the request under paragraph (1) has been made, a nonexclusive license may be granted only where the patented invention of the later application constitutes an important technical advance with substantial economical value in comparison with the other party's patented invention or registered utility model for which an application was filed before the filing date of the later application.

(3) If a person granted a nonexclusive license under paragraph (1) needs to work the patented invention of the person granted the nonexclusive license, and if the latter refuses to give permission or if obtaining permission is impossible, the former may request a trial for the grant of a nonexclusive license with the scope necessary to work the patented invention.

(4) A nonexclusive licensee who was granted a nonexclusive license under paragraphs (1) or (3) of this Article shall remunerate the patentee, the owner of the utility model right, the owner of the design right or the exclusive licensee, unless payment is not possible for unavoidable reasons, in which case the remuneration must be deposited.

(5) A nonexclusive licensee under paragraph (4) may not work a patented invention,

registered utility model, registered design or similar design without paying remuneration or depositing the payment.

**Article 139 Request for a Joint Trial etc.**

(1) Where two or more persons request an invalidation trial under Articles 133(1), 134(1) or 137(1) or a trial to confirm the scope of a patent right under Article 135(1), the request may be made jointly.

(2) Where a trial is requested against any of the joint owners of a patent right, all the joint owners are defendants.

(3) Where the joint owners of a patent right or of a right to obtain a patent request a trial concerning the right under joint ownership, the request must be made jointly by all the owners.

(4) Where grounds exist for the suspension of trial proceedings that apply to one of the requesters under paragraphs (1) or (3) or one of the defendants under paragraph (2), the suspension is effective against all of them.

**Article 140 Formal Requirements of a Request for a Trial**

(1) A person requesting a trial shall submit a written request to the President of the Intellectual Property Tribunal, stating the following:

- (i) the names and addresses of the parties (and, if a legal entity, the name and address of the business);
- (*ibis*) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (ii) identification of the trial case; and
- (iii) the purpose and grounds of the request.

(2) The intent or purpose of a request for a trial submitted under paragraph (1) may not be amended; however, this provision does not apply in any of the following circumstances;

- (i) where the grounds for requesting a trial under paragraph (1)(iii) have changed
- (ii) where, in the case of a trial confirming the scope of rights as requested by a patentee or an exclusive licensee, the requester amends the description and drawing(s) of the invention specified in the written request for a trial (the invention of the defendant as contended by the requester) in order to make the invention the same as the invention

being worked by the defendant if the defendant argues, on the basis of a comparison, that the requester's invention differs from the invention being worked by the defendant.

(3) When a trial is requested to confirm the scope of a patent right under Article 135(1), the explanation and the necessary drawing(s) that can be compared with the patented invention must be attached to the written request.

(4) In addition to stating the particulars referred to in paragraph (1), a written request for a trial under Article 138(1) must state the following:

- (i) the number and title of the patent required to be worked;
- (ii) the number, title and date of the other party's patent, registered utility model or registered design to be worked; and
- (iii) the scope, duration and remuneration for the nonexclusive license on a patented invention, a registered utility model or a design.

(5) When a trial for amendment under Article 136(1) is requested, the amended description or drawing(s) must be attached to the written request for a trial.

**Article 140bis Formal Requirements of a Request for a Trial on a Decision to Refuse or Revoke a Patent etc.**

(1) Notwithstanding Article 140(1), a person who requests a trial against a decision to refuse a patent under Article 132<sup>ter</sup> shall submit a written request to the President of the Intellectual Property Tribunal and specify the following:

- (i) the name and address of the petitioner (if the petitioner is a legal entity, the name and address of the business);
- (*ibis*) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (ii) the filing date and file number of the application (and, for dissatisfaction with a decision to revoke a patent, the registration date and number of the patent);
- (iii) the title of the invention;
- (iv) the date of the decision;
- (v) identification of the trial case; and
- (vi) the purpose and grounds of the request.

However, under Article 173, it is possible not to specify the grounds of the request under subparagraph (vi).

(2) Deleted.

(3) If notification of a request for a trial has been given under Article 175(2) for a request that does not specify the grounds of the request under paragraph (1)(vi) of this Article in accordance with the proviso of paragraph (1) of this Article, the President of the Intellectual Property Tribunal shall designate a period in which the grounds of the request may be amended.

#### **Article 141 Rejection of a Request for a Trial**

(1) When either of the following subparagraphs applies, a presiding trial examiner shall instruct the applicant to make a written amendment within a designated period:

- (i) where a request for a trial does not comply with Articles 140(1) and (3) to (5) or 140*bis*(1);
- (ii) where a trial-related procedure falls under any of the following cases:
  - (a) where the procedure does not comply with Articles 3(1) or 6;
  - (b) where the fees required under Article 82 have not been paid; or
  - (c) where the procedure does not comply with the formalities prescribed in this Act or by Presidential Decree.

(2) Where a person instructed to make a written amendment under paragraph (1) fails to do so within the designated period, the presiding trial examiner shall reject the request for a trial by decision.

(3) A decision to reject a request for a trial under paragraph (2) must be in writing and must state the reasons for the decision.

(4) Deleted.

(5) Deleted.

(6) Deleted.

#### **Article 142 Rejection of a Request for a Trial Containing Incurable Defects**

Where a request for a trial contains unlawful defects that cannot be corrected by amendment, the request may be rejected by a ruling without giving the defendant an opportunity to submit a written reply.

#### **Article 143 Trial Examiners**

(1) When a trial is requested, the President of the Intellectual Property Tribunal shall direct the trial examiners to hear the case.

- (2) The qualifications of trial examiners are prescribed by Presidential Decree.
- (3) A trial examiners shall conduct official trial duties for a trial in an independent manner.

#### **Article 144 Designation of Trial Examiners**

- (1) For each trial, the President of the Intellectual Property Tribunal shall designate trial examiners to constitute a collegial body under Article 146.
- (2) Where a trial examiner designated under paragraph (1) is ineligible to participate in a trial, the President of the Intellectual Property Tribunal may appoint another trial examiner to replace the designated trial examiner.

#### **Article 145 Presiding Trial Examiner**

- (1) The President of the Intellectual Property Tribunal shall select one of the trial examiners designated under Article 144(1) as the presiding trial examiner.
- (2) A presiding trial examiner shall preside over all matters related to the trial.

#### **Article 146 Collegial Body for a Trial**

- (1) A trial must be conducted by a collegial body of three or five trial examiners.
- (2) The collegial body referred to in paragraph (1) shall make its decisions by a majority vote.
- (3) The consultations of trial examiners are not open to the public.

#### **Article 147 Submission of a Response etc.**

- (1) When a trial has been requested, the presiding trial examiner shall transmit a copy of the written request to the defendant and shall give the defendant an opportunity to submit a response within a designated period.
- (2) Upon receipt of the response under paragraph (1), the presiding trial examiner shall transmit a copy of the response to the petitioner.
- (3) The presiding trial examiner may directly examine the parties in relation to the trial.

### **Article 148 Exclusion of a Trial Examiner**

A trial examiner is excluded from a trial in any of the following cases:

- (i) the trial examiner or the present or former spouse of the trial examiner is a party or intervener;
- (ii) the trial examiner is or was a blood relative or a member of the household of a party or intervener;
- (iii) the trial examiner is or was a legal representative of a party or intervener;
- (iv) the trial examiner has become a witness or expert witness or was an expert witness;
- (v) the trial examiner is or was an agent of a party or intervener;
- (vi) the trial examiner participated as an examiner or trial examiner in a decision to grant a patent or a trial decision related to the case; or
- (vii) the trial examiner has a direct interest.

### **Article 149 Request for Exclusion**

Where grounds exist for exclusion under Article 148, a party or intervener may request that a trial examiner be excluded.

### **Article 150 Recusal of a Trial Examiner**

(1) In circumstances where the participation of a trial examiner would prejudice the fairness of a trial, a party or intervener may present a motion to recuse the trial examiner.

(2) After a party or intervener has made a written or oral statement with regard to a case before a trial examiner, the party or intervener may not present a motion to recuse the trial examiner, except when the party or intervener did not know grounds for recusal existed or the grounds for recusal arose later.

### **Article 151 Indication of Grounds for Exclusion or Recusal**

(1) A person who presents a motion for exclusion or recusal under Articles 149 or 150 shall submit a document to the President of the Intellectual Property Tribunal stating the grounds for the motion. However, in an oral trial examination, an oral challenge may be made.

(2) The underlying causes for exclusion or recusal must be substantiated within three days of the date on which the motion was presented.

### **Article 152 Decision on a Request to Exclude or Recuse**

(1) A trial shall decide on a request for exclusion or recusal.

(2) A trial examiner subject to a motion for exclusion or recusal may not participate in the trial of the request but may, however, give an opinion.

(3) A decision made under paragraph (1) must be in writing and must state the reasons for the decision.

(4) An appeal may not be made against a decision made under paragraph (1) of this Article.

### **Article 153 Suspension of Trials**

When a motion for exclusion or recusal has been presented, trial proceedings must be suspended until a decision has been made, except when the motion requires urgent attention.

### **Article 153bis Trial Examiners Recusing Themselves**

Where Articles 148 or 150 apply to trial examiners, the trial examiners may recuse themselves from trial proceedings related to the case with the consent of the President of the Intellectual Property Tribunal.

### **Article 154 Trial Proceedings etc.**

(1) Trial proceedings are conducted by oral hearing or documentary examination. However, when a concerned party requests an oral hearing, the trial proceedings must be conducted by oral hearing unless a decision can obviously be made on the basis of documentary examination alone.

(2) deleted.

(3) Except when public order or morality is likely to be injured, oral hearings are conducted in public.

(4) Where trial proceedings are conducted by oral hearings in accordance with paragraph (1), the presiding trial examiner shall designate the date and place of the hearings and transmit a document containing such information to the parties and interveners of the case unless the parties or interveners have already been notified.

(5) Where trial proceedings are conducted by oral hearings under paragraph (1), an official designated by the President of the Intellectual Property Tribunal shall, under the direction



of the presiding trial examiner, prepare a protocol setting forth the essence of the proceedings and other necessary matters in time for the date of each trial proceeding.

(6) The presiding trial examiner and the official who has prepared the protocol under paragraph (5) shall sign the protocol and affix their seals to the protocol.

(7) Articles 153, 154 and 156 to 160 of the Civil Procedure Act apply *mutatis mutandis* to the protocol under paragraph (5).

(8) Articles 143, 259, 299 and 367 of the Civil Procedure Act apply *mutatis mutandis* to a trial.

#### **Article 155 Intervention**

(1) A person with the right to request a trial under Article 139(1) may intervene in the trial before the conclusion of the trial examination.

(2) An intervener under paragraph (1) may continue a trial even after the request for the trial has been withdrawn by the original party.

(3) A person with an interest in the result of a trial may intervene in the trial before the conclusion of the trial examination to assist one of the parties.

(4) An intervener under paragraph (3) may initiate and take part in any trial-related procedure.

(5) Where grounds for suspending a trial proceeding apply to an intervener under paragraphs (1) or (3), the suspension is also effective against the original party.

#### **Article 156 Request for an Intervention and Decision**

(1) To intervene in a trial, a person shall submit a written request for an intervention to the presiding trial examiner.

(2) The presiding trial examiner shall transmit copies of a request for an intervention to the parties and other interveners and give them an opportunity to submit written opinions within a designated period.

(3) Where a request for an intervention is made, the decision must be made by a trial.

(4) A decision under paragraph (3) must be in writing and must state the reasons for the decision.

(5) An appeal may not be made against a decision under paragraph (3).

#### **Article 157 Taking and Preserving Evidence**

(1) For a trial, evidence may be taken or preserved upon the request of a party, intervener, interested person or *ex officio*.

(2) The provisions of the Civil Procedure Act related to taking and preserving evidence apply *mutatis mutandis* to any taking and preserving of evidence under paragraph (1). However, the trial examiner may not impose a fine for negligence, order a person to appear or require the deposit of money as security.

(3) A request to preserve evidence must be made to the President of the Intellectual Property Tribunal before a request for a trial and to the presiding trial examiner of the case while the trial is pending.

(4) Where a motion for preservation of evidence has been made under paragraph (1) before a request for a trial, the President of the Intellectual Property Tribunal shall designate a trial examiner to be responsible for the motion.

(5) Where evidence has been taken or preserved *ex officio* under paragraph (1), the presiding trial examiner shall notify the parties, interveners and interested persons and shall give them an opportunity to submit written opinions within a designated period.

#### **Article 158 Continuation of Trial Proceedings**

Notwithstanding the failure of a party or intervener to take any proceedings within the period prescribed by law or designated under this Act, or the failure to appear on the date designated under Article 154(4), the presiding trial examiner may proceed with the trial proceedings.

#### **Article 159 *Ex Officio* Trial Examination**

(1) Grounds that have not been pleaded by a party or intervener in a trial may be examined; however, in such cases, the parties and interveners must be given an opportunity within a designated period to state their opinions regarding the grounds.

(2) In a trial, an examination may not be made on the purpose of a claim not requested by the petitioner.

#### **Article 160 Combination or Separation of a Trial or Ruling**

When examining two or more trial proceedings where one or both parties are the same, a trial examiner may either combine the examinations or examine the cases separately.

#### **Article 161 Withdrawal of a Request for a Trial**

(1) A request for a trial may be withdrawn by the petitioner before the trial decision has become final; however, the consent of the defendant for the withdrawal must be obtained where a response has already been submitted.

(2) Where a request for a trial for invalidating a patent under Article 133(1) or for confirming the scope of a patent right under Article 135 has been made with regard to two or more claims, the request may be withdrawn for each of the claims.

(3) Where a request for a trial or a request for each claim is withdrawn under paragraphs (1) or (2), the request is deemed never to have been made.

#### **Article 162 Ruling on a Trial**

(1) Except as otherwise stipulated, when a trial ruling has been given, the trial is closed.

(2) A trial ruling under paragraph (1) must be in writing, and it must be signed and sealed by the trial examiners who made the ruling; the ruling must state the following:

- (i) the number of the trial;
- (ii) the name and address of the parties and interveners (and, if a legal entity, the name and address of the business);
- (iibis) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (iii) the identification of the trial case;
- (iv) the text of the ruling (including the scope, duration and remuneration in trial cases under Article 138);
- (v) the reasons for the decision (including the purpose and a summary of the reason for the request); and
- (vi) the date of the ruling.

(3) When ready to make a ruling after thoroughly examining a case, the presiding trial examiner shall notify the parties and interveners of the closure of the trial examination.

(4) After giving notification of the closure of a trial examination under paragraph (3), if necessary, the presiding trial examiner may reopen the examination upon the motion of a party or an intervener or *ex officio*.

(5) A decision must be made within twenty days of the date on which the notification of the closure of a trial examination is served under paragraph (3).

(6) When a trial decision or a ruling has been made, the presiding trial examiner shall transmit a certified copy of the trial decision or the ruling to the parties, interveners, and persons who have requested intervention to the trial, but have been rejected.

#### **Article 163 *Res Judicata***

Where a trial decision has become final under this Act, a person may not demand a retrial on the basis of the same facts and evidence, unless the final trial decision is a rejection.

#### **Article 164 Trials and Litigation**

(1) Proceedings of a trial may, if necessary, be suspended until a trial decision of another trial becomes final or litigation proceedings of another trial are concluded.

(2) The court may, if considered necessary in the litigation proceedings, suspend the litigation proceedings until a trial decision on the patent becomes final.

(3) Where an action related to the infringement of a patent right or exclusive license is started and when litigation proceedings have been terminated, the relevant Court must notify the President of the Intellectual Property Tribunal accordingly.

(4) Where a trial for invalidating a patent and so on is requested in response to a legal action against an infringement of a patent right or exclusive license under paragraph (3) and, when a decision to reject, a request for a trial or a withdrawal of a request has occurred, the President of the Intellectual Property Tribunal must notify the relevant Court under paragraph (3) accordingly.

**Article 165 Costs of a Trial**

- (1) The imposition of costs of a trial under Articles 133(1), 134(1), 135 and 137(1) is decided either by a trial decision if a trial is terminated by a trial decision, or by a decision in the trial if the trial is terminated in a manner other than by a trial decision.
- (2) Articles 98 to 103, 107(1) and (2), 108, 111, 112 and 116 of the Civil Procedure Act apply *mutatis mutandis* to the costs of trials under paragraph (1).
- (3) The petitioner shall bear the costs of trials under Article 132~~ter~~ and 136 or 138.
- (4) Article 102 of the Civil Procedure Act applies *mutatis mutandis* to the costs borne by the petitioner under paragraph (3).
- (5) Upon the request of an interested party, the President of the Intellectual Property Tribunal shall determine the total costs of a trial after the trial decision or ruling has become final.
- (6) The extent, amount and payment of the costs of a trial, as well as the payment of the costs for performing any procedural acts in the trial, are governed by the relevant provisions of the Act of Civil Procedure Costs, unless they are incompatible.
- (7) The payment that a party has paid or will pay to a patent attorney who represents the party in a trial is considered an element of the trial costs in determining the extent of the costs by the Commissioner of the Korean Intellectual Property Office. If two or more patent attorneys represent a person in a trial, the person is deemed to have been represented by a single patent attorney.

**Article 166 Title of Enforcement of Costs or Remuneration**

A final ruling on the costs of a trial decided by the President of the Intellectual Property Tribunal or on the compensation to be paid under this Act, as decided by the trial examiner, has the same effect as an enforceable title of liability; an official of the Intellectual Property Tribunal shall give the legal writ, which has the force of execution.

**Article 167 Deleted**

**Article 168 Deleted**

**Article 169 Deleted**

**Article 170 *Mutatis Mutandis* Application of Provisions on Examination to Trial against a Ruling of Refusal to Grant a Patent**

(1) Articles 47(1)(i),(ii), 51, 63 and 66 apply *mutatis mutandis* to a trial against a ruling of refusal to grant a patent by an examiner. In such cases, in Article 51(1) the expressions "Article 47(1)(ii)" reads "Article 47(1)(ii) or (iii)", and "an amendment" reads "an amendment (under Article 47(2), excluding an amendment filed before a request for a trial against a ruling of refusal to grant a patent under Article 132<sup>ter</sup>)"; and "under 47(1)(ii)" in the proviso of Article 63 reads "under 47(1)(ii) or (iii) (under 47(2), excluding that which was submitted before a request for a trial against a ruling of refusal to grant a patent under Article 132<sup>ter</sup>)".

(2) Article 63, which applies *mutatis mutandis* under paragraph (1), applies if grounds for rejection have been found that differ from those in the examiner's original refusal to grant a patent.

**Article 171 Special Provisions for a Trial against a Ruling of Refusal to Grant a Patent**

(1) The selection of the trial examiners for a trial against a ruling of refusal to grant a patent under Article 173 is made only when notification has been given under Article 175(2).

(2) Articles 147(1) and (2), 155 and 156 do not apply to a trial against a ruling of refusal to grant a patent or a ruling of refusal to extend the term of a registered patent by an examiner.

**Article 172 Effect of Examination or Opposition Proceedings**

Proceedings previously undertaken during the course of an examination remain effective in a trial against a ruling of refusal to grant a patent or a ruling of refusal to extend the term of a registered patent issued by an examiner.

**Article 173 Reexamination Before a Trial**

(1) Where a person who has received a ruling of refusal to grant a patent under Article 62 requests a trial under Article 132<sup>ter</sup> and amends the description or drawing(s) attached to the application that is the subject of the request within thirty days of the request, the President of the Intellectual Property Tribunal shall notify the Commissioner of the Korean Intellectual Property Office before proceeding with the trial.

(2) Where a notification referred to in paragraph (1) is given, the Commissioner of the Korean Intellectual Property Office shall order the examiner to reexamine the application that is the subject of the request.

**Article 174 *Mutatis Mutandis* Application of Provisions on Examination to the Reexamination Before a Trial**

(1) Articles 51, 57(2), 78 and 148(i) to (v) and (vii) apply *mutatis mutandis* to the reexamination under Article 173. In such cases, in Article 51(1), the expression "Article 47(1)(ii)" reads "Article 47(1)(ii) or (iii)", and "an amendment" reads "an amendment (under Article 47(2), excluding an amendment filed before a request for a trial against a ruling of refusal to grant a patent under Article 132<sup>ter</sup>)".

(2) Articles 47(1)(i) and (ii) and 63 apply *mutatis mutandis* to a reexamination under Article 173 if grounds for rejection have been found that differ from those of the examiner's original refusal to grant a patent. In such cases, "under 47(1)(ii)" in Article 63 reads "under 47(1)(ii) or (iii) (in cases under 47(2), excluding those submitted before a request for a trial against a refusal to grant a patent under Article 132<sup>ter</sup>)".

(3) Articles 66 and 67 apply *mutatis mutandis* to the reexamination under Article 173 if the request for a trial is considered to have merit.

**Article 175 Termination of a Reexamination**

(1) If the reason for refusing an application is resolved by a reexamination under Article 173(2), the examiner shall reverse the ruling of refusal to grant a patent, and grant the patent. In such cases, a request for a trial against a ruling of refusal to grant a patent is deemed to be extinguished.

(2) If an examiner cannot decide to grant a patent as a result of a reexamination under Article 173(2), the examiner shall report the reexamination result to the Commissioner of the Korean Intellectual Property Office without issuing another ruling of refusal to grant a patent. The Commissioner of the Korean Intellectual Property Office shall notify the President of the Intellectual Property Tribunal after receiving the report.

**Article 176 Reversal of a Ruling of Refusal etc.**

(1) Where a trial examiner considers that a request for a trial under Articles 132<sup>ter</sup> is well grounded, the trial examiner shall reverse the examiner's ruling of refusal to grant a patent or refusal to extend the term of a registered patent.

(2) Where a ruling of refusal or refusal to extend the term of a registered patent is reversed in a trial, a presiding trial examiner may rule that the issue be submitted for examination.

(3) In ruling on a trial under paragraphs (1) and (2) of this Article, the reasons constituting the basis for the reversal are binding on the examiner.

**Article 177 Deleted**

**CHAPTER VIII  
RETRIAL**

**Article 178 Request for a Retrial**

(1) Any party may request a retrial against a trial decision that has become final.

(2) Articles 451 and 453 of the Civil Procedure Act apply *mutatis mutandis* to a request for a retrial under paragraph (1).

**Article 179 Request for a Retrial on Account of Collusion**

(1) Where the parties in a trial colluded to bring about a trial decision that damages the rights or interests of a third party, the third party may request a retrial against the final trial decision.

(2) In a request for a retrial under paragraph (1), the parties of the trial must be joint defendants.

**Article 180 Period for Requesting a Retrial**

(1) A retrial must be requested within thirty days of the date on which the petitioner becomes aware of the grounds for a retrial after the trial ruling has become final.

(2) Where a retrial is requested because of defects in a power of attorney, the period designated in paragraph (1) is counted from the day after the date on which the petitioner or the petitioner's legal representative becomes aware, by means of a transmittal of a certified copy of the ruling, that the trial ruling has been given.



(3) A person may not request a retrial more than three years after the date on which the trial ruling became final.

(4) Where grounds for a retrial arise after a trial ruling becomes final, the period prescribed in paragraph (3) is counted from the day after the date on which the grounds first arose.

(5) Paragraphs (1) and (3) do not apply to a request for a retrial made on the grounds that the trial ruling conflicts with an earlier trial ruling that is final.

#### **Article 181 Restriction on Effects of a Patent Right Restored by a Retrial**

(1) In any of the following cases, a patent right is not effective for any product imported into the Republic of Korea, or manufactured or acquired in good faith in the Republic of Korea, after a trial ruling has become final but before a request for a retrial is registered:

- (i) where the patent right whose patent or registration of the term extension was concluded to be invalid, has been restored by a retrial;
- (ii) after a trial ruling that a product was outside the scope of the patent right became final, where a ruling to the contrary at a retrial has become final; or
- (iii) where the establishment of a patent right or the extension of a patent term for a patent application or application to register the extension of a patent term previously refused by a trial ruling has been registered through a retrial.

(2) A patent right under paragraph (1) of this Article does not extend to the following acts:

- (i) working an invention in good faith after a trial ruling has become final but before the registration of a request for a retrial;
- (ii) acts of manufacturing, assigning, leasing, importing or offering for assignment or lease articles to be used exclusively for manufacturing an invented product in good faith after a trial decision has become final but before the registration of a request for a retrial; and
- (iii) acts of manufacturing, assigning, leasing, importing or offering for assignment or lease articles to be used exclusively for working of an invented process in good faith after a trial decision has become final but before the registration of a request for a retrial.

#### **Article 182 Nonexclusive License for Prior User of a Patent Right Restored by a Retrial**

For cases that fall under any subparagraph of Article 181(1), when a person has, in good faith, commercially or industrially worked an invention in the Republic of Korea, or has been making preparations to work the invention, after a trial ruling became final

but before the registration of a request for a retrial, the person is entitled to have a nonexclusive license on the patent right limited to the purpose of the business and the scope of the invention being worked or for which preparations for working are being made.

**Article 183 Nonexclusive License for Person Deprived of a Nonexclusive License by a Retrial**

(1) Where, after a decision to grant a nonexclusive license under Article 138(1) or (3) has become final, a decision to the contrary is made at a retrial, a person who has, in good faith, commercially or industrially worked the invention in the Republic of Korea or has been making preparations to work the invention under a nonexclusive license, before the registration of a request for a retrial, the person is entitled to have a non-exclusive license on the patent right or on the exclusive license existing at the time the decision at the retrial becomes final, the license being limited to the purpose of the person's business and to the scope of the invention under the original nonexclusive license.

(2) Article 104(2) applies *mutatis mutandis* to the case referred to in paragraph (1).

**Article 184 *Mutatis Mutandis* Application of Provisions on Trial to Retrial**

The trial-related provisions apply *mutatis mutandis* to a request for a retrial against the decision of a trial decision, unless they are incompatible.

**Article 185 *Mutatis Mutandis* Application of the Civil Procedure Act**

Article 459(1) of the Civil Procedure Act applies *mutatis mutandis* to a request for a retrial.

**CHAPTER IX  
LITIGATION**

**Article 186 Action on a Trial Decision etc.**

(1) The Patent Court of Korea has original jurisdiction over any action against a trial decision or dismissal of a request for a trial or retrial.

(2) The action prescribed in paragraph (1) may be brought by a person who is a party

or intervener in the trial or by any person who has requested an intervention in the trial but has had the request rejected.

(3) The action prescribed in paragraph (1) may be brought within the thirty-day period immediately after the date on which a certified copy of the trial decision or ruling was received.

(4) The period prescribed in paragraph (3) may not be changed.

(5) For the peremptory period referred to in paragraph (4) of this Article, a presiding trial examiner may *ex officio* determine any additional period for the benefit of a person residing in an area that is remote or difficult to access.

(6) An action may not be brought unless it relates to matters for which a trial may be requested.

(7) An action under paragraph (1) on a trial decision on remuneration under Article 162(2)(iv) and a trial decision or ruling on trial costs under Article 165(1) may not be brought independently.

(8) Any person who has received a ruling from the Patent Court may appeal to the Supreme Court.

#### **Article 187 Qualification for Defendant**

In an action under Article 186(1), the Commissioner of the Korean Intellectual Property Office is the defendant. However, in an action on the decisions of a trial under Articles 133(1), 134(1), 135(1), 137(1), 138(1) and (3) or a retrial, the petitioner or the defendant is the defendant.

#### **Article 188 Notification of Institution of Action and Transmittal of Document**

(1) When an action under Article 186(1) is started or an appeal is filed under Article 186(8), the Patent Court shall immediately notify the President of the Intellectual Property Tribunal accordingly.

(2) When an action under the proviso of Article 187 has been concluded, the Patent Court shall immediately transmit a certified copy of the judgment on the action to the President of the Intellectual Property Tribunal.

**Article 188bis Exclusion or Recusal of a Technical Examiner**

- (1) Article 148 of the Patent Act and Articles 42 to 45, 47 and 48 of the Civil Procedure Act apply to the exclusion or recusal of a technical examiner prescribed by Article 54bis of the Court Organization Act.
- (2) The court to which a technical examiner belongs shall decide on a request for exclusion or recusal of the technical examiner under paragraph (1)
- (3) Where grounds for exclusion or recusal exist, technical examiners may recuse themselves from conducting trial proceedings related to the case with the consent of the President of the Patent Court.

**Article 189 Revoking a Trial Decision or Ruling**

- (1) Where the Patent Court considers that an action under Article 186(1) is well grounded, the Patent Court shall revoke the trial decision or ruling by judgment.
- (2) Where the reversal of a trial decision or ruling becomes final under paragraph (1), the trial examiner shall review the case and make a trial decision or ruling again.
- (3) The reasons for a judgment on an action under paragraph (1) that constitute the basis for a revocation are binding on the Intellectual Property Tribunal.

**Article 190 Action against Decision on Amount of Compensation or Remuneration**

- (1) A person who is dissatisfied with a decision, ruling or adjudication regarding the amount of compensation or remuneration under Articles 41(3) or (4), 106(3), 110(2)(ii) or 138(4) may bring an action before the court.
- (2) An action under paragraph (1) must be filed within thirty days of the date on which a certified copy of the decision, ruling or adjudication was received.
- (3) The period prescribed in paragraph (2) may not be changed.

**Article 191 Defendant in an Action Related to Compensation or Remuneration**

In an action under Article 190, the following persons are the defendants:

- (i) for compensation under Article 41(3) or (4), the government agency or applicant liable for payment of compensation;

- (ii) for compensation under Article 106(3), the government agency, patentee, exclusive licensee or nonexclusive licensee liable for payment of compensation; or
- (iii) for remuneration under Articles 110(2)(ii) or 138(4), the nonexclusive licensee, exclusive licensee, patentee or owner of a utility model or design registration.

#### **Article 191bis Compensation for Patent Attorneys and Costs of Litigation**

Article 109 of the Civil Procedure Act applies *mutatis mutandis* to the compensation for patent attorneys who provide representation in litigations. In this case, attorneys are regarded as patent attorneys.

### **CHAPTER X INTERNATIONAL APPLICATIONS UNDER THE PATENT COOPERATION TREATY**

#### **Part I. International Application Procedure**

#### **Article 192 Persons Capable of International Application**

Any person who falls under any of the following subparagraphs may file an international application with the Commissioner of the Korean Intellectual Property Office:

- (i) a national of the Republic of Korea;
- (ii) a foreigner who has a residential or business address in the Republic of Korea;
- (iii) a person who does not fall under subparagraph (i) or (ii) but who files an international application under the name of a representative falling under subparagraph (i) or (ii); or
- (iv) a person who meets the requirements prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 193 International Application**

(1) A person filing an international application shall submit to the Commissioner of the Korean Intellectual Property Office an application, description, claim(s), drawing(s) (if any), and an abstract prepared in the Korean language or any language prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(2) An application prescribed under paragraph (1) must contain the following:

- (i) an indication that the international application is to be processed according to the Patent Cooperation Treaty;

- (ii) the designation of the contracting States in which protection for the invention is sought on the basis of the international application;
- (iii) if the applicant is seeking a regional patent referred to in Article 2(iv) of the Patent Cooperation Treaty among the contracting States designated under subparagraph (ii), an indication to that effect;
- (iv) the name, or title, the residential or business address and the nationality of the applicant;
- (v) the name and residential or business address of the agent (if any);
- (vi) the title of the invention; and
- (vii) the name and residential or business address of the inventor (where the national law of a designated State requires that these indications be furnished).

(3) The description under paragraph (1) must disclose the invention in a manner sufficiently clear and complete for the invention to be carried out easily by a person skilled in the art to which the invention pertains.

(4) The claim(s) under paragraph (1) must clearly and concisely define the matter for which protection is sought and be fully supported by the description.

(5) Other necessary matters not prescribed in paragraphs (1) to (4) concerning an international application are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 194 Recognition etc. of the Filing Date of an International Application**

(1) The Commissioner of the Korean Intellectual Property Office shall deem the date of receiving the international application as the international filing date under Article 11 of the Patent Cooperation Treaty (referred to as "an international filing date"); however, this provision does not apply to any of the following cases:

- (i) the applicant does not meet the requirements prescribed in Article 192;
- (ii) the international application is not in the language prescribed under Article 193(1);
- (iii) the international application does not contain a description or claim(s) under Article 193(1); or
- (iv) the elements listed in Article 193(2)(i) and (ii) or the name or title of the applicant are not indicated.

(2) Where an international application falls under the proviso of paragraph (1), the Commissioner of the Korean Intellectual Property Office shall instruct the applicant to amend the defect in writing within a designated period.

(3) Where an international application refers to a drawing or drawings not included in the application, the Commissioner of the Korean Intellectual Property Office shall notify the applicant accordingly.

(4) The Commissioner of the Korean Intellectual Property Office shall deem the international filing date as the date of receiving the amendment in writing when the instructed applicant under paragraph (2) has complied with the instruction within the designated period, or the date of receiving the drawing(s) when the instructed applicant under paragraph (3) has furnished the drawing(s) within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy. If the instructed applicant under paragraph (3) does not furnish the drawing(s) within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy, reference to the drawing(s) is considered nonexistent.

#### **Article 195 Invitation to Amendment**

The Commissioner of the Korean Intellectual Property Office shall instruct the applicant to make written amendments within a designated period if the international application does not:

- (i) contain the title of the invention;
- (ii) contain an abstract;
- (iii) comply with Articles 3 or 197(3); or
- (iv) comply with the requirements prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 196 International Application Considered to have been Withdrawn**

- (1) An international application is considered to be withdrawn if:
- (i) an applicant fails to make an amendment within the period designated under Article 195;
  - (ii) the fee is not paid within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy, and Article 14(3)(a) of the Patent Cooperation Treaty therefore applies; or
  - (iii) it is an international application with an international filing date recognized under Article 194, and it falls under any subparagraph of Article 194(1) within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy.
- (2) If part of a fee has not been paid within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy, and Article 14(3)(b) of the Patent

Cooperation Treaty therefore applies, the designation of the State or States for which the fee has not been paid is considered to have been withdrawn.

(3) If an international application, or part of the States designated, is considered to have been withdrawn under paragraphs (1) or (2), the Commissioner of the Korean Intellectual Property Office shall notify the applicant accordingly.

#### **Article 197 Representative etc.**

(1) Where two or more applicants jointly file an international application, the procedure under Articles 192 to 196 and 198 may be initiated by a common representative of the applicants.

(2) Where two or more applicants jointly file an international application and do not designate a common representative, a representative may be designated as their common representative as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) An applicant who intends to use an agent to initiate a procedure under paragraph (1) shall appoint a patent attorney as the agent unless the procedure is initiated by a legal representative under Article 3.

#### **Article 198 Fees**

(1) An applicant for an international application shall pay the required fees.

(2) Fees, proceedings and payment period under paragraph (1) are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 198bis International Search and International Preliminary Examination**

(1) The Korean Intellectual Property Office shall perform duties as an international searching authority and as an international preliminary examining authority for an international application in accordance with the convention concluded with the International Bureau as prescribed in Article 2(xix) of the Patent Cooperation Treaty.

(2) Details concerning the performance of duties under paragraph (1) are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.



## **Part II. Special Provisions on International Patent Applications**

### **Article 199 Patent Application Based on an International Application**

(1) Where the international filing date of an international application is recognized under the Patent Cooperation Treaty and the Republic of Korea is a designated State for obtaining a patent, the international application is considered to be a patent application filed on its international filing date.

(2) Article 54 does not apply to an international application considered to be a patent application under paragraph (1) (referred to as "an international patent application").

### **Article 200 Special Provision Concerning Inventions Not Considered to be Publicly Known etc.**

Notwithstanding Article 30(2), a person intending to apply Article 30(1)(i) to the invention claimed in an international patent application may submit to the Commissioner of the Korean Intellectual Property Office a written statement to that effect and a document proving that the invention falls under Article 30(1)(i) within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 201 Translation of International Patent Applications**

(1) An applicant who has filed an international patent application in a foreign language shall submit to the Commissioner of the Korean Intellectual Property Office a Korean translation of the description, claim(s), the drawing(s) (only the textual matter of the drawing(s)) and the abstract filed on the international filing date within two years and seven months (referred to as "the domestic period for submitting documents") of the priority date as defined in Article 2(xi) of the Patent Cooperation Treaty (referred to as "the priority date"). However, when an applicant who has filed an international patent application in a foreign language amends the claim(s) under Article 19(1) of the Patent Cooperation Treaty, the Korean translation of the amended claim(s) may be submitted as a replacement for the Korean translation of the claim(s) submitted on the date of international application.

(2) Where a translation of the description and claim(s) under paragraph (1) is not submitted within the domestic period, the international patent application is deemed to be withdrawn.

(3) An applicant who has submitted the translation referred to in paragraph (1) may submit a new translation to replace the earlier translation only within the domestic period for submitting documents, unless the applicant requested an examination.

(4) Matters disclosed in the description, claim(s) and the drawing(s) of an international patent application filed on the international filing date but not disclosed in the translation under paragraphs (1) or (3) (referred to as "the translated version") that was submitted within the domestic period for submitting documents (or the date of the request for an examination where the applicant has made the request within the period, which is referred to as "the relevant date") are deemed not to have been disclosed in the description, claim(s) and the drawing(s) of the international patent application filed on the international filing date.

(5) An international patent application submitted on the international filing date is deemed to be an application submitted under Article 42(1).

(6) A translated version of the description, claim(s), drawing(s) and abstract of an international patent application (and the description, claim(s), drawing(s) and abstract submitted on the international filing date for an international patent application in the Korean language) is deemed to be the description, claim(s), drawing(s) and abstract submitted under Article 42(2).

(7) Article 204(1) and (2) does not apply when a Korean translation of the amended claim(s) is submitted in accordance with the proviso of paragraph (1).

(8) Where a Korean translation has been submitted under the proviso of paragraph (1) only for the amended claim(s), the claim(s) submitted at the international filing date are not recognized.

#### **Article 202 Special Provisions on Claim of Priority**

(1) Articles 55(2) and 56(2) do not apply to an international patent application.

(2) In Article 55(4), "description or the drawing(s) originally attached to the earlier application" reads "description, claim(s) and the drawing(s) (only the textual matter of the drawing(s)) submitted on the international filing date under Article 201(1), and the translated version of the documents under Article 201(4) or the drawing(s) (excluding the textual matter of the drawing(s)) of the international application submitted on the international filing date", and "laying open for public inspection" reads "international publication under Article 21 of the Patent Cooperation Treaty".

(3) In Articles 55(1), (3) and (4) and 56(1), where the earlier application under Article 55(1) of this Act is the international patent application or international utility model application under Article 34(2) of the Utility Model Act, "description or drawing(s) originally attached to a patent or utility model application" in Article 55(1) and (3) reads

"description, claim(s) and drawing(s) of an international application submitted on the international filing date under Article 201(1) of this Act or Article 35(1) of the Utility Model Act," "description or drawing(s) originally attached to the earlier application" in Article 55(4) reads "description, claim(s) or drawing(s) of an international application concerning an earlier application submitted on the international filing date under Article 201(1) or Article 35(1) of the Utility Model Act," "laying open of the earlier application" for public inspection in Article 55(4) reads "international publication concerning the earlier application under Article 21 of the Patent Cooperation Treaty" and "when more than one year and three months has elapsed after the filing date" in Article 56(1) reads "at the relevant date under Article 201(4) of this Act or Article 35(4) of the Utility Model Act or more than one year and three months after the international filing date under Article 201(1) of this Act or Article 35(1) of the Utility Model Act, whichever date expires later," respectively.

(4) In Articles 55(1), (3) and (4) or 56(1), where the earlier application under Article 55(1) is an international patent application recognized as a patent application or a utility model application under Article 214(4) of this Act or Article 40(4) of the Utility Model Act, "description or drawing(s) originally attached to the application" in Article 55(1) and (3) reads "description, claim(s) or drawing(s) of an international application as of the date regarded as the international filing date under Article 214(4) of this Act or Article 40(4) of the Utility Model Act" and "description or drawing(s) originally attached to the earlier application" in Article 55(4) reads "description, claim(s) or drawing(s) of an international application concerning an earlier application as of the date regarded as the international filing date under Article 214(4) of this Act or Article 40(4) of the Utility Model Act" and "when more than one year and three months has elapsed after the filing date of the earlier application" in Article 56(1) reads "within one year and three months of the date regarded as the international filing date under Article 214(4) of this Act or Article 40(4) of the Utility Model Act or at the time of making a decision under Article 214(4) of this Act or Article 40(4) of the Utility Model Act, whichever date expires later," respectively.

### **Article 203 Submission of Documents**

(1) An applicant for an international patent shall submit a document within the domestic period for submitting documents to the Commissioner of the Korean Intellectual Property Office, stating the items in the following subparagraphs; an applicant who has filed an international patent application in a foreign language shall submit the document with a Korean translation in accordance with Article 201(1):

- (i) the name and address of the applicant (and, if the applicant is a legal entity, the name and address of the business);

- (ii) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the appointed patent attorney);
- (iii) deleted;
- (iv) the title of the invention;
- (v) the name and residential or business address of the inventor; and
- (vi) the international filing date and the international application number.

(2) The Commissioner of the Korean Intellectual Property Office shall instruct an applicant to make amendments within a designated period if the submission of documents falls under either of the following subparagraphs:

- (i) where the document prescribed in the top portion of paragraph (1) was not submitted within the domestic period for submitting documents; or
- (ii) where the document prescribed in the top portion of paragraph (1) does not comply with the formalities prescribed in this Act or any order under this Act.

(3) Where a person instructed to make an amendment under paragraph (2) fails to make an amendment within the designated period, the Commissioner of the Korean Intellectual Property Office may invalidate the international patent application.

#### **Article 204 Amendment after Receipt of the International Search Report**

(1) Where an applicant amends the claim(s) of an international patent application after receiving an international search report under Article 19(1) of the Patent Cooperation Treaty, the applicant shall submit a Korean translation of the amendment to the Commissioner of the Korean Intellectual Property Office no later than the relevant date (which, if the relevant date is the date on which a request is made to examine the patent application, refers to the time of day on which the request to examine the patent application is made) the applicant shall submit a Korean translation of the amendment to the Commissioner of the Korean Intellectual Property Office no later than the very hour (time) of that particular date by which the request to examine the patent application is made.

(2) Where a translation of an amendment is submitted under paragraph (1), the claim(s) are deemed to have been amended under Article 47(1) by the translation.

(3) Where an applicant of an international patent application submits a statement under Article 19(1) of the Patent Cooperation Treaty to the International Bureau under Article 2(xix) of the Patent Cooperation Treaty (referred to as "the International Bureau"), the applicant shall submit a Korean translation of the statement to the Commissioner of the Korean Intellectual Property Office.

(4) Where an applicant of an international patent application does not follow the procedure under paragraphs (1) or (3) before the relevant date (which, if the relevant date is the date on which a request is made to examine the patent application, refers to the time of day on which the request to examine the patent application is made), an amendment or statement under Article 19(1) of the Patent Cooperation Treaty is deemed not to have been made.

(5) Deleted.

**Article 205 Amendment before Establishment of the International Preliminary Examination Report**

(1) Where an applicant amends the description, claim(s) or drawing(s) of an international patent application under Article 34(2)(b) of the Patent Cooperation Treaty, the applicant shall submit a Korean translation of the amendment to the Commissioner of the Korean Intellectual Property Office no later than the relevant date (which, if the relevant date is the date on which a request is made to examine the patent application, refers to the time of day on which the request to examine the patent application is made).

(2) Where a translation of an amendment is submitted under paragraph (1), the description and drawing(s) are deemed to have been amended under Article 47(1) by the translation.

(3) Where an applicant of an international patent application has not followed the procedure under paragraph (1) before the relevant date (which, if the relevant date is the date on which a request is made to examine the patent application, refers to the time of day on which the request to examine the patent application is made), the amendment under Article 34(2)(b) of the Patent Cooperation Treaty is deemed not to have been made.

(4) Deleted.

**Article 206 Special Provision on Patent Administrator for Nonresidents**

(1) Notwithstanding Article 5(1), a nonresident applicant of an international patent application may, before the relevant date, initiate a patent-related procedure without a patent administrator.

(2) Nonresidents who have submitted a translation of an application under paragraph (1) shall appoint a patent administrator and report that fact to the Commissioner of the Korean Intellectual Property Office within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) An international application is deemed to have been withdrawn if the appointment of a patent administrator is not reported within the period prescribed under paragraph (2).

**Article 207 Special Provision on the Time and Effect of Laying  
Open an Application**

(1) For the laying open of an international patent application, "after one year and six months of the date falling under any of the following subparagraphs" in Article 64(1) reads "within the period under Article 201(1) (where the applicant has requested an examination of the international patent application within the designated period and the international publication under Article 21 of the Patent Cooperation Treaty has been made, within one year and six months of the priority date or the date of the request for an examination, whichever date expires later)".

(2) The applicant of an international patent application may, after the domestic laying open and after having given a warning in the form of a document describing the contents of the invention claimed in the international patent application, demand of a person who has commercially or industrially worked the invention, after the warning but before the registration of a patent right, the payment of compensation equivalent to what the applicant would normally receive for working the invention. Even in the absence of a warning, the same demand may be made of a person who commercially or industrially worked the invention before the domestic laying open and who had known that the invention was the one claimed in the international patent application. However, the applicant may not exercise the right to demand compensation until the patent has been registered.

**Article 208 Special Provision on Amendment**

(1) Notwithstanding Article 47(1), no amendment to an international patent application (except an amendment under Article 204(2) and 205(2)) may be made until the fees prescribed under Article 82(1) have been paid, a translation of the application (except for an international patent application made in the Korean language) under Article 201(1) has been submitted, and the relevant date (which, if the relevant date is the date on which a request is made to examine the patent application, refers to the time of day on which the request to examine the patent application is made) has passed.

(2) Deleted.

(3) With regard to the scope of an amendment made to an international patent application, "the features disclosed in the description or the drawing(s) originally attached to the application" in Article 47(2) reads "the features disclosed in the description, claim(s) or the

drawing(s) (only the textual matter therein) of the international patent application submitted on the international filing date and in the translated version or the features disclosed in the drawing(s) (except in the textual matter of the drawing(s)) of the international patent application".

(4) Deleted.

(5) Deleted.

#### **Article 209 Restriction on Timing of Application for Conversion**

Notwithstanding Article 53(1) of this Act, where an international application is deemed to be a utility model application filed on the international application date under Article 34(1) of the Utility Model Act, a person may not file an application for the conversion of the international application to a patent application unless the person pays the fees referred to in Article 17(1) of the Utility Model Act and submits a translation of the application in accordance with Article 35(1) of the Utility Model Act (except where the application for international utility model registration was filed in the Korean language); (furthermore, a person may not file an application for conversion where the application is based on an international application deemed to have been filed on a date that can be acknowledged as the international application date under Article 40(4) of the Utility Model Act, unless a decision under Article 40(4) of the Utility Model Act has been made).

#### **Article 210 Time Restriction on a Request for an Examination**

Notwithstanding Article 59(2), an applicant of an international patent application may not request an examination of the application until the proceedings (except for international patent applications made in the Korean language) under Article 201(1) have been taken and the fees under Article 82(1) have been paid. A person other than the applicant of an international patent application may not request an examination of the international patent application until the period under Article 201(1) has elapsed.

#### **Article 211 Order Concerning Submission of Documents Cited in the International Search Report etc.**

The Commissioner of the Korean Intellectual Property Office may require an applicant of an international patent application to submit, within a designated period, copies of the references cited in the international search report under Article 18 of the Patent Cooperation Treaty or the International Preliminary Examination Report under Article 35 of the Patent Cooperation Treaty.

**Article 212 Deleted**

**Article 213 Special Provisions on an Invalidation Trial of a Patent**

Any person may request a trial to invalidate a patent for an international application filed in a foreign language on the grounds that the invention does not fall under either of the following subparagraphs nor under any subparagraph of Article 133(1):

- (i) the invention disclosed in the description, claim(s) or the drawing(s) of an international application submitted on the international filing date and in the translated version; or
- (ii) the invention disclosed in the drawing(s) (excluding the textual matter of the drawing(s)) of an international application submitted on the international filing date.

**Article 214 International Application Considered to be a Patent Application by Decision**

(1) Where the receiving office referred to in Article 2(xv) of the Patent Cooperation Treaty has made a refusal referred to in Article 25(1)(a) of the Treaty or has made a declaration referred to in Article 25(1)(a) or (b) of the Treaty or the International Bureau has made a finding referred to in Article 25(1)(a) of the Treaty on an international patent application in which the Republic of Korea is a designated State referred to in Article 4(1)(ii) of the Treaty, an applicant of an international application (pertaining exclusively to a patent application) may request the Commissioner of the Korean Intellectual Property Office as provided by ordinance of the Ministry of Commerce, Industry and Energy to make the decision referred to in Article 25(2)(a) of the Treaty within the period prescribed by the ordinance.

(2) A person who makes a request under paragraph (1) shall submit, to the Commissioner of the Korean Intellectual Property Office, a Korean translation of the description, claim(s) and the drawing(s) (only the textual matter of the drawing(s)) as well as other documents related to the international application prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) Where a request is made under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall decide whether the refusal, declaration or finding referred to in the request is justified under the Patent Cooperation Treaty and its Regulations.

(4) Where the Commissioner of the Korean Intellectual Property Office decides that the refusal, declaration or finding under paragraph (3) is not justified under the Patent Cooperation Treaty and its Regulations, the international application concerned is consid-



ered to be a patent application filed on the date that would have been recognized as the international filing date if the refusal, declaration or finding had not been made.

(5) Where a decision is made under paragraph (3) as to whether a refusal, declaration or finding is justified, the Commissioner of the Korean Intellectual Property Office shall issue a certified copy of the decision to the applicant of an international application.

(6) Articles 199(2), 200, 201(4) to (8), 202(1) and (2), 208, 210 and 213 apply *mutatis mutandis* to an international application considered to be a patent application under paragraph (4).

(7) For the laying open of an international application considered to be a patent application under paragraph (4), "filing date of an application for a patent" in Article 64(1) reads "priority date referred to in Article 201(1)".

## **CHAPTER XI SUPPLEMENTARY PROVISIONS**

### **Article 215 Special Provisions for a Patent or Patent Right with Two or More Claims**

Where Articles 65(6), 84(1)(ii), 85(1)(i) (only for extinguishment), 101(1)(i), 104(1)(i), (iii) or (v), 119(1), 133(2) or (3), 136(6), 139(1), 181 and 182 of this Act and Article 26(1)(ii), (iv) or (v) of the Utility Model Act apply to a patent or patent right with two or more claims, a patent is deemed to have been granted, or a patent right is deemed to have been established, for each claim.

### **Article 215bis Special Provisions for Registering a Patent Application with Two or More Claims**

(1) Where a person who has received a decision to grant a patent for a patent application with two or more claims pays the registration fees, the person may abandon the individual claims.

(2) Matters necessary for abandoning the claim(s) under paragraph (1) are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 216 Inspection of Documents etc.**

(1) A person may request the Commissioner of the Korean Intellectual Property Office

or the President of the Intellectual Property Tribunal for a patent or trial certificate, a certified copy or extract of documents, or to inspect or copy the Patent Register or other documents.

(2) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may not grant the request referred to in paragraph (1) if it relates to a patent application that has not been published or laid open for public inspection, or if it relates to matters liable to contravene public order or morality.

**Article 217 Prohibition on Opening or Removing Documents Related to a Patent Application, Examination, Trial, Retrial or the Patent Register**

(1) The removal of documents related to a patent application, examination, trial, retrial or the Patent Register is prohibited except for any of the following cases:

- (i) where documents related to a patent application or examination for the purpose of prior art searches under Article 58(1) or 58(2) of this Act are removed;
- (ii) where documents related to a patent application, examination, trial, retrial or the Trademark Register are removed for the purpose of commissioning the affairs of digitizing patent documents under Article 217*bis*(1) of this Act; or
- (iii) where documents related to a patent application, examination, trial, retrial or the Trademark Register are removed for the purpose of on-line remote performance of duties under Article 30 of the Electronic Government Act.

(2) A response may not be given to a request for an expert opinion, testimony or an inquiry on the contents of a pending patent application, examination, trial, or retrial that is in process, nor on the contents of an examiner's decision, trial decision or ruling.

**Article 217*bis* Agency for Digitizing Patent Documents**

(1) When considered necessary for dealing effectively with patent procedures, the Commissioner of the Korean Intellectual Property Office may entrust a legal entity that meets the standards of facilities and human resources as prescribed by ordinance of the Ministry of Commerce, Industry and Energy with digitizing documents related to patent applications, examinations, trials, retrials or the Patent Register through an electronic information processing system and the technology for using the electronic information processing system.

(2) Deleted.

(3) Officers or employees of a person entrusted with digitizing patent documents under paragraph (1) (referred to as "an agency for digitizing patent documents") may not divulge

or appropriate an invention disclosed in a pending application to which they had access during the course of their duties.

(4) The Commissioner of the Korean Intellectual Property Office may, under paragraph (1), convert into electronic form a written application for a patent or other documents prescribed by ordinance of the Ministry of Commerce, Industry and Energy that were not submitted as electronic documents as prescribed in Article 28<sup>ter</sup> (1), and may save them in a file of an electronic information processing system operated by the Korean Intellectual Property Office or the Intellectual Property Tribunal.

(5) The contents of a file under paragraph (4) of this Article are deemed to be the same as the contents of the documents concerned.

(6) The method of digitizing patent documents under paragraph (1) and other matters necessary for digitizing patent documents are determined by ordinance of the Ministry of Commerce, Industry and Energy.

(7) Where an agency that is commissioned to digitize patent documents fails to meet the standards of facilities and human resources as prescribed by ordinance of the Ministry of Commerce, Industry and Energy in accordance with paragraph (1) and fails to comply with a request from the Commissioner of the Korean Intellectual Property Office to take corrective action, the Commissioner may cancel the agency's commission to digitize patent documents. In such cases, the Commissioner shall give the agency a prior opportunity to present its opinions.

#### **Article 218 Transmittal of Documents**

In addition to the provisions in this Act, matters related to the transmittal of documents and procedures of transmittal are prescribed by Presidential Decree.

#### **Article 219 Transmittal by Public Notification**

(1) When documents cannot be transmitted because the residential or business address of the addressee is unclear, the addressee is notified by public notification.

(2) Public notification is conducted by publishing a notice in the Patent Gazette that the documents to be transmitted are available at any time to the addressee.

(3) Documents are deemed to have been served two weeks after the date on which the notice is published in the Patent Gazette; however, a subsequent public notification for the same party is deemed to have been served on the day after its publication in the Patent Gazette.

**Article 220 Transmittal of Documents to Nonresidents**

- (1) Documents to be transmitted to a nonresident who has a patent administrator must be transmitted to the patent administrator.
- (2) Documents to be transmitted to a nonresident who does not have a patent administrator may be sent to the nonresident by registered airmail.
- (3) When documents have been sent by registered airmail under paragraph (2), the documents are deemed to have been served on the mailing date.

**Article 221 Patent Gazette**

- (1) The Korean Intellectual Property Office shall publish the Patent Gazette.
- (2) The Patent Gazette may be published in electronic format under conditions determined by ordinance of the Ministry of Commerce, Industry and Energy.
- (3) When publishing the Patent Gazette in electronic media, the Commissioner of the Korean Intellectual Property Office shall publicize on a communication network matters regarding the Patent Gazette's publication, main contents and service.

**Article 222 Submission of Documents etc.**

The Commissioner of the Korean Intellectual Property Office or examiner may order a concerned party to submit documents and articles necessary for dealing with proceedings unrelated to the proceedings of a trial or retrial.

**Article 223 Patent Indication**

A patentee or an exclusive or nonexclusive licensee may put on a manufactured product an identification of the patent for an invention of either a product or a process. If placing the identification on the product is not possible, the identification may be put on the product's container or package.

**Article 224 Prohibition of False Indication**

A person may not perform any of the following acts:

- (i) the act of marking an article with an indication that a patent has been granted or a patent application has been filed, or with any sign likely to cause confusion as to

whether a patent has been granted or a patent application is pending, or upon an article manufactured by a process for which a patent has not been granted or for which a patent application is not pending, or the article's container or package;

(ii) the act of assigning, leasing or displaying an article that has been marked with an indication referred to in subparagraph (i);

(iii) for the purpose of manufacturing, using, assigning or leasing an article referred to in subparagraph (i), the act of marking an indication on advertisements, signboards or tags that a patent has been granted or a patent application had been filed or that the article has been produced by a process for which a patent has been granted or a patent application is pending, or marking with any sign likely to cause confusion as to whether a patent has been granted or a patent application is pending; or

(iv) for the purpose of using, assigning or leasing a process for which a patent has not been granted or a patent application is not pending, the act of marking an indication on advertisements, signboards or tags that a patent has been granted or a patent application had been filed for the process, or marking with any sign likely to cause confusion as to whether a patent has been granted or a patent application is pending.

#### **Article 224bis Restriction on Objections**

(1) An objection may not be raised against a decision to reject an amendment, a decision to grant a patent, a trial decision or the dismissal of a request for a trial or retrial under any other Act, and an objection may not be raised under any other Act against any disposition against which an objection may not be raised under this Act.

(2) Any objection to measures other than those set out in paragraph (1) is subject to the Administrative Appeals Act or the Administrative Litigation Act.

## **CHAPTER XII PENAL PROVISIONS**

#### **Article 225 Offense of Infringement**

(1) A person who infringes a patent right or exclusive licensee is liable to imprisonment with labor not exceeding seven years or to a fine not exceeding 100 million won.

(2) Prosecution for offenses under paragraph (1) are initiated when an injured party files a complaint.

**Article 226 Offense of Perjury**

(1) A witness, expert witness or interpreter who, having taken an oath under the law, has made a false statement or given a false expert opinion or interpreted falsely before the Intellectual Property Tribunal is liable to imprisonment with labor not exceeding five years or to a fine not exceeding 10 million won.

(2) A person that has committed an offense under paragraph (1) who confesses it before the trial decision becomes final may be partially or totally exempted from the application of the sentence.

**Article 227 Offense of False Marking**

A person who violates Article 224 is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

**Article 228 Offense of Fraud**

A person who has obtained a patent, the registration of an extension of the patent term, or a trial decision by means of a fraudulent or any other unjust act is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

**Article 229 Offense of Divulging Secrets**

Any present or former employees of the Korean Intellectual Property Office or the Intellectual Property Tribunal who have divulged or appropriated an invention disclosed in a pending application to which they had access during the course of their duties are liable to imprisonment with labor not exceeding two years or to a fine not exceeding 3 million won.

**Article 229bis Officers and Employees of Special Searching Agency as Public Officials and Irrefutable Presumption**

When applying Article 229, a person who is a present or former officer or employee of a special searching agency or agency for digitizing patent documents prescribed under Article 58(1) is deemed to be a present or former employee of the Korean Intellectual Property Office.

**Article 230 Dual Liability**

Where a representative of a legal entity or an agent, an employee or any other servant of a legal

or natural person violates Articles 225(1), 227 or 228 with regard to the business of the legal or natural person, the legal person, in addition to the offender, is liable to a fine as prescribed in either of the following subparagraphs, and the natural person is liable to a fine prescribed in the relevant Article:

- (i) under Article 225(1), a fine not exceeding 300 million won;
- (ii) under Articles 227 or 228, a fine not exceeding 60 million won.

#### **Article 231 Confiscation etc.**

(1) Any article that is the subject of an infringing act under Article 225(1) or any article arising out of the infringing act must be confiscated or, upon request of the injured party, a judgment must be made requiring the article to be delivered to the injured party.

(2) Where an article is delivered to an injured party under paragraph (1), the injured party may claim compensation for damages in excess of the value of the article.

#### **Article 232 Administrative Fine**

(1) A person who commits any of the following acts is liable to an administrative fine not exceeding 500,000 won:

- (i) making a false statement before the Intellectual Property Tribunal after having taken an oath under Articles 299(2) and 367 of the Civil Procedure Act;
- (ii) failing to comply, without justifiable reasons, with an order of the Intellectual Property Tribunal to submit or show documents or other materials related to taking or preserving evidence;
- (iii) deleted; or
- (iv) failing to comply, without justifiable reasons, with a subpoena of the Intellectual Property Tribunal to appear as a witness, expert witness or interpreter, or refusing to take an oath, make a statement, testify, give an expert opinion or interpret.

(2) The administrative fine referred to in paragraph (1) is imposed and collected by the Commissioner of the Korean Intellectual Property Office as prescribed by Presidential Decree.

(3) Any person who objects to the imposition of an administrative fine under paragraph (2) may lodge a protest with the Commissioner of the Korean Intellectual Property Office within thirty days of the date of being notified of the imposition.

(4) The Commissioner of the Korean Intellectual Property Office, upon receipt of a protest under paragraph (3) by a person who was fined under paragraph (2), shall immediately

notify the competent court; the competent court shall adjudicate the case of the administrative fine under the Noncontentious Case Litigation Procedure Act.

(5) Where no objection has been raised within the period prescribed in paragraph (3) and where the fine has not been paid, the Commissioner of the Korean Intellectual Property Office shall collect it in accordance with the rules of collecting national taxes in arrears through the head of the competent tax office.

**ADDENDUM** <No. 4207, January 13, 1990>

**Article 1 Date of Entry into Force**

This Act enters into force on September 1, 1990. However, Articles 201, 205 and 211 of this Act, regarding Chapter II of the Patent Cooperation Treaty, enter into force on the date on which Chapter II of the Patent Cooperation Treaty enters into force in the Republic of Korea.

**Article 2 General Transitional Measures**

This Act applies to matters that occur before this Act enters into force except for the special cases prescribed in Articles 3 and 9 of this Addendum. However, this act does not affect the validity under the previous provisions.

**Article 3 Transitional Measures on Patent Applications etc.**

Any appeal against an examination or a decision to refuse a patent application initiated before this Act enters into force is subject to the previous provisions.

**Article 4 Transitional Measures on Trials Related to the Granting of a Patent Right**

Any trial, appeal, retrial or litigation related to a patent whose application was filed before this Act enters into force is subject to the previous provisions.

**Article 5 Transitional Measures on the Submission of Priority Documents for Inventions under the Treaty**

When priority is claimed in a patent application in the Republic of Korea before this Act enters into force, the period for submitting the priority documents for the inventions in the patent application is subject to the previous provisions.



**Article 6 Transitional Measures on the Refusal of Amendments**

An amendment made before this Act enters into force is subject to the previous provisions.

**Article 7 Transitional Measures on the Term of a Patent Right**

The term of a patent right for any patent granted before this Act enters into force is subject to the previous provisions.

**Article 8 Transitional Measures on Expropriation of a Patent Right**

Any limitation, expropriation, or revocation of patent right, or any disposition or litigation on the working of a patent right requested before this Act enters into force are subject to the previous provisions.

**Article 9 Transitional Measures on the Procedure and Expenses of Trials and Compensation for Damages etc.**

The procedure, expenses and compensation for damages in a trial, appeal, retrial or litigation that were requested before this Act enters into force are subject to the previous provisions.

**ADDENDUM (Government Organization Act) <No. 4541, March 6, 1993>**

**Article 1 Date of Entry into Force**

This Act enters into force on the date of its promulgation. (Proviso deleted.)

**Article 2 and Article 3 Deleted**

**Article 4 Amendment of Other Acts by the New Establishment of the Ministry of Commerce, Industry and Energy**

(1) to <46> Deleted.

<47> The following provisions of the Patent Act are amended as follows.

In Articles 16(1), 28(4), 42(6), 79(2), 82(3), 83(2) and (3), 90(1)(vi), 192(iv), 193(1) and (5), 194(4), 195(iv), 196(1)(ii) to (iii) and (2), 197(2), 198(2), 200, 206(2) and 214(1) and (2), "ordinance of the Ministry of Commerce and Industry" reads "ordinance of the

Ministry of Commerce, Industry and Energy".

<48> to <100> Deleted.

**Article 5 Deleted**

**ADDENDUM** <No. 4594, December 10, 1993>

**Article 1 Date of Entry into Force**

This Act enters into force on January 1, 1994.

**Article 2 Transitional Measures on the Period for Refunding Patent Fees etc.**

The provisions on the refund of patent fees and other fees paid by mistake before this Act enters into force are subject to the previous provisions.

**Article 3 Application Examples on Refunding Patent Fees**

Amended Article 84(1)(ii) and (iii) of this Act, which concerns refunding patent fees due to a final decision on the invalidation of a patent, apply to final decisions on invalidation made after this Act enters into force.

**ADDENDUM (Invention Promotion Act)** <No. 4757, March 24, 1994>

**Article 1 Date of Entry into Force**

This Act enters into force on the date of its promulgation.

**Articles 2 Deleted**

**Article 3 Amendment of Other Acts**

The provisions of the Patent Act are amended as follows:

Article 40(4) is deleted.

**Articles 4 and 5 Deleted**

**ADDENDUM** <No. 4892, January 5, 1995>

**Article 1 Date of Entry into Force**

This Act enters into force on March 1, 1998.

**Article 2 Transitional Measures on Pending Cases**

(1) Any request for a trial or appeal against a decision of refusal, a decision of revocation, or a decision to dismiss an amendment that is lodged before this Act enters into force is deemed, under this Act, to have been lodged at the Intellectual Property Tribunal and to be pending at the Intellectual Property Tribunal.

(2) Any request for an appeal against a trial decision or any immediate appeal against a decision to dismiss a request for a trial that is lodged before this Act enters into force is deemed under this Act to have been lodged at the Patent Court and to be pending at the Patent Court.

**Article 3 Transitional Measures on Cases that May Be Appealed**

(1) Where the decision of a trial, the decision to dismiss a request for a trial, a ruling of refusal, or a decision to dismiss an amendment by the examiner has been given when this Act enters into force, and if no appeal is brought to the Board of Appeals under the previous provisions within thirty days of the enforcement date of this Act, then, under Article 186(1) of this Act, a person may file a litigation against the decision of a trial and against the decision to dismiss a request for trial; or, under Article 132<sup>ter</sup> or 132<sup>quater</sup> of this Act, the person may request a trial against a ruling of refusal or against the decision to dismiss an amendment by the examiner. However, this provision does not apply if the period for appeal has expired under the previous provisions when this Act enters into force.

(2) Where a trial decision of the Board of Appeal, a decision to dismiss a request for an appeal and a decision to dismiss an amendment by a trial examiner has been given when this Act enters into force, and if the decision has not been appealed at the Supreme Court, a person may lodge an appeal with the Supreme Court. However, this provision does not apply if the period for appeal has expired under the previous provisions when this Act enters into force.

(3) Any case in which an appeal has been lodged at the Supreme Court under paragraph (2) of this Article before this Act enters into force is deemed to have been lodged at the Supreme Court under this Act or to be pending at the Supreme Court.

**Article 4 Transitional Measures on Retrials**

Articles 2 and 3 of the addendum apply *mutatis mutandis* to a pending retrial.

**Article 5 Transfer etc. of Documents**

(1) The Commissioner of the Korean Intellectual Property Office shall immediately transfer the documents of a pending case referred to in Article 2(1) of this addendum (including those applied *mutatis mutandis* under Article 4 of this addendum) to the President of the Intellectual Property Tribunal.

(2) The Commissioner of the Korean Intellectual Property Office shall immediately transfer the documents of a pending case referred to in Article 2(2) of this addendum (including those applied *mutatis mutandis* under Article 4 of this addendum) to the presiding trial examiner. In this case, matters necessary for the transfer and so on of documents are prescribed by Supreme Court regulations.

**Article 6 Amendment of Other Acts**

In Article 37(5) of the Government Organization Act, "business of an examination, a trial and a trial of appeal "reads "business of an examination and a trial"

**ADDENDUM** <No. 5080, December 29, 1995>

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 1996.

**Article 2 Transitional Measures on the Invention of Substances to be Manufactured by a Nuclear Conversion Method**

(1) When this Act enters into force, where an applicant has a patent application pending before the Korean Intellectual Property Office (and no certified copy of the decision to grant the patent has been transmitted), and the invention is for a substance that is manufactured by a nuclear conversion method as stated in the description or drawings attached to the original patent application, the applicant may amend the description or drawings within six months of this Act entering into force.

(2) The amendment referred to in paragraph (1) of this Article is considered as that made before a copy of the decision on the public notice of application has been transmitted.

### **Article 3 Transitional Measures on the Term of a Patent Right**

(1) This Act does not apply to a patent whose term has expired under the previous provisions before this Act enters into force.

(2) The previous provisions apply to the term of any patent that exists when this Act enters into force and to any patent whose term is reduced when this Act enters into force among the pending patent applications at the Korean Intellectual Property Office.

### **Article 4 Special Case of Recognizing an Ordinary License for those Preparing an Working Project**

(1) Where a patent on an invention of a substance to be manufactured by a nuclear conversion method is established under amended Article 32 of this Act, the person conducting or preparing to work the invention in the Republic of Korea before January 1, 1995, is entitled to have an ordinary license to the patent on the invention, limited to the object of the invention or the working.

(2) Where the term of a patent is extended by the enforcement of this Act, a person who is preparing to work the invention in the Republic of Korea before January 1, 1995, in anticipation of the expiry of the patent under the previous provisions is entitled to have an ordinary license for the patent, limited to the object of the invention and business that the person is preparing, during the period extended by the enforcement of this Act from the end of the period prescribed by the previous provisions.

(3) A person who holds an ordinary license under paragraphs (1) and (2) of this Article shall pay reasonable compensation to the patentee or exclusive licensee.

(4) Article 118(2) of this Act applies *mutatis mutandis* to the ordinary license referred to in paragraphs (1) and (2) of this Article.

### **Article 5 Transitional Measures on the Procedure and Expenses of Trials and Liability for Damages etc.**

Any procedure, expense, liability for damages and so on for a trial, appeal, retrial and litigation requested against any act committed before this Act enters into force is subject to the previous provisions

**ADDENDUM** <No. 5329, April 10, 1997>

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 1997. However, Articles 15(2), 16(1) and (2), 46, 132*ter*, 140*bis*, 164(1), 170, 171(2), 172, 176(1) and (2), 224*bis* of this Act and Articles 2(1) and 3(1) of the addendum of the amended Patent Act, Act No. 4892, enter into force on March 1, 1998.

**Article 2 Special Example on Oppositions Against a Patent**

(1) In applying Article 6 of this Act, "request an appeal against a decision of refusal under Article 167" reads "request an appeal against a decision of refusal or revocation under Article 167" until February 28, 1998.

(2) In applying Article 164(1) of this Act, "until the decision of other trials or appeals has become final" reads "a decision on an opposition to a patent, of other trials or appeals, has become final" until February 28, 1998.

(3) In applying Article 170(1) of this Act, "Articles 50, 51, 63 and 66 to 75" in the first part of the same paragraph reads "Articles 51, 63 and 66", and the latter part of the same paragraph is deemed to be deleted until February 28, 1998; in applying paragraph (3) of the same Article, "Article 51(4) to (6)" in the same paragraph reads "Article 51(1) and (5)" until February 28, 1998.

(4) In applying Article 171(3) and (4) of this Act, "a decision of refusal" in the same paragraph reads "a decision for refusal or revocation" until February 28, 1998.

(5) In applying Article 172 of this Act, "procedure for the patent, which was taken for the examination or trial" reads "procedure for the patent, which was taken for the opposition against examination and patent or trial" until February 28, 1998.

(6) In applying Article 176 of this Act, "shall reverse the decision of refusal or decision on a trial" reads "shall reverse or revoke the decision of refusal, decision of revocation or decision on a trial" until February 28, 1998.

**Article 3 Transitional Measures on Modification of the System for  
Opposition to a Patent**

(1) Where a copy of the decision to publish a patent application has been transmitted, with respect to a patent application that is pending at the Korean Intellectual Property

Office when this Act enters into force, the application and any patent, patent right, trial or retrial related to the patent application is subject to the previous provisions.

(2) Notwithstanding amended Article 29(3) of this Act, where a patent application for which a copy of the decision to publish the application has been served or a patent application applying for the same invention as an invention or device described in the description or drawing(s) attached to the original patent application after the application date of the utility model registration is subject to the previous provisions.

#### **Article 4 Transitional Measures on Penal Provisions**

The application of penal provisions against acts committed before this Act enters into force is subject to the previous provisions.

#### **Article 5 Amendment of Other Acts**

(1) The following provisions of the Trademark Act are amended as follows:  
Article 16(2) is amended as follows and paragraph (3) in the same Article is newly created as follows:

(2) Where an amendment of a trademark or the designated goods of an application for trademark registration filed before the transmittal of a certified copy of the decision to publish the application is considered to change the gist of the application after the establishment of the trademark right, the trademark application is deemed to have been filed when a document of the amendment was submitted.

(3) Where an amendment of a trademark or the list of designated goods of an application for trademark registration filed after the transmittal of a certified copy of the decision to publish the application is considered to have violated Article 15 of this Act after the establishment of the trademark right, the trademark application is deemed that a trademark right which the application for the trademark has not been made the amendment is granted.

Article 89(2) of this Act becomes paragraph (4) of the same Article, and paragraphs (2) and (3) of the same Article are newly created as follows:

(2) The Trademark Gazette may be published in electronic media as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) When publishing the Trademark Gazette in electronic media, the Commissioner of the Korean Intellectual Property Office shall use an electronic network to publicize matters regarding the Trademark Gazette's publication, main contents and service.

(2) The following provisions of the Industrial Design Act are amended as follows:  
"Articles 77 and 78(1) in this Act" in Article 30 reads "Articles 68 and 78 in this Act", and the later part of the same Article is deleted.

Article 78(2) becomes paragraph (4), and paragraphs (2) and (3) in the same Article are newly created as follows:

(2) The Design Gazette may be published in electronic media as prescribed by ordinance of the Ministry of the Commerce, Industry and Energy.

(3) When publishing the Design Gazette in electronic media, the Commissioner of the Korean Intellectual Property Office shall use an electronic network to publicize matters regarding the Design Gazette's publication, main contents and service.

**ADDENDUM** <No. 5576, September 23, 1998>

**Article 1 Date of Entry into Force**

This Act enters into force on January 1, 1999. However, Articles 193(1) and 198*bis* of this Act, amendments concerning the effect of the description, claim(s), drawing(s) and abstract of an international patent application made in the Korean language under Article 201(6) of this Act, amendments concerning the exemption of submission of translations for an international patent application made in the Korean language under Article 208(1) of this Act and amendments concerning the exemption of submission of translations for an international patent application made in the Korean language under Article 210 of this Act, enter into force on the day on which a convention that the Government of the Republic of Korea concludes with the International Bureau in connection with the appointment of an international searching authority enters into force, and amended Articles 6, 11, 29, 36, 49, 53, 55, 56, 59, 69, 87, 88, 102, 104, 133, 202, 209 and 215 of this Act and Articles 21 and 22 of the Industrial Design Act in Article 5(2) of the addendum enter into force on July 1, 1999.

**Article 2 General Transitional Measures**

When this law enters into force, any examination, patent registration, patent right, opposition to a patent, trial, review and litigation related to a patent application filed after January 1, 1999, is subject to the previous provisions.

**Article 3 Application of Disposition of Procedures Related to Filing a Patent Application by Means of Electronic Documents**

The provisions on procedures related to filing a patent application and oppositions to the grant of a patent under amended Articles 28*ter* and 217*bis*(5) of this Act apply to any patent application filed after January 1, 1999.



#### **Article 4 Application of Requirements for Patents**

Amended Article 29(3) of this Act applies when an invention for which a patent application filed after this Act enters into force (referred to as "a later-filed invention" in this Article) is the same as a device described in the description or drawing(s) attached to a written application for utility model registration filed before this Act enters into force and laid open after the filing date of the patent application for a later-filed invention.

#### **Article 5 Amendment of Other Acts**

- (1) The following provisions of the Industrial Design Act are amended as follows:  
"Articles 3 to 28 of the Patent Act" in Article 4 reads "Article 3 to 28~~quinquies~~ of the Patent Act";  
Articles 21 and 22 are deleted;  
"Article 218 of the Patent Act" in Article 81 reads "Article 217~~bis~~ of the Patent Act",  
and "Article 231 of the Patent Act" in Article 89 reads "Articles 229~~bis~~ and 231 of the Patent Act".
- (2) The following provisions of the Trademark Act are amended as follows:  
"Article 28 of the Patent Act" in Article 5 reads "Article 28 to 28~~quinquies~~ of the Patent Act",  
and "Article 218 of the Patent Act" in Article 92 reads "Article 217~~bis~~ of the Patent Act".

**ADDENDUM (National Basic Living Security Act) <No. 6024, September 7, 1999>**

#### **Article 1 Date of Entry into Force**

This Act enters into force on October 1, 2000. (Proviso deleted.)

#### **Article 2 Deleted**

#### **Article 3 Amendment of Other Acts**

(1) to (6) Deleted.

(7) The following provisions of the Patent Act are amended as follows:  
"An entitled person under Article 3 of the National Basic Livelihood Security Law" of Article 83(2) reads "the recipient under the provision of Article 5 of the National Basic Livelihood Security Act".

(8) to (10) Deleted

**Article 4 to Article 13 Deleted**

**ADDENDUM** <No. 6411, February 3, 2001>

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2001. However, amended Articles 56(1), 84(2) and (3), Article 217(1) and Article 229*bis* of this Act enter into force on the day this Act is promulgated.

**Article 2 Application of Requirements for Patents**

Amended Articles 29(1)(ii) and 30(1)(i)(c) of this Act apply to a patent application initiated after this Act enters into force.

**Article 3 General Transitional Measures**

The previous provisions apply to an examination, patent registration, patent right, opposition to a patent, trial, retrial and litigation related to a patent application made under the previous provisions when this Act enters into force, except under any of the following circumstances:

- (i) where an opposition to a patent is made, Article 136(9) of this Act as applied *mutatis mutandis* under amended Article 77(3) of this Act applies;
- (ii) where a patent application or patent right is deemed to have retroactive effect, amended Article 81*bis* of this Act applies;
- (iii) where a trial to invalidate a patent is requested, amended Article 133*bis*(1) and (2) of this Act, amended Articles 136(3) to (5), (7) to (11), 139(3), 140(1), (5) and 136(1) of this Act as applied *mutatis mutandis* under amended Article 133*bis*(3) of this Act applies;
- (vi) where a trial against a ruling to reject a patent application is requested, the exception of amended Article 140*bis*(1) and (3) of this Act applies; or
- (v) where individual claims of a patent application with two or more claims are abandoned, amended Article 215*bis* of this Act applies

**ADDENDUM** <No. 6582, December 31, 2001>

**Article 1 Date of Entry into Force**

This Act enters into force six months after its promulgation.

**Article 2 Transitional Measures on National and Public Patent Rights**

A patent right and the right to obtain a patent for official inventions created by the faculty of national and public schools owned by the State and local government entities may be transferred to the organization of the school concerned when this Act enters into force.

**Article 3 Transitional Measures on National and Public Utility Model Rights**

For official utility models and a utility model right for an official creation, the right to obtain a utility model, the utility model right and transferring the right to obtain a utility model by the faculty of national and public schools owned by the State and local government entities, amended Article 39 of this Act and the addendum as applied *mutatis mutandis* under Article 20 of the Utility Model Act and Article 24 of the Industrial Design Act apply when this Act enters into force.

**ADDENDUM (Civil Procedure Act) <No. 6626, January 26, 2002>**

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2002.

**Articles 2 to 5 Deleted**

**Article 6 Amendment of Other Acts**

(1) to (22) Deleted.

(23) The following provisions of the Patent Act are amended as follows:

"Article 9 of the Civil Procedure Act" in Article 13 reads "Article 11 of the Civil Procedure Act".

"Articles 142, 143 and 145 to 149 of the Civil Procedure Act" in Article 154(7) reads "Articles 153, 154 and 156 to 160 of the Civil Procedure Act", and "Articles 133, 271 and 339 of the Civil Procedure Act" in Article 154(8) reads "Articles 143, 299 and 367". "Articles 89 to 94, 98(1) and (2), 99, 101, 102 and 106 of the Civil Procedure Act" in Article 165(2) reads "Articles 98 to 103, 107(1) and (2), 108, 111, 112 and 116 of the Civil Procedure Act" and "Article 93 of the Civil Procedure Act" in Article 165(4) reads "Article 102 of the Civil Procedure Act".

"Articles 422 and 424 of the Civil Procedure Act" in Article 178(2) reads "Articles 451 and 453 of the Civil Procedure Act".

"Article 429(1) of the Civil Procedure Act" in Article 185 reads "Article 459(1) of the Civil Procedure Act".

"Articles 38 to 41, 43 and 44 of the Civil Procedure Act" in Article 188*bis*(1) reads "Articles 42 to 45, 47 and 48 of the Civil Procedure Act".

"Articles 271(2) and 339 of the Civil Procedure Act" in Article 232(1)(i) reads "Articles 299(2) and 367 of the Civil Procedure Act".

(24) to (29) deleted

### **Article 7 Deleted**

#### **ADDENDUM <No. 6768, December 11, 2002>**

##### **Article 1 Date of Entry into Force**

This Act enters into force five months after its promulgation; however, the amended Article 201(1) of this Act enters into force three months after its promulgation.

##### **Article 2 Application of Treatment of Oppositions against the Grant of a Patent**

Amended Article 78*bis* of the Act applies to an opposition against the granting of a patent initially filed after the enforcement of this Act.

##### **Article 3 Transitional Measures on Domestic Period for Submitting the Documents of an International Patent Application**

Notwithstanding amended Article 201(1) of this Act, the previous provisions apply to an international patent application of which the domestic period for submitting documents expires when this Act enters into force.

#### **ADDENDUM (Industrial Design Protection Act) <No. 7289, December 31, 2004>**

##### **Article 1 Date of Entry into Force**

This Act enters into force after six months after its promulgation.

**Article 2 to Article 4 Deleted**

**Article 5 Amendment of Other Acts**

(1) to (7) deleted

(8) The following provisions of the Patent Act are amended as follows

In Article 55(3), "Industrial Design Act" [uijang] reads the "Industrial Design Protection Act"[dizain].

In Article 98, "registered design" [uijang] reads "registered design" [dizain], "design" [uijang] reads "design" [dizain], "design right" [uijang] reads "design right" [dizain] and "holder of design right" [uijang] reads "holder of design right" [dizain].

In Article 102(4), "Industrial Design Act" [uijang] reads "Industrial Design Protection Act" [dizain] and "design right" [uijang] reads "design right" [dizain].

In Article 105, "Design Right" [uijang] in the title reads "Design Right" [dizain], and "design right" [uijang] in paragraph (1) of the same Article reads "design right" [dizain], "holder of original design right" [uijang] reads "holder of original design right" [dizain], and "original design right" [uijang] reads "original design right"[dizain], and, in paragraph (2) of the same Article, "design right" [uijang] reads "design right" [dizain] and "Industrial Design Act" [uijang] reads the "Industrial Design Protection Act" [dizain].

In Article 132-2 (1), "design" [uijang] reads "design" [dizain].

In the main part of Article 138(4), "the owner of the design right" [uijang] reads "the owner of the design right" [dizain], and, in paragraph (5) of the same Article, "registered design" [uijang] reads "registered design" [dizain] and "design" [uijang] reads "design" [dizain].

In Article 140(4)(ii) and (iii), "registered design" [uijang] reads "registered design" [dizain].

In Article 191(iii), "holder of design right" [uijang] reads "holder of design right" [dizain].

(9) or (16) Deleted.

In these articles, the English word "design" remains unchanged but, in the Korean version, the word for design, "uijang", has been changed to the more widely used term "dizain".

**ADDENDUM (Civil Act) <No. 7427, March 31, 2005>**

**Article 1 Date of Entry into Force**

This Act enters into force on the date of its promulgation; however, (deleted) Article

7 of this Addendum (except for paragraph (2) and paragraph (29)) enters into force on January 1, 2008.

**Articles 2 to 6 deleted**

**Article 7 Amendment of Other Laws**

(1) to (23) Deleted.

<24> The Patent Act is partly amended as follows:

"Blood relative, head of the household, family member" in Article 148(ii) reads "blood relative."

(25) to (29) Deleted.

**ADDENDUM <No. 7554, May 31, 2005>**

This Act enters into force six months after its promulgation; however, the amended Article 81*ter* enters into force on September 1, 2005.

**ADDENDUM (Invention Promotion Act) <No. 7869, March 3, 2006>**

**Article 1 Date of Entry into Force**

This Act enters into force six months after its promulgation. (proviso deleted.)

**Articles 2 to 5 Deleted**

**Article 6 Amendment of Other Laws**

(1) The Patent Act is partly amended as follows:

Articles 39 and 40 are both deleted.

(2) and (3) Deleted.

**ADDENDUM** <No. 7871, March 3, 2006>

**Article 1 Date of Entry into Force**

This Act enters into force on the date of its promulgation; however, the following amendments enter into force on October 1, 2006: the amendments to Articles 3(3), 6, *7bis*, 11(1), 20(vii), 21(vi), 29(1), 29(3) and 29(4), which are related to the Utility Model Act; the amendments to Articles 31, 36(3), 49, 52, 53, 55(1), 55(3) and 55(4), which are related to the Utility Model Act; the amendments to Articles 56(1), 58, *58bis*, *59ter*, 62, *63bis*, 64, 87(2), 88(4) and 102(4), which are related to the Utility Model Act; the amendments to Articles 104(1), 133(1), *133bis*(4), 135(1), 154(8), 193(1) and 202(3), which are related to the Utility Model Act; the amendments to Articles 202(4), 204 and 205, which are related to relevant dates; the amendments to Articles 208(3), 209, 213 and 215, which are related to the Utility Model Act; and the amendments to Article *229bis*; in addition, the following amendments enter into force on July 1, 2007: the amendments to Articles 3(2), 4, 15(1), 35 and 55(3), which are related to an opposition to a patent; the amendments to Articles 57(1), 65(6), 69 to 78, *78bis*, 84(1), *132ter*, 136(1), 136(6), 137(1), *140bis*, 148, 164(1), 165(3) and 165(4), which are related to an opposition to a patent; the amendments to Articles 171(2), 172, 176(1), 176(2), 181(1), 212, 214(5), 215 and 217(1), which are related to an opposition to a patent; the amendments to Articles 217(2), *217bis*(1) and *217bis*(2), which are related to an opposition to a patent; the amendments to Article *224bis*(1), which is related to an opposition to a patent; and the amendments to Articles 226(2) and 228.

**Article 2 Application Examples on Patent Requirements, etc.**

The application of amended Articles 29(1)(i), 30(1) and 36(4) begins with the first patent application filed after this Act enters into force.

**Article 3 Application Examples on the Refund of Patent Fees**

The application of amended Articles 84(2) and 84(3) begins when a decision to cancel a patent, a trial decision to invalidate a patent or a trial decision to invalidate the registration of the extended term of a patent right becomes final after this Act enters into force.

**Article 4 Application Examples on the Modification of a Patent Invalidation Trial**

The application of the amended proviso of Article 133(1) (except for subparagraphs (vii) and (viii)) begins when a patent right is established and registered after this Act enters into force.

**Article 5 Application Examples on Remuneration for Patent Attorneys**

The application of amended Article 191*bis* begins when a patent attorney represents a relevant party in a litigation after this Act enters into force.

**Article 6 General Transitional Measures**

Where a patent application is submitted before this Act enters into force, any examination, patent registration, patent right, trial, retrial or lawsuit of that application is subject to the previous provisions; however, amended Article 133*bis*(4) applies in a request for a trial to invalidate a patent, and amended Article 135(1) applies in a request for a trial to confirm the scope of rights.

**Article 7 Transitional Measures Regarding Abolishment of  
Opposition to Patents**

An opposition to any patent rights established and registered before July 1, 2007, are subject to the previous provisions.

**ADDENDUM (Act on Promotion of the Digitization of Administrative Affairs, etc.  
for the Creation of Electronic Government)**<No. 8171, January 3, 2007>

**Article 1 Date of Entry into Force**

This Act enters into force six months after its promulgation. (Proviso deleted.)

**Articles 2 to 5 Deleted**

**Article 6 Amendment of Other Laws**

(1) to (3) Deleted.

(4) A partial amendment to the Patent Act (No. 7871) is partly amended as follows: "Act on Promotion of the Digitization of Administrative Affairs, etc. for the Creation of Electronic Government" in Article 217(1)(iii) reads "Electronic Government Act".



**ADDENDUM** <No. 8197, January 3, 2007>

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2007.

**Article 2 Application Examples on Patent Applications, etc.**

The application of amended Articles 42, 47(1) and 55(3), the proviso of Article 59(2), Articles 62(iv) and 63*bis*, the proviso of Article 64(1), the latter part of Article 170(1), and the latter part of Article 174(2) begins when the first patent application is filed after this Act enters into force.

**Article 3 Application Examples on Cancellation of the Designation as a Specialized Search Organization**

The application of amended Article 58*bis* begins when the first violation occurs after the Act enters into force.

**Article 4 Application Examples on the Refund of Fees for Patent Applications, etc.**

The application of amended Article 84(1)(iv) begins when the first patent application is filed after this Act enters into force.

**Article 5 Application Examples on Patent Correction in a Patent Invalidation Trial**

The application of amended Articles 133*bis* and 137 begins when the first patent invalidation trial is requested after this Act enters into force.

**Article 6 Application Examples on Correction of Descriptions and Drawings in a Trial to Confirm the Scope of Rights**

The application of amended Article 140(2)(ii) begins with the first trial to confirm the scope of rights is requested after this Act enters into force.

**Article 7 General Transitional Measures**

Where a patent application is submitted before the Act enters into force, any examination, trial, retrial or lawsuit of that application is subject to the previous provisions.

**ADDENDUM (Invention Promotion Act) <No. 8357, April 11, 2007>**

**Article 1 Date of Entry into Force**

This Act enters into force on the date of its promulgation; however, (deleted) amended Article 6(4) of this Addendum enters into force on July 1, 2007.

**Articles 2 to 5 Deleted**

**Article 6 Amendment of Other Laws**

(1) and (2) Deleted.

(3) The Patent Act is partly amended as follows:

"Article 29 of the Invention Promotion Act" in Article 109 reads "Article 41 of the Invention Promotion Act".

(4) A partial amendment to the Patent Act (No. 8197) is partly amended as follows:

"Article 8(1) of the Invention Promotion Act" in Article 118(2), 119(1) and 136(7) reads "Article 10(1) of the Invention Promotion Act".

**Article 7 Deleted**

**ADDENDUM <No. 8462, May 17, 2007>**

**Article 1 Date of Entry into Force**

This Act enters into force six months after its promulgation.

**Articles 2 Application Examples on Refunding Patent Fees, etc.**

Amended Article 84(3) of this Act also applies to patent fees and other fees if the refund period specified in the previous provisions has not elapsed when this Act enters into force.





## UTILITY MODEL ACT

Act No. 952, Promulgated on December 31, 1961  
As last amended by Act No. 8193, January 3, 2007

### TABLE OF CONTENTS

#### CHAPTER I : GENERAL PROVISIONS

Article 1	Purpose .....	133
Article 2	Definitions .....	133
Article 3	<i>Mutatis Mutandis</i> Application of the Patent Act .....	133

#### CHAPTER II : REQUIREMENTS FOR UTILITY MODEL REGISTRATION AND UTILITY MODEL APPLICATIONS

Article 4	Requirements for Utility Model Registration .....	133
Article 5	Devices Deemed to be Not Known etc. ....	134
Article 6	Unregistrable Devices .....	135
Article 7	First-to-File Rule .....	135
Article 8	Application for a Utility Model Registration .....	136
Article 9	Scope of a Utility Model Application .....	137
Article 10	Converted Application .....	138
Article 11	<i>Mutatis Mutandis</i> Application of the Patent Act .....	139

#### CHAPTER III : TECHNICAL EVALUATION

Article 12	Request for an Examination of an Application for Utility Model Registration .....	139
Article 13	Decision to Refuse a Utility Model Registration .....	139
Article 14	Notification of the Reasons for Refusal .....	140
Article 15	<i>Mutatis Mutandis</i> Application of the Patent Act .....	140
Article 16	Registration Fees .....	140
Article 17	Official Fees .....	141
Article 18	Utility Model Register .....	141
Article 19	Issuance of a Utility Model Registration Certificate .....	141
Article 20	<i>Mutatis Mutandis</i> Application of the Patent Act .....	142

**CHAPTER V : UTILITY MODEL RIGHT**

Article 21	Registration of Establishment of a Utility Model Right and Publication of Registration .....	142
Article 23	Effects of a Utility Model Right .....	143
Article 24	Limitations on a Utility Model Right .....	143
Article 25	Relation with Registered Utility Models of Other Persons .....	143
Article 26	Nonexclusive License Due to Working before the Registration of a Request for an Invalidation Trial .....	144
Article 27	Nonexclusive License after a Design Right Expires .....	145
Article 28	<i>Mutatis Mutandis</i> Application of the Patent Act .....	145

**CHAPTER VI : PROTECTION OF OWNER OF UTILITY MODEL RIGHT**

Article 29	Acts Considered to be an Infringement .....	145
Article 30	<i>Mutatis Mutandis</i> Application of the Patent Act .....	145

**CHAPTER VII : TRIALS, RETRIALS AND LITIGATION**

Article 31	Trial for Invalidation of Utility Model Registration .....	146
Article 32	Trial to Grant a Nonexclusive License .....	147
Article 33	<i>Mutatis Mutandis</i> Application of the Patent Act .....	147

**CHAPTER XIII : INTERNATIONAL APPLICATIONS UNDER THE PATENT  
COOPERATION TREATY**

Article 34	Utility Model Application Based on an International Application .....	148
Article 35	Translation of International Utility Model Application .....	148
Article 36	Submission of Drawings .....	149
Article 37	Limitations on the Timing of Converted Application .....	150
Article 38	Limitations on the Timing of Request for Application Examination .....	150
Article 39	Special Provisions on an Invalidation Trial of a Utility Model Registration .....	150
Article 40	International Application Considered to be a Utility Model Application by Decision .....	150
Article 41	<i>Mutatis Mutandis</i> Application of the Patent Act .....	152

**CHAPTER X : SUPPLEMENTARY PROVISIONS**

Article 42 Utility Model Gazette ..... 152  
Article 43 Legal Fiction as Public Officials Regarding Employees and  
Officers of Specialized Search Organizations, etc. .... 152  
Article 44 *Mutatis Mutandis* Application of the Patent Act ..... 152

**CHAPTER XI : PENAL PROVISIONS**

Article 45 Offense of Infringement ..... 153  
Article 46 Offense of Perjury ..... 153  
Article 47 Offense of False Marking ..... 153  
Article 48 Offense of Fraud ..... 153  
Article 49 Offense of Divulging Secrets ..... 153  
Article 50 Dual Liability ..... 154  
Article 51 Confiscation etc. .... 154  
Article 52 Administrative Fine ..... 154

**ADDENDA** ..... 155





**CHAPTER I  
GENERAL PROVISIONS**

**Article 1 Purpose**

The purpose of this Act is to encourage, protect and utilize practical devices, thereby improving and developing technology, and to contribute to the development of industry.

**Article 2 Definitions**

The definitions of terms used in this Act are as follows:

- (i) "device" means the creation of technical ideas using the rules of nature;
- (ii) "registered utility model" means a device for which a utility model has been granted; and
- (iii) "working" means acts of manufacturing, using, assigning, leasing, importing, or offering for assignment or lease (including displaying for assignment or lease) an article to which a device has been applied.

**Article 3 *Mutatis Mutandis* Application of the Patent Act**

Articles 3 to 7, 7*bis*, 8 to 26, 28, 28*bis* to 28*quinquies* of the Patent Act apply *mutatis mutandis* to utility models.

**CHAPTER II  
REQUIREMENTS FOR UTILITY MODEL REGISTRATION AND UTILITY MODEL  
APPLICATIONS**

**Article 4 Requirements for Utility Model Registration**

(1) A utility model may be granted for devices that are industrially applicable and relate to the shape or structure of an article or a combination of articles, unless they fall under either of the following subparagraphs:

- (i) devices publicly known or worked in the Republic of Korea before the filing of the utility model application; or
- (ii) devices described in a publication distributed in the Republic of Korea or in a foreign country before the filing of the utility model application or made available to the public through electronic telecommunication lines under Presidential Decree.

(2) Notwithstanding paragraph(1), where a device could easily have been made before the filing of the utility model application by a person with ordinary skill in the art to which the device pertains, on the basis of a device referred to in either subparagraph of paragraph (1), a utility model registration may not be granted to that device.

(3) Notwithstanding paragraph (1), where a device for which a utility model application is filed is identical to a device or an invention described in the description or drawing(s) originally attached to another utility model application or a patent application, and where the other utility model application was filed before the utility model application and published after registration for public inspection after the filing date of the utility model application, or where a patent application was filed before the utility model application and laid open or published after grant for public inspection after the filing date of the utility model application, a utility model may not be granted for the device of the utility model application. This provision does not apply, however, where the inventor of the utility model application and the inventor of the other utility model or patent application are the same person or where the applicant of the utility model application and the applicant of the other utility model or patent application are the same person at the time of filing.

(4) Where the other utility model or patent application under paragraph (3) is an international application deemed to be a utility model application under Article 34 (1) of this Act, or an international application deemed to be a patent application under Article 199(1) of the Patent Act (including an international application considered to be a utility model or patent application under Article 71(4) of this Act or a patent application under Article 214(4) of the Patent Act), in applying paragraph (3), "laid open" reads "laid open or the subject of an international publication under Article 21 of the Patent Cooperation Treaty," and "a device or an invention described in the description or drawing(s) originally attached" reads "a device or an invention described both in the description, claim(s) or drawing(s) of the international application as of the international filing date and in the translated version".

#### **Article 5 Devices Deemed to be Not Known etc.**

(1) Where a device that belongs to a person with the right to obtain a utility model registration falls under any of the following subparagraphs, the device is not considered to fall under either subparagraph of Article 4(1) where Article 4(1) or (2) applies if the utility model application is filed within six months of the applicable date:

(i) where a person with the right to obtain a utility model registration causes the device to fall under either subparagraph of Article 4(1); however, this provision does not apply if an application is laid open or the registration is published in the Republic of Korea or in a foreign country in accordance with a treaty or applicable law.

(ii) where the device falls under either subparagraph of Article 4(1) against the intention of the person with the right to obtain a utility model registration;

(2) A person seeking to take advantage of paragraph (1)(i) of this Article shall file an application for utility model registration, and, within thirty days of the filing date of the application, specify in the application the purport of the intention to take advantage of paragraph (1)(i) of this Article and submit documents proving the relevant facts to the Commissioner of the Korean Intellectual Property Office.

### **Article 6 Unregistrable Devices**

Notwithstanding Article 4, devices falling under either of the following subparagraphs are unregistrable:

- (i) devices that are identical or similar to the national flag or decorations; or
- (ii) devices liable to contravene public order or morality, or to injure public health.

### **Article 7 First-to-File Rule**

(1) Where two or more applications related to the same device are filed on different dates, only the applicant with the earlier filing date may obtain a utility model registration for the device.

(2) Where two or more applications related to the same device are filed on the same date, only the person agreed upon by all the applicants after consultation may obtain a utility model registration for the device. If no agreement is reached or no consultation is possible, none of the applicants may obtain a utility model registration for the device.

(3) Where a utility model application has the same subject matter as a patent application and the applications are filed on different dates, paragraph (1) of this Article applies *mutatis mutandis*. If the utility model application and the patent application are filed on the same date, paragraph (2) of this Article applies *mutatis mutandis*.

(4) In the application of paragraphs (1) to (3) of this Article, where an application for utility model registration or a patent application is invalidated, withdrawn or abandoned, or where a decision to refuse an application or a trial decision of refusal becomes final, the application for utility model registration or the patent application is deemed never to have existed however, this provision does not apply if the decision to refuse the application for utility model registration or the patent application or the trial decision of refusal becomes final under the latter part of paragraph (2) of this Article (including those cases to which paragraph (2) of this Article applies *mutatis mutandis* under paragraph (3) of this Article).

(5) A utility model application or patent application filed by a person who is not the deviser, inventor or successor in title to the right to obtain a utility model registration or a patent, for the purposes of paragraphs (1) to (3) of this Article, is deemed never to have been filed.

(6) In the case of paragraph (2) of this Article, the Commissioner of the Korean Intellectual Property Office shall order the applicant for utility model registration to report the consultation results within a designated period. If the applicant fails to file the report within the designated period, the applicant is deemed to have not reached an agreement.

### **Article 8 Application for a Utility Model Registration**

(1) A person seeking to register a utility model shall file a utility model application with the Commissioner of the Korean Intellectual Property Office, stating the following:

- (i) the name and address of the applicant (and, if a legal entity, the name and address of the business);
- (ii) the name and residential or business address of an agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (iii) the title of the device; and
- (iv) the name and address of the deviser;

(2) A utility model application under paragraph (1) must be accompanied by an abstract, drawing(s) and a description stating the following:

- (i) the title of the device;
- (ii) a brief explanation of the drawing(s);
- (iii) a detailed description of the device; and
- (iv) the claim(s).

(3) In a method prescribed by ordinance of the Ministry of Commerce, Industry and Energy, the detailed description of a device under paragraph (2)(iii) of this Article must be clear and detailed enough to enable a person with ordinary skill in the art to which the device pertains to work the device easily.

(4) The claim(s) under paragraph (2)(iv) must describe the matter for which protection is sought in one or more claims (referred to as "claim(s)"), and the claim(s) must comply with each of the following subparagraphs:

- (i) the claim(s) must be supported by a detailed description of the device;
- (ii) the claim(s) must define the device clearly and concisely
- (iii) deleted.

(5) Notwithstanding paragraph (2) of this Article, when a person files an application to register a utility model, the description that must be submitted with the application may exclude the scope of claims claim(s) referred to in paragraph (2)(iv). In this case, however, the person shall amend the description to include the scope of claim(s) not later than the relevant deadline stipulated in either of the following subparagraphs:

- (i) the date on which a period of one year and six months elapses after the date that falls under any of the subparagraphs of Article 64(1) of the Patent Act, which applies *mutatis mutandis* under Article 15 of this Act; or
- (ii) the date on which a period of three months elapses after the date on which a notice of the purport of a request to examine an application is given under Article 60(3) of the Patent Act, which applies *mutatis mutandis* under Article 15 of this Act, before the deadline stipulated in subparagraph (i) of this paragraph (provided the notice is given more than one year and three months after the date that falls under any of the subparagraphs of Article 64(1) of the Patent Act, which applies *mutatis mutandis* under Article 15 of this Act).

(6) In stating the scope of claims for utility model registration under paragraph (2)(iv) of this Article, the applicant shall specify the shape and structure or a combination of these for the purpose of clarifying which specific parts of the design are to be protected.

(7) Where a person who has applied to register a utility model fails to amend the description that does not contain the scope of claim(s) by the relevant deadline stipulated in the subparagraphs of paragraph (5) of this Article, the application for utility model registration is deemed to have been withdrawn on the date immediately following the relevant deadline.

(8) Necessary matters related to the method of stating the scope of claims for utility model registration under subparagraph (2)(iv) of this Article are prescribed by Presidential Decree.

(9) Necessary matters related to the method of preparing an abstract under paragraph (2) of this Article are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 9 Scope of a Utility Model Application**

(1) A utility model application must relate to a single device only, unless a group of devices is linked to form a single general device concept.

(2) The requirements for a utility model application under paragraph (1) are prescribed by Presidential Decree.

### **Article 10 Converted Application**

(1) A patent applicant may convert a patent application to an application for utility model registration within the scope of matters stated in the description or drawing initially attached to the patent application; however, the conversion to an application for utility model registration is not permitted if more than thirty days have elapsed since the date on which a certified copy of refusal of the patent application was initially served.

(2) When an application is filed for the conversion of a patent application to an application for utility model registration under paragraph (1) of this Article (referred to as "converted application"), the converted application is deemed to have been an application for utility model registration at the time the relevant patent application was filed however, this provision does not apply if the converted application falls under any of the following circumstances:

- (i) where Article 4(3) of this Act or Article 29(3) of the Patent Act applies on the grounds that the converted application is the subject of another application for utility model registration under Article 4(3) of this Act or under Article 29(3) of the Patent Act;
- (ii) where Article 5(2) of this Act applies
- (iii) where Article 54(3) of the Patent Act, as applied *mutatis mutandis* under Article 11 of this Act, applies or
- (iv) where Article 55(2) of the Patent Act, as applied *mutatis mutandis* under Article 11 of this Act, applies.

(3) Any person who converts an application under paragraph (1) of this Article shall state in the conversion application the purport of the conversion as well as details of the patent application that serves as the basis of the converted application.

(4) Where a patent application is converted to an application for utility model registration, the relevant patent application is deemed withdrawn.

(5) Where the period stipulated in Article 132<sup>ter</sup> of the Patent Act is extended under Article 15(1) of the Patent Act, the thirty-day period under the proviso of paragraph (1) of this Article is extended by the same period of extension.

(6) Any person who claims a priority right under Article 54 of the Patent Act when applying to convert an application shall submit the documents referred to in Article 54(4) of the Patent Act to the Commissioner of the Korean Intellectual Property Office within three months of applying to convert the application, regardless of the period stipulated in Article 54(5) of the Patent Act.

**Article 11 *Mutatis Mutandis* Application of the Patent Act**

Articles 33 to 35, 37, 41, 43, 44, 46, 47, 51, 52, and 54 to 56 of the Patent Act apply *mutatis mutandis* to the requirements of utility model registration and the applications for utility model registration.

**CHAPTER III  
TECHNICAL EVALUATION**

**Article 12 Request for an Examination of an Application for Utility Model Registration**

(1) An application for utility model registration may be examined only when the applicant requests an examination.

(2) Any person who has filed an application for utility model registration may submit a request for an examination to the Commissioner of the Korean Intellectual Property Office within three years of the filing date however, an applicant for utility model registration may request an examination only if a detailed statement specifying the scope of claims for utility model registration is attached to the application.

(3) For a converted application or a divisional application under Article 52(2) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act, a person may request an examination within thirty days of the date on which the converted application or divisional application was filed, even if the period stipulated in paragraph (2) of this Article has expired.

(4) A request for an examination of an application may not be withdrawn.

(5) Where an applicant fails to request an examination of an application for utility model registration within the period stipulated in paragraph (2) or (3) of this Article, the application is deemed to have been withdrawn.

**Article 13 Decision to Refuse a Utility Model Registration**

Where an application for utility model registration falls under any of the following subparagraphs (referred to as "the reasons for refusal"), an examiner (referred to as "an examiner"), under Article 57(1) of the Patent Act as applied *mutatis mutandis* under Article 15 of this Act, shall refuse to register the utility model:

- (i) where the utility model is unregistrable under Articles 4, 6 and 7(1) to 7(3) of this Act and Article 25 of the Patent Act as applied *mutatis mutandis* under Article 3 of this Act or Article 44 of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act;
- (ii) where the applicant is not entitled to register a utility model under the main part of Article 33(1) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act or the utility model is unregistrable under the proviso of the Article 33(1) of the Patent Act;
- (iii) where the registration of the utility model violates a treaty;
- (iv) where the registration of the utility model fails to meet the requirements of Articles 8(3), 8(4), 8(8) and 9 of this Act;
- (v) where the converted application is beyond the scope referred to in Article 10(1) of this Act;
- (vi) where the amendment is beyond the scope referred to in Article 47(2) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act; or
- (vii) where the divisional application is beyond the scope referred to in Article 52(1) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act.

#### **Article 14 Notification of the Reasons for Refusal**

(1) Where an examiner intends to refuse the registration of a utility model under Article 13 of this Act, the examiner shall notify the applicant of the reasons for refusal and give the applicant an opportunity to submit a statement of opinions within a designated period; however, the provision does not apply where Article 47(1)(ii) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act is applicable and where the examiner intends to reject registration under Article 51(1) of the Patent Act.

(2) When an examiner gives notice of the reasons for refusal under the main part of paragraph (1) of this Article, with respect to an application for utility model registration with two or more claims, the examiner shall specify which of the claims are refused and, for each refused claim, provide concrete reasons for refusal.

#### **Article 15 *Mutatis Mutandis* Application of the Patent Act**

Articles 57, 58, 58*bis*, 60, 61, 63*bis*, 64 to 68, and 78 of the Patent Act apply *mutatis mutandis* to any examination or decision pertaining to an application for utility model registration.

#### **Article 16 Registration Fees**

(1) The owner of a utility model right or a person seeking to register a utility model right under Article 21(1) shall pay the registration fees.



(2) Matters necessary for paying registration fees, including the method and period of payment under paragraph (1), are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 17 Official Fees**

(1) Any person who applies to register a utility model registration shall pay official fees.

(2) Where a detailed statement attached to an application for utility model registration is amended after any person other than the applicant of the utility model registration requests examination of the application and, as a result of the amendment, the number of claims specified in the scope of claims for utility model registration increases, the applicant shall pay examination fees for the additional claims.

(3) Matters necessary for paying official fees, including the method and period of payment under paragraph (1), are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 18 Utility Model Register**

(1) The Commissioner of the Korean Intellectual Property Office shall maintain a Utility Model Register at the Korean Intellectual Property Office and register the following matters:

- (i) the establishment, transfer, extinguishment, restoration or restriction on the disposal of a utility model right;
- (ii) the establishment, maintenance, transfer, modification, extinguishment or restriction on the disposal of an exclusive or nonexclusive license; and
- (iii) the establishment, transfer, extinguishment or restriction on the disposal of a pledge on a utility model right or on an exclusive or nonexclusive license;

(2) All or parts of the Utility Model Register under paragraph (1) may be stored on magnetic tapes and so on.

(3) Necessary matters related to the procedures of registration and the maintenance of the register are prescribed by Presidential Decree.

(4) The description and drawing(s) of registered utility models and other documents prescribed by Presidential Decree are considered to be part of the Utility Model Register.

#### **Article 19 Issuance of a Utility Model Registration Certificate**

(1) When the establishment of a utility model right has been registered, the Commissioner

of the Korean Intellectual Property Office shall issue a utility model registration certificate to the owner of the utility model right.

(2) When the utility model registration certificate does not coincide with the Utility Model Register or other equivalent documents, the Commissioner of the Korean Intellectual Property Office shall reissue the utility model registration certificate with amendments, or issue a new utility model registration certificate upon request or *ex officio*.

(3) When a trial decision for a correction under Article 136(1) of the Patent Act as applied *mutatis mutandis* under Article 33 of this Act has become final, the Commissioner of the Korean Intellectual Property Office shall issue a new utility model registration certificate in accordance with the trial decision.

#### **Article 20 *Mutatis Mutandis* Application of the Patent Act**

Articles 80, 81, 81*bis*, 81*ter*, 83 and 84 of the Patent Act apply *mutatis mutandis* to registration fees and utility model registrations.

### **CHAPTER V UTILITY MODEL RIGHT**

#### **Article 21 Registration of Establishment of a Utility Model Right and Publication of Registration**

(1) A utility model right comes into effect upon registration of its establishment

(2) The Commissioner of the Korean Intellectual Property Office shall register the establishment of a utility model right if a situation in either of the following subparagraphs applies;

- (i) where registration fees are paid under Article 16(1) of this Act;
- (ii) where registration fees are paid late under Article 81(1) of the Patent Act, which applies *mutatis mutandis* under Article 20 of this Act;
- (iii) where the remaining balance of registration fees is paid under Article 81*bis*(2) of the Patent Act, which applies *mutatis mutandis* under Article 20 of this Act;
- (iv) where registration fees are paid late or the remaining balance of registration fees is paid under Article 81*ter*(1) of the Patent Act, which applies *mutatis mutandis* under Article 20 of this Act; or
- (v) where registration fees are exempted under Articles 83(1)(i) and 83(2) of the Patent Act, which apply *mutatis mutandis* under Article 20 of this Act.

(3) Where a registration has been made under paragraph (2), the Commissioner of the Korean Intellectual Property Office shall publish the registration of the utility model with relevant information in the Utility Model Gazette.

(4) Notwithstanding paragraph (3) of this Article, where a utility model application is ordered to be treated confidentially under Article 41(1) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act, the Commissioner of the Korean Intellectual Property Office shall reserve publication of the utility model registration until the registration is declassified. Upon declassification of the registration, the Commissioner shall immediately publish the registration.

(5) The Commissioner of the Korean Intellectual Property Office shall make application documents and attached materials available for public inspection for a period of three months after the publication date of the registration under paragraph (3).

(6) Matters to be published in the Utility Model Gazette regarding publication of registrations under paragraph (3) are prescribed by Presidential Decree.

#### **Article 23 Effects of a Utility Model Right**

The owner of a utility model right has an exclusive right to work the registered utility model commercially and industrially. However, where the utility model right is the subject of an exclusive license, this provision does not apply to the extent that the exclusive licensee has the exclusive right to work the registered utility model under Article 100(1) of the Patent Act as applied *mutatis mutandis* under Article 28 of this Act.

#### **Article 24 Limitations on a Utility Model Right**

The effects of a utility model right do not extend to the following::

- (i) working a registered utility model for research or experimentation;
- (ii) vessels, aircraft or vehicles merely passing through the Republic of Korea or machinery, instruments, equipment or other accessories used on the vessels, aircraft or vehicles; or
- (iii) articles existing in the Republic of Korea at the time the utility model application was filed.

#### **Article 25 Relation with Registered Utility Models of Other Persons**

Where the working of a registered utility model involves the use of another person's previously filed registered utility model, patented invention, registered design or design

similar to a registered design, or where a registered utility model right conflicts with another person's previously filed design right or trademark right, the owner of the subsequently filed registered utility model right or the exclusive or nonexclusive licensee may not work the registered utility model commercially or industrially without the permission of the person who owns the previously filed utility model right, patent right, design right or trademark right.

**Article 26 Nonexclusive License Due to Working before the Registration of a Request for an Invalidation Trial**

(1) Where a person falling under any of the following subparagraphs, before a request for an invalidation trial of a relevant registered utility model or patent, has been commercially or industrially working a device or invention in the Republic of Korea in good faith, or has been making preparations to work the device or invention, without knowing that the registered utility model or patented invention is subject to invalidation, the person is entitled to have a nonexclusive license on that utility model or on the exclusive license existing at the time the registered utility model or patent was invalidated, provided the nonexclusive license is limited to the scope of the device or invention being worked or for which preparations for working are being made and to the purpose of the working or preparations:

- (i) the original owner of a utility model right, where one of two or more utility model registrations granted for the same device has been invalidated;
- (ii) the original owner of a patent right, where a registered utility model and a patented invention are the same and the patent has been invalidated;
- (iii) the original owner of a utility model right, where the original owner's utility model registration has been invalidated and a utility model registration for the same device has been granted to an entitled person;
- (iv) the original patentee, where the original patentee's patent has been invalidated and a utility model registration for the same device as the invention has been granted to an entitled person; or
- (v) in cases referred to in subparagraphs (i) to (iv), a person who, at the time of registration of the request for an invalidation trial of an invalidated utility model or patent right, has been granted an exclusive license or a nonexclusive license, or a nonexclusive license on the exclusive license, and the license has been registered. However, a person falling under Article 118(2) of the Patent Act as applied *mutatis mutandis* under Article 28 of this Act is not required to register the license.

(2) A person granted a nonexclusive license under paragraph (1) shall pay reasonable remuneration for the nonexclusive license to the owner of a utility model right or the exclusive licensee.

**Article 27 Nonexclusive License after a Design Right Expires**

(1) Where a design right filed and registered on or before the filing date of a utility model application conflicts with the utility model right, and the term of the design right has expired, the owner of the design right is entitled to have a nonexclusive license on the utility model right to the extent of the design right, or on the exclusive license existing at the time the design right expired

(2) Where a design right filed and registered on or before the filing date of a utility model application conflicts with the utility model right, and the term of the design right has expired, a person who, at the time of expiry, has an exclusive license on the expired design right or a nonexclusive license (limited to the nonexclusive license under Article 118(1) of the Patent Act as applied *mutatis mutandis* under Article 61 of the Industrial Design Act) on the expired design right or on the exclusive license is entitled to have a nonexclusive license, to the extent of the scope of the expired right, on the utility model right or on the exclusive license existing at the time the design right expired.

(3) A person granted a nonexclusive license under paragraph (2) shall pay reasonable remuneration for the nonexclusive license to the owner of the utility model right or the exclusive licensee.

**Article 28 *Mutatis Mutandis* Application of the Patent Act**

Articles 97, 99 to 103, 106 to 111, 111*bis*, 112 to 116, 118 to 125 and 125*bis* of the Patent Act apply *mutatis mutandis* to a utility model right.

**CHAPTER VI  
PROTECTION OF OWNER OF UTILITY MODEL RIGHT**

**Article 29 Acts Considered to be an Infringement**

Commercial acts of manufacturing, assigning, leasing or importing, or the act of offering for commercial or industrial assignment or lease, of goods used exclusively for manufacturing a product related to a utility model registration are considered to infringe a utility model right or an exclusive license under the utility model registration.

**Article 30 *Mutatis Mutandis* Application of the Patent Act**

Articles 126, 128, 130, 131 and 132 of the Patent Act apply *mutatis mutandis* to protection of the owner of a utility model right.

**CHAPTER VII  
TRIALS, RETRIALS AND LITIGATION**

**Article 31 Trial for Invalidation of Utility Model Registration**

(1) Any interested party or an examiner may request a trial to invalidate a utility model registration under any of the following subparagraphs; when the registered utility model contains two or more claims, a request for an invalidation trial may be made for each claim; however, where a person requests an invalidation trial on any of the grounds in the following subparagraphs (except subparagraph (v)), the request must be submitted within the period from the publication date of the utility model right registration until three months after the registration date:

(i) where the registration of a utility model violates Articles 4, 6, 7(1) to 7(3), 8(3) and 8(4) of this Act or Article 25 of the Patent Act as applied *mutatis mutandis* under Article 3 of this Act;

(ii) where the utility model has been registered to a person who is not entitled to the utility model right or who may not obtain a patent under Article 25 of the Patent Act as applied *mutatis mutandis* under Article 3 of this Act;

(iii) where the registration of a utility model violates a treaty;

(iv) where the amendment is beyond the scope stipulated under Article 14; or

(v) where the owner of the registered utility model is not entitled to register a utility model under the main part of Article 33(1) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act or the registration of the utility model violates Article 44 of the Patent Act;

(vi) where the utility model is unregistrable under the proviso of Article 33(1) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act;

(vii) where the amendment is beyond the scope stipulated in Article 47(2) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act; or

(viii) where the divisional application is beyond the scope stipulated in Article 52(1) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act.

(2) A request for a trial under paragraph (1) may be made even after the extinguishment of a utility model right.

(3) Where a trial decision invalidating a utility model registration has become final, the utility model right is deemed never to have existed; however, where a trial decision invalidating a utility model registration under paragraph (1)(ii) has become final, the utility model right is deemed not to have existed from the time the utility model registration first became subject to paragraph (1)(ii).

(4) Where a request for a trial under paragraph (1) has been made, the presiding trial examiner shall notify the exclusive licensee of the utility model right and any other persons who have registered rights related to the utility model registration of the contents of the request.

### **Article 32 Trial to Grant a Nonexclusive License**

(1) Where the owner of a utility model right or an exclusive or nonexclusive licensee seeks permission to exercise the registered utility model under Article 25 and the other person refuses permission without justifiable reasons or permission is impossible to obtain, the owner or exclusive or nonexclusive licensee may request a trial to grant a nonexclusive license with the scope necessary to work the registered utility model.

(2) When a trial under paragraph (1) has commenced, a nonexclusive license may be granted only where the registered utility model of the later application constitutes an important technical advance that has substantial economic value in comparison to the other person's registered utility model or patented invention for which an application was filed before the filing date of the later application.

(3) If a person ordered to grant a nonexclusive license in accordance with a trial under paragraph (1) needs to work the registered utility model of the party who has been granted the nonexclusive license, and if the party refuses to give permission or if permission is impossible to obtain, the person may request a trial for the grant of a nonexclusive license with the scope necessary to work the registered utility model.

(4) A party granted a nonexclusive license under paragraphs (1) and (3) shall remunerate the owner of the utility model right, the patentee, the owner of the design right or the exclusive licensee; if payment is not possible for unavoidable reasons, the remuneration must be placed in deposit.

(5) A nonexclusive licensee under paragraph (4) may not work a registered utility model, a patented invention or a registered design or a similar design without paying the remuneration or placing a deposit.

### **Article 33 *Mutatis Mutandis* Application of the Patent Act**

Articles 132*ter*, 133*bis*, 135 to 137, 139, 140, 140*bis*, 141 to 153, 153*bis*, 154 to 166, 170 to 176, 178 to 188, 188*bis*, 189 to 191, and 191*bis* of the Patent Act shall apply *mutatis mutandis* to a trial, retrial and lawsuit on utility models.

**CHAPTER XIII**  
**INTERNATIONAL APPLICATIONS UNDER THE PATENT COOPERATION TREATY**

**Article 34 Utility Model Application Based on an International Application**

(1) Where an international application for which an international filing date has been recognized under the Patent Cooperation Treaty designates the Republic of Korea as a designated State to obtain a utility model registration, the application is considered to be a utility model application filed on its international filing date.

(2) Article 54 of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act does not apply to an international application considered to be a utility model application filed on its international filing date under paragraph (1) (referred to as "an international utility model application").

**Article 35 Translation of International Utility Model Application**

(1) An applicant who has filed an international utility model application in a foreign language shall submit to the Commissioner of the Korean Intellectual Property Office, a Korean translation of the description, claim(s), the drawing(s) and the abstract filed on the international filing date, within a period (referred to as "the domestic period for submitting documents") that is not more than two years and seven months after the priority date as defined in Article 2(xi) of the Patent Cooperation Treaty (referred as "the priority date"). However, if the claim(s) of an international utility model application have been amended under Article 19(1) of the Patent Cooperation Treaty, the applicant may replace the Korean translation of the scope of claims submitted on the international filing date with a Korean translation of the amended scope of claims.

(2) Where a Korean translation of the description and claim(s) under paragraph (1) have not been submitted within the domestic period for submitting documents, the international utility model application is deemed to have been withdrawn.

(3) An applicant who has submitted the Korean translation referred to in paragraph (1) may submit a new translation to replace the earlier translation only within the designated domestic period for submitting documents. If the applicant requests an examination of an application, this provision does not apply.

(4) Matters that were disclosed in the description, claim(s) and textual matter of the drawing(s) of an international utility model application filed on the international filing date but not disclosed in the Korean translation under paragraph (1) or (3) (referred to



as "the translated version") submitted within the domestic period for submitting documents (or the date of the request for an examination where the applicant has made the request before the designated date, referred to as "the relevant date") are deemed not to have been disclosed in the description, claim(s) and textual matter of the drawing(s) of the international utility model application filed on the international filing date.

(5) An application submitted on the international filing date of an international utility model application is deemed to be an application submitted under Article 8(1).

(6) The translated version of the description, claim(s), drawing(s) and abstract of an international utility model application (or the description, claim(s), drawing(s) and abstract submitted on the international filing date if the international utility model application is filed in the Korean language) is deemed to be the description, claim(s), drawing(s) and abstract submitted under Article 8(2).

(7) Article 204(1) and (2) of the Patent Act as applied *mutatis mutandis* under Article 41 of this Act does not apply where a Korean translation of the amended claims is submitted in accordance with paragraph (1) of this Article.

(8) Where a Korean translation has been submitted under the proviso of paragraph (1) only for the amended claim(s), the claim(s) submitted on the international filing date are not recognized.

### **Article 36 Submission of Drawings**

(1) An applicant for an international utility model application shall submit a drawing or drawings (including a brief description of the drawing(s)) to the Commissioner of the Korean Intellectual Property Office no later than the relevant date if no drawing of the international application submitted on the international filing date is included.

(2) The Commissioner of the Korean Intellectual Property Office may require the applicant for an international utility model application to submit a drawing or drawings within a designated period when the drawing(s) under paragraph (1) have not been submitted on or before the relevant date. The same procedure applies where the Korean translation of the drawing(s) under Article 35(1) or (3) has not been submitted by the relevant date.

(3) The Commissioner of the Korean Intellectual Property Office may invalidate an international utility model application where the applicant required to submit the drawing(s) under paragraph (2) has failed to do so within the designated period.

(4) A drawing and a Korean translation of the drawing(s) submitted under paragraph (1) or (2) is deemed to be an amendment under Article 47(1) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act. However, the period allowed for amendment under Article 13(1) of this Act does not apply to such a drawing.

#### **Article 37 Limitations on the Timing of a Converted Application**

Notwithstanding Article 10(1) of this Act, an application to convert an international application that is deemed to be a patent application filed on the international filing date under Article 199(2) of the Patent Act into an application for utility model registration may not be filed unless the official fees under Article 82(1) of the Patent Act have been paid and the Korean translation under Article 201(1) of the Patent Act (excluding international patent applications filed in Korean) has been filed (or, if the application for conversion is based on an international application deemed to have been filed on a date recognized as the international filing date under Article 214(4) of the Patent Act, the application for conversion may not be filed unless a decision under Article 214(4) of the Patent Act has been made).

#### **Article 38 Limitations on the Timing of Request for Application Examination**

Notwithstanding Article 12(2) of this Act, an applicant for an international utility model registration may not request an examination of the application for international utility model registration unless the applicant has undergone the procedure prescribed in Article 35(1) (with the exception of applications for international utility model registration filed in Korean) and paid the official fees under Article 17(1); furthermore, no person other than the applicant for international utility model registration may request an examination of the application unless the period stipulated in Article 35(1) has expired.

#### **Article 39 Special Provisions on an Invalidation Trial of a Utility Model Registration**

A person may request a trial to invalidate a utility model registration for an international application filed in a foreign language on the grounds that the device does not fall under either of the following subparagraphs or under any subparagraph of Article 31(1):

- (i) the device is disclosed in the description, claim(s) or the drawing(s) of an international application submitted on the international filing date and in the translated version; or
- (ii) the device is disclosed in the drawing(s) (excluding the textual matter of the drawing(s)) of an international application submitted on the international filing date.

#### **Article 40 International Application Considered to be a Utility Model Application by Decision**

(1) Where the receiving office referred to in Article 2(xv) of the Patent Cooperation Treaty

has refused to recognize an international filing date under Article 25(1)(a) of the Treaty or has made a declaration of withdrawal of an international application under Article 25(1)(a) or (b) of the Treaty, or the International Bureau has made a finding that the recorded copy has not been received under Article 25(1)(a) of the Treaty, for an international application (referring only to an application for utility model registration) that includes the Republic of Korea in designated States under Article 4(1)(ii) of the Treaty, the applicant of the international application may request the Commissioner of the Korean Intellectual Property Office, as prescribed by ordinance of the Ministry of Commerce, Industry and Energy, to make a decision in accordance with Article 25(2)(a) of the Treaty.

(2) A person making a request under paragraph (1) shall submit to the Commissioner of the Korean Intellectual Property Office a Korean translation of the description, claim(s), the drawing(s) (only the textual matter of the drawing(s)) and other documents related to the international application as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) Where a request under paragraph (1) has been made, the Commissioner of the Korean Intellectual Property Office shall decide whether the refusal, declaration or finding referred to in the request was properly made under the Patent Cooperation Treaty and its Regulations.

(4) Where the Commissioner of the Korean Intellectual Property Office has decided under paragraph (3) that the refusal, declaration or finding was not properly made under the Patent Cooperation Treaty and its Regulations, the relevant international application is deemed to be a utility model application filed on the date that would have been recognized as the international filing date if the refusal, declaration or finding had not been made for the international application.

(5) When determining whether a refusal, declaration or finding was properly made in accordance with paragraph (3) of this Article, the Commissioner of the Korean Intellectual Property Office shall issue a certified copy of the decision to the international applicant concerned.

(6) Articles 200, 202(1) and (2), and 208 of the Patent Act as applied *mutatis mutandis* under Articles 34(2), 35(4) to 35(8), 38, 39 and 41 of this Act apply *mutatis mutandis* to an international application considered to be a utility model application filed on the date that would have been recognized as the international filing date under paragraph (4).

(7) With regard to laying open an international application considered to be a utility model application under paragraph (4), the "date of a patent application" under Article 64(1) of the Patent Act as applied *mutatis mutandis* under Article 15 of this Act reads "priority date under Article 35(1)."

**Article 41 *Mutatis Mutandis* Application of the Patent Act**

Articles 192 to 198, 198*bis*, 200, 202 to 208, and 211 of the Patent Act apply *mutatis mutandis* to international utility model applications.

**CHAPTER X  
SUPPLEMENTARY PROVISIONS**

**Article 42 Utility Model Gazette**

- (1) The Korean Intellectual Property Office shall publish the Utility Model Gazette.
- (2) The Utility Model Gazette may be published in electronic media as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.
- (3) When publishing the Utility Model Gazette in electronic media, the Commissioner of the Korean Intellectual Property Office shall publicize on a communication network matters regarding the Utility Model Gazette's publication, main contents and service.

**Article 43 Legal Fiction as Public Officials Regarding Employees and Officers of Specialized Search Organizations, etc.**

Current or former employees and officers of specialized search organizations under Article 58(1) of the Patent Act as applied *mutatis mutandis* under Article 15 of this Act and current or former employees of agencies that digitize patent documents under Article 217*bis*(3) of the Patent Act as applied *mutatis mutandis* under Article 44 of this Act are considered current or former employees of the Korean Intellectual Property Office with respect to the application of Article 49 of this Act.

**Article 44 *Mutatis Mutandis* Application of the Patent Act**

Articles 215, 215*bis*, 216, 217, 217*bis*, 218 to 220, 222 to 224 and 224*bis* of the Patent Act apply *mutatis mutandis* to a utility model.

**CHAPTER XI  
PENAL PROVISIONS**

**Article 45 Offense of Infringement**

(1) A person who infringes a utility model right or exclusive license is liable to imprisonment with labor not exceeding seven years or to a fine not exceeding 100 million won.

(2) Prosecution for offenses under paragraph (1) are initiated upon the filing of a complaint by an injured party.

**Article 46 Offense of Perjury**

(1) Having taken an oath under Article 33 of this Act and under the Civil Procedure Act as applied *mutatis mutandis* under Article 157(2) of the Patent Act, a witness, expert witness or interpreter who makes a false statement, gives a false expert opinion or interprets falsely is liable to imprisonment with labor not exceeding five years or a fine not exceeding 10 million won.

(2) Having committed an offense under paragraph (1), a person who admits the offense before the decision of an opposition or a trial decision related to a utility model registration becomes final may be partially or totally exempted from the application of the sentence.

**Article 47 Offense of False Marking**

A person who violates subparagraphs 1 to 3 of Article 224 of the Patent Act as applied *mutatis mutandis* under Article 44 of this Act is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

**Article 48 Offense of Fraud**

A person who fraudulently or unjustly obtains a utility model registration, a decision on a technical evaluation, or an official or trial decision in an opposition to a utility model registration is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

**Article 49 Offense of Divulging Secrets**

Any present or former officials of the Korean Intellectual Property Office or the Intellectual Property Tribunal who have disclosed or appropriated a device disclosed in

a pending utility model application to which they had access during the course of their duties are liable to imprisonment with labor not exceeding two years or to a fine not exceeding 3 million won.

#### **Article 50 Dual Liability**

Where a representative of a legal entity or an agent, employee or other servant of a legal entity or natural person violates Articles 45(1), 47 or 48 with regard to the business of the legal or natural person, the legal person in addition to the offender is liable to a fine as prescribed in either of the following paragraphs, and the natural person is liable to a fine prescribed in the relevant Article:

- (i) under Article 45(1), a fine not exceeding 300 million won;
- (ii) under Article 47 or 48, a fine not exceeding 60 million won.

#### **Article 51 Confiscation etc.**

(1) Any goods that are the subject of an act of infringement under Article 45(1) or any goods arising out of the act of infringement must be confiscated or, upon the request of the injured party, a judgment must be made requiring the goods to be delivered to the injured party.

(2) Where goods are delivered to the injured party under paragraph (1), the injured party may claim compensation of damages in excess of the value of the goods.

#### **Article 52 Administrative Fine**

(1) A person who commits any of the following acts is liable to an administrative fine not exceeding 500,000 won:

- (i) making a false statement before the Intellectual Property Tribunal after having taken an oath under Articles 299(2) and 367 of the Civil Procedure Act;
- (ii) failing to comply, without justifiable reasons, with an order of the Intellectual Property Tribunal to submit or show documents or other materials related to taking or preserving evidence;
- (iii) failing to comply, without justifiable reasons, with a subpoena of the Intellectual Property Tribunal to appear as a witness, an expert witness or an interpreter, or refusing to take an oath, make a statement, testify, give an expert opinion or interpret.

(2) The Commissioner of the Korean Intellectual Property Office shall impose and collect the administrative fine referred to in paragraph (1) as prescribed by Presidential Decree.

(3) A person who objects to the imposition of an administrative fine under paragraph (2) may protest to the Commissioner of the Korean Intellectual Property Office within thirty days of being notified of the imposition.

(4) Where a person who has been notified of the imposition of an administrative fine under paragraph (2) raises an objection under paragraph (3), the Commissioner of the Korean Intellectual Property Office shall immediately notify the competent court, which shall adjudicate the case of the administrative fine according to the Noncontentious Case Litigation Procedure Act.

(5) Where no objection has been raised within the period prescribed in paragraph (3) and where the fine has not been paid, the Commissioner of the Korean Intellectual Property Office shall collect the fine in accordance with the rules of collecting national taxes in arrears through the head of a competent tax office.

**ADDENDUM** <No. 5577, September 23, 1998>

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 1999. However, Articles 28*bis* to 28*quinquies* of the Patent Act as applied *mutatis mutandis* under Article 4 take effect on January 1, 1999, and provisions on the effect of the description, claim(s), drawing(s) and abstract of an application for international utility model registration filed in the Korean language in Article 59(6), provisions on the exemption of submission of the translation of an application for international utility model registration filed in the Korean language in Article 65(1), provisions on the exemption of submission of the translation of an application for an international patent filed in the Korean language in Article 210 of the Patent Act as applied *mutatis mutandis* under Article 72, and Articles 193(1) and 198*bis* of the Patent Act as applied *mutatis mutandis* under Article 72 apply on and after the date on which the agreement that the Government of the Republic of Korea concludes with the International Bureau on the selection of an international investigation agency takes effect for the Republic of Korea under Article 16(3)(b) of the Patent Cooperation Treaty.

**Article 2 General Transitional Measures**

An application for utility model registration, as well as its examination, utility model registration, utility model right, opposition to a utility model registration, trial, review, and lawsuits, filed under the previous provisions when this Act enters into force is subject to the previous provisions.

**Article 3 Application Examples of Disposition of Procedures Related to a Utility Model by Means of Electronic Documents**

Articles 28<sup>ter</sup> to 28<sup>quinquies</sup> of the Patent Act as applied *mutatis mutandis* under Article 4 and Article 217bis(5) of the Patent Act as applied *mutatis mutandis* under Article 77 apply to an application for utility model registration filed on or after January 1, 1999.

**Article 4 Application Examples of Requirements for Utility Model Registration**

Article 5(3) of this Act applies when a device for which an application for utility model registration is filed after this Act enters into force (referred to as "a later-filed application" in this Article) is the same as a device described in the description or drawing(s) attached to an application for utility model registration that had been filed before the date of enforcement of this Act and has been laid open after the later-filed application.

**Article 5 Special Cases for Applying the New Act to Previous Applications for Utility Model Registration**

(1) Notwithstanding Article 2 of this addendum, upon the request of an applicant, the provisions apply to an application for utility model registration pending in the Korean Intellectual Property Office when this Act enters into force (excluding an application for which six years have elapsed since the date of its application as of the date this Act takes effect).

(2) A person applying the provisions under paragraph (1) of this Article shall submit a request to the Commissioner of the Korean Intellectual Property Office as prescribed by ordinance of the Ministry of Commerce, Industry and Energy within one year of the date on which this Act takes effect. However, a request for an international application deemed to be an application for utility model registration under the previous provisions of Articles 36(1) or 44(4) of this Act is allowed only if the translation and necessary documents under the previous provisions of Articles 37(1) and 38 of this Act are submitted and the fees are paid under the previous provisions of Article 17(1) of this Act when making the request.

(3) An application for utility model registration subject to this Act under paragraph (1) of this Article is deemed to have been filed on the filing date of the original application for utility model registration deemed to have been withdrawn on the date of the request under paragraph (1) of this Article.

(4) Notwithstanding Article 13(1) of this Act, amendment of the description, drawing(s) or abstract attached to an application for utility model registration that is subject to applica-



tion of this Act under paragraph (1) of this Article may be made within the period designated by ordinance of the Ministry of Commerce, Industry and Energy under Article 13(1) of this Act from the date on which a request is submitted under paragraph (2) of this Article.

### **Article 6 Amending Other Acts**

(1) The following provision of the Invention Promotion Act is amended as follows: "Article 11 of the Utility Model Act" in Article 14 reads "Article 20 of the Utility Model Act".

(2) The following provision of the Court Organization Act is amended as follows. "Article 35 of the Utility Model Act" in Article 28<sup>quater</sup>(i) and Article 54<sup>bis</sup>(2) reads "Article 55 of the Utility Model Act".

### **ADDENDUM <No. 7872, March 3, 2006>**

#### **Article 1 Date of Entry into Force**

This Act enters into force on October 1, 2006; however, the amended provisions of Article 5, the proviso of Article 7(4) and Article 52 of this Act, and the proviso of Article 3 of this Addendum enter into force on the date of promulgation.

#### **Article 2 Application Examples on the Requirements of Utility Model Registration**

The application of amended Articles 4(1)(i), 5(1) and 7(4) begins when the first application for utility model registration is filed after these amended provisions enter into force.

#### **Article 3 General Transitional Measures**

An application for utility model registration as well as any related examination, utility model registration, utility model right, trial, retrial or lawsuit filed under the previous provisions when this Act enters into force is subject to the previous provisions; however, this provision does not apply in either of the following cases:

- (i) where Article 77(3) of the Patent Act as applied *mutatis mutandis* under the previous Article 27(4) of this Act applies in a technical evaluation of a utility model or
- (ii) where Article 77(3) of the Patent Act as applied *mutatis mutandis* under the previous Article 48 of this Act applies in the filing of an opposition to a utility model registration.

**Article 4 Transitional Measures on Opposition to Utility Model Registration**

Where an opposition to a utility model registration is filed on or before June 30, 2007, the opposition is subject to the previous provisions.

**Article 5 Amendment of Other Laws**

(1) The Court Organization Act is partly amended as follows:

"Article 55 of the Utility Model Act" in Articles 28*quater*(i) and Article 54*bis*(2) of the Court Organization Act reads "Article 33 of the Utility Model Act".

(2) The Technology Transfer Promotion Act is partly amended as follows:

"Article 34 of the Utility Model Act" in the main part of Article 15(2) of the Technology Transfer Promotion Act reads "Article 20 of the Utility Model Act."

**ADDENDUM** <No. 8193, January 3, 2007>

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2007.

**Article 2 Application Examples on an Application for Utility Model Registration, etc.**

The application of amended Article 8, the proviso of Article 12(2) and Article 13(iv) begins when the first application for utility model registration is filed after this Act enters into force.

**Article 3 Application Examples on the Correction of a Utility Model Registration in Proceedings Invalidating a Utility Model Registration**

The application of amended Article 133*bis* of the Patent Act as applied *mutatis mutandis* under Article 33 of this Act begins when the first application for the invalidation of a utility model registration is filed after this Act enters into force.

**Article 4 Application Examples on the Amendment of Descriptions and Drawings in Trials Confirming the Scope of Rights**

The application of amended Article 140(2)(ii) of the Patent Act as applied *mutatis muta-*

*ndis* under Article 33 of this Act begins when the first application for a trial confirming the scope of claims is filed after this Act enters into force.

**Article 5 General Transitional Measures**

An application for utility model registration as well as any related examination, trial, retrial or lawsuit filed under the previous provisions when this Act enters into force is subject to the previous provisions.







**TRADEMARK ACT**

Military Act No. 71, Promulgated on November 28, 1949  
As last amended by Act No. 8458, May 17, 2007

**TABLE OF CONTENTS**

**CHAPTER I : General Provisions**

Article 1	Purpose .....	171
Article 2	Definitions .....	171
Article 3	Persons Entitled to Register a Trademark .....	172
Article 3bis	Persons Entitled to Register a Collective Mark .....	172
Article 4	Persons Entitled to Register a Business Emblem .....	172
Article 5	<i>Mutatis Mutandis</i> Application of the Patent Act .....	172

**CHAPTER II : Requirements for trademark Registration and Trademark Applications**

Article 6	Requirements for Trademark Registration .....	173
Article 7	Unregistrable Trademarks .....	174
Article 8	First-to-File Rule .....	177
Article 9	Application for Trademark Registration .....	179
Article 9bis	According the Filing Date etc. ....	180
Article 10	A Single Application for a Single Trademark .....	181
Article 11	Deleted .....	181
Article 12	Transfer and Partial Assignment of an Application for Trademark Registration etc. ....	181
Article 13	Amendment of Procedure .....	182
Article 14	Amendment before Decision of Publication of Application .....	182
Article 15	Amendment after Decision of Publication of Application .....	182
Article 16	Material Change of Application .....	183
Article 17	Rejection of Amendment .....	183
Article 17bis	Submission of Amended Articles of Association .....	184
Article 18	Division of Application for Trademark Registration .....	184
Article 19	Conversion of an Application .....	184
Article 20	Priority Claim under Treaty .....	185
Article 21	Special Provisions on the Time of Filing an Application .....	186

**CHAPTER III : Examination**

Article 22 Examination by Examiner .....	187
Article 22 <i>bis</i> Request etc. for Inspection of a Trademark by a Specialized Searching Agency .....	187
Article 22 <i>ter</i> Revocation of Designation as a Specialized Searching Agency, etc. ....	187
Article 23 Decision to Refuse Trademark Registration and Notification of Reasons for Refusal .....	188
Article 24 Publication of an Application .....	189
Article 24 <i>bis</i> Right to Demand Compensation for Loss .....	189
Article 25 Opposition to a Trademark Registration .....	190
Article 26 Amendment of Reasons for an Opposition to a Trademark Registration .....	191
Article 27 Decision on an Opposition to Trademark Registration .....	191
Article 28 Decision of Refusal to Register a Trademark Made <i>Ex Officio</i> after Publication .....	192
Article 29 Concurrent Oppositions to Trademark Registration .....	192
Article 30 Decision to Grant Registration of a Trademark .....	192
Article 31 Method of Decision to Grant or Refuse Trademark Registration .....	192
Article 32 Suspension of Examination or Litigation Proceedings .....	193
Article 33 <i>Mutatis Mutandis</i> Application of the Patent Act .....	193

**CHAPTER IV : Trademark Registration Fees and Registration of Trademarks**

Article 34 Trademark Registration Fees .....	193
Article 34 <i>bis</i> Abandoning Some or All Designated Goods When Paying Trademark Registration Fees .....	194
Article 35 Extension of Payment Period for Trademark Registration Fees .....	194
Article 36 Abandoning an Application for Trademark Registration as a Consequence of Nonpayment of Trademark Registration Fees .....	194
Article 36 <i>bis</i> Supplementary Trademark Registration Fees .....	194
Article 36 <i>ter</i> Recovery of an Application for Trademark Registration by Paying Trademark Registration Fees etc. ....	195
Article 37 Official Fees .....	195
Article 38 Refund of Trademark Registration Fees .....	196
Article 39 Trademark Register .....	196
Article 40 Issuance of a Trademark Registration Certificate .....	197



**CHAPTER V : Trademark Right**

Article 41	Registration of Establishment of a Trademark Right .....	197
Article 42	The Term of a Trademark Right .....	197
Article 43	Application to Renew the Term of a Registered Trademark .....	198
Article 44	Division of an Application to Renew the Term of a Registered Trademark .....	198
Article 45	Refusal of Registration for Renewal of the Term and Notification of Reasons for Refusal .....	198
Article 46	Effects of an Application to Renew the Term of a Registered Trademark etc. ....	199
Article 46bis	Application to Register the Reclassification of Goods .....	199
Article 46ter	Division of an Application to Register the Reclassification of Goods .....	200
Article 46quater	Decision to Refuse Registration of the Reclassification of Goods and Notification of the Reasons for Refusal .....	201
Article 46quinquies	Registration of the Reclassification of Goods .....	201
Article 47	Application for Supplementary Registration of Designated Goods ...	201
Article 48	Decision to Refuse Supplementary Registration of Designated Goods and Notification of Reasons for Refusal .....	202
Article 49	<i>Mutatis Mutandis</i> Application of the Patent Act .....	202
Article 50	Effects of a Trademark Right .....	202
Article 51	Limitations of a Trademark Right .....	203
Article 52	Extent of Protection of a Registered Trademark etc. ....	204
Article 53	Relationship with Another Design Right etc. ....	204
Article 54	Assignment and Joint Ownership of a Trademark etc. ....	204
Article 54bis	Division of a Trademark Right .....	205
Article 55	Exclusive License .....	205
Article 56	Effects of Registration on Trademark Right and Exclusive License ..	205
Article 57	Nonexclusive License .....	206
Article 57bis	Right to Use a Trademark after the Term of a Patent Right Expires etc. ....	206
Article 57ter	Right to Continued Use of a Trademark by Virtue of Prior Use ..	207
Article 58	Effects of Registration of a Nonexclusive License etc. ....	208
Article 59	Abandonment of a Trademark Right .....	208
Article 60	Restriction on Abandonment of a Trademark Right etc. ....	208
Article 61	Effect of Abandonment .....	209
Article 62	Pledge .....	209
Article 63	Subrogation for Right of Pledge .....	209
Article 64	Extinguishment of a Trademark Right .....	209

Article 64 <i>bis</i> Extinguishment of a Trademark Right in the Absence of Registration of the Reclassification of Goods .....	209
--	-----

**CHAPTER VI : Protection of Owner of a Trademark Right**

Article 65 Injunction etc. against an Infringement .....	210
Article 66 Acts Considered to be an Infringement .....	210
Article 67 Presumption etc. of the Amount of Damages .....	211
Article 68 Presumption of Intent .....	212
Article 69 Measures for Recovering the Business Reputation of the Owner of a Trademark Right etc. ....	212
Article 70 Submission of Documents .....	213

**CHAPTER VII : Trial**

Article 70 <i>bis</i> Trial against Decision of Refusal .....	213
Article 70 <i>ter</i> Trial against a Decision to Refuse an Amendment .....	213
Article 71 Invalidation Trial of a Trademark Registration .....	213
Article 72 Invalidation Trial for Renewal of the Term of a Registered Trademark .....	214
Article 72 <i>bis</i> Invalidation Trial of a Registration for the Reclassification of Goods .....	215
Article 73 Trial for the Cancellation of a Registered Trademark .....	215
Article 74 Trial for the Cancellation of the Registration of an Exclusive or Nonexclusive License .....	217
Article 75 Trial to Confirm the Scope of a Trademark Right .....	218
Article 76 Terms of Exclusion .....	218
Article 77 <i>Mutatis Mutandis</i> Application of the Patent Act .....	218
Article 78 Deleted .....	219
Article 79 Formal Requirements for Requesting a Trial against an Examiner's Decision to Refuse or Reject an Amendment .....	219
Article 80 Deleted .....	219
Article 81 <i>Mutatis Mutandis</i> Application of Provisions Concerning Examination in the Trial against the Decision of Refusal .....	219
Article 82 Special Provisions of a Trial against the Decision to Refuse or the Decision to Reject an Amendment .....	220

**CHAPTER VIII : Retrial and Litigation**

Article 83	Request for a Retrial .....	220
Article 84	Request for a Retrial on Account of Collusion .....	220
Article 85	Restriction on the Effects of a Trademark Right Restored by a Retrial .....	221
Article 86	<i>Mutatis Mutandis</i> Application of the Patent Act .....	221

**CHAPTER VIIIbis : International Applications under the Protocol**

**Part I . International Applications etc.**

Article 86bis	International Applications .....	221
Article 86ter	Entitlement to File .....	222
Article 86quater	Procedure for an International Application .....	222
Article 86quinquies	Examination of the Particulars of an International Application etc. ....	223
Article 86sexies	Subsequent Designation .....	223
Article 86septies	Renewal of Term .....	223
Article 86octies	Recording a Change of Ownership of an International Registration .....	224
Article 86novies	Payment of Official Fees .....	224
Article 86decies	Amendment concerning Nonpayment of Official Fees .....	224
Article 86undecies	Invalidation of a Procedure .....	224
Article 86duodecies	Recording a Change in International Registration Matters .....	225
Article 86terdecies	Exclusion of Business Emblems .....	225

**Part II. Special Provisions on an International Application for Trademark Registration**

Article 86quaterdecies	International Application for Trademark Registration .....	225
Article 86quindecies	Special Provision on Business Emblems .....	226
Article 86sedecies	Special Provisions on an International Application for Trademark Registration .....	226
Article 86septiesdecies	Effect of an International Application for Trademark Registration of a Domestically Registered Trademark .....	226
Article 86duodevicies	Special Provisions for the Transfer and Partial Assignment of an Application for Trademark Registration etc. ....	228
Article 86undevicies	Special Provisions for Amendments .....	228

Article 86 <i>vicies</i> Special Provision for the Division of Applications .....	228
Article 86 <i>unvicies</i> Special Provision for the Conversion of Applications .....	228
Article 86 <i>duovicies</i> Special Provision for a Priority Claim under the Paris Convention .....	229
Article 86 <i>tervicies</i> Special Provision on the Time of Filing an Application .....	229
Article 86 <i>quatervicies</i> Special Provision for Notification of Grounds for Refusal ..	229
Article 86 <i>quinvicies</i> Special Provision for Publication of an Application .....	229
Article 86 <i>sevicies</i> Special Provision for the Right to Demand Compensation for Losses .....	229
Article 86 <i>septiesvicies</i> Special Provisions for a Decision to Register a Trademark ..	229
Article 86 <i>duodetricies</i> Special Provisions for Trademark Registration Fees .....	230
Article 86 <i>undetricies</i> Special Provision for Refunding Trademark Registration Fees etc .....	230
Article 86 <i>tricie</i> Special Provisions for Registration in the Trademark Register .....	230
Article 86 <i>untricies</i> Special Provision for Registering the Establishment of a Trademark Right .....	230
Article 86 <i>duotricies</i> Special Provisions for the Term of a Trademark Right .....	231
Article 86 <i>tertricies</i> Special Provision for an Application for Supplementary Registration of Designated Goods .....	231
Article 86 <i>quatertricie</i> Special Provision for the Division of a Trademark Right ..	231
Article 86 <i>quintricies</i> Special Provisions for the Effects of a Trademark Right ..	231
Article 86 <i>setricies</i> Effects of Canceling an International Registration .....	232
Article 86 <i>septiestricies</i> Special Provisions on Abandoning a Trademark Right ..	232
Article 86 <i>duodequadragie</i> Special Provision on an Invalidation Trial for Renewal of the Term of a Registered Trademark .....	232

**Part III. Special Provisions on an Application for Trademark Registration**

Article 86 <i>undequadragies</i> Special Provisions on an Application for Trademark Registration after Cancellation of an International Registration .....	232
Article 86 <i>quadragies</i> Special Provisions on an Application for Trademark Registration after Denunciation of the Protocol .....	233
Article 86 <i>unquadragies</i> Special Provision on Examinations .....	233
Article 86 <i>duoquadragies</i> Special Provision on the Statute of Limitation .....	234

**CHAPTER IX : Supplementary Provisions**

Article 87 Inspection of Documents etc. ....	234
--	-----

Article 88	Prohibition of Opening or Removing the Trademark Register and Documents Related to an Application for a Trademark Registration, Examination, Trial or Retrial .....	234
Article 89	Trademark Gazette .....	235
Article 90	Indication of Trademark Registration .....	235
Article 90bis	Indication of a Registered Homonymous Collective Mark for a Geographical Indication .....	235
Article 91	Prohibition of False Indication .....	235
Article 91bis	Special Provision on a Trademark etc. that is Similar to a Registered Trademark .....	236
Article 92	<i>Mutatis Mutandis</i> Application of the Patent Act .....	236

**CHAPTER X : Penal Provisions**

Article 93	Offense of Infringement .....	237
Article 94	Offense of Perjury .....	237
Article 95	Offense of False Marking .....	237
Article 96	Offense of Fraud .....	237
Article 97	Dual Liability .....	237
Article 97bis	Confiscation .....	238
Article 98	Administrative Fine .....	238

<b>ADDENDA</b> .....	239
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**CHAPTER I  
GENERAL PROVISIONS**

**Article 1 Purpose**

The purpose of this Act is to ensure the maintenance of the business reputation of persons using trademarks by protecting trademarks so as to contribute to the development of industry and to protect the interests of consumers.

**Article 2 Definitions**

(1) The definitions of terms used in this Act are as follows:

(i) "trademark" is defined as either of the following (referred to as "a mark") that is used on goods related to the business of a person who conducts business activities, such as producing, processing, certifying or selling such goods, to distinguish them from the goods of others;

(a) a sign, a character, a figure, a three-dimensional shape or any combination of these; or

(b) other visually recognizable constructs;

(ii) "service mark" means a mark used by a person who conducts a service business to distinguish the service business from the service businesses of others;

(iii) "collective mark" means a mark intended to be used by a legal entity founded in association with a person who conducts business activities such as producing, manufacturing, processing, certifying or selling goods and with a person who conducts a service business; members of the legal entity can use the mark for their goods and services;

(iiibis) "geographical indication" means an indication that identifies a good as originating in a certain region where a given quality, reputation or other characteristic of the good is essentially attributable to that region;

(iiiter) "homonymous geographical indication" means a geographical indication that has the same pronunciation as another geographical indication on the same type of goods, but which refers to a different geographical region;

(iiiquarter) "collective mark for a geographical indication" means a collective mark intended to be used by a legal entity composed solely of persons who conduct business activities such as producing, manufacturing, processing, or selling goods; members of the legal entity can use the collective mark for their goods;

(iv) "business emblem" means a mark used by a person conducting a nonprofit business to indicate the person's business;

(v) "registered trademark" means a trademark for which trademark registration has been granted; and

(vi) "use of a trademark" means any of the following acts:

(a) using trademarks on goods or their packaging;

- (b) selling or delivering goods or their packaging on which trademarks have been used, or displaying, exporting or importing such goods or their packaging for the purposes of selling or delivering; or
- (c) using a trademark on advertisements, price lists, business papers, signboards or labels, or displaying or distributing them.

(2) Acts of using a trademark on goods or their packaging, advertisements, signboards or labels under paragraph (1)(vi)(a) to (c) of this Article include the use of goods or their packaging, advertisements, signboards or labels as shapes of marks.

(3) Except as otherwise stipulated in this Act, the provisions in this Act that are related to trademarks apply to service marks, collective marks and business emblems.

### **Article 3 Persons Entitled to Register a Trademark**

A person who uses or intends to use a trademark in the Republic of Korea is entitled to trademark registration; however, employees of the Korean Intellectual Property Office or employees of the Intellectual Property Tribunal are not entitled to register trademarks during their employment at the office or tribunal except in the case of inheritance or a bequest.

### **Article 3bis Persons Entitled to Register a Collective Mark**

A legal entity jointly founded by persons who conduct business activities such as producing, manufacturing, processing, certifying or selling goods or persons who conduct service business (limited to a legal entity comprising only those persons engaging in the business of producing, manufacturing or processing goods for which a geographical indication can be used, in the case of a collective mark for a geographical indication) may have their collective marks registered.

### **Article 4 Persons Entitled to Register a Business Emblem**

Any person who conducts a nonprofit business in the Republic of Korea is entitled to register a business emblem.

### **Article 5 *Mutatis Mutandis* Application of the Patent Act**

Articles 3 to 26 and 28 to 28*quinquies* of the Patent Act apply *mutatis mutandis* to trademarks. In such cases, "Trial" in Article 3(2) of the Patent Act reads "opposition to, and trial of, a trademark registration", "person who requests an examination of a



patent application" in Article 4 of the Patent Act reads "person filing an opposition to a trademark registration", "Article 132*ter*" in Articles 6 and 11(1)(iv) and the main part of Article 17 of the Patent Act reads "Article 70*bis* or 70*ter*", "Article 132*ter*" in Article 15(1) of the Patent Act reads "period for amending the reasons for an opposition to a trademark registration under Articles 26, 70*bis* or 70*ter*"; furthermore, in the proviso of Article 28(2) of the Patent Act, "patent right and other" reads "trademark right and other", and "Article 2(vii) of the Patent Cooperation Treaty" reads "Article 2(2) of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (referred to as "the Protocol")."

## **CHAPTER II REQUIREMENTS FOR TRADEMARK REGISTRATION AND TRADEMARK APPLICATIONS**

### **Article 6 Requirements for Trademark Registration**

- (1) Trademark registration may be obtained except in any of the following cases:
- (i) where the mark consists solely of a sign indicating, in a common way, the usual name of the goods;
  - (ii) where the mark is customarily used on the goods;
  - (iii) where the mark consists solely of a sign indicating, in a common way, the origin, quality, raw materials, efficacy, use, quantity, shape (including the shape of the packaging) or price of the goods, or the method or time of manufacturing, processing or using them;
  - (iv) where the mark consists solely of a sign indicating a conspicuous geographical name, an abbreviation of a conspicuous geographical name or a map;
  - (v) where the mark consists solely of a sign indicating, in a common way, a common surname or name of a legal entity;
  - (vi) where the mark consists solely of a very simple and commonplace sign; or
  - (vii) in addition to the cases mentioned in subparagraphs (i) to (vi) of this Article, where the mark does not enable consumers to recognize the person whose goods are indicated by the mark.
- (2) Even if a trademark that falls under paragraphs (1)(iii) to (vi) of this Article, where, as a result of using the trademark before the application for registration under Article 9 of this Act, consumers are easily able to recognize the person whose goods are indicated by the trademark, the trademark may be registered with the designated goods for which the trademark has been used; the same applies to designated goods and supplementary designated goods as defined in Articles 10(1) and 47(2)(iii) of this Act.

(3) Notwithstanding marks that are subject to paragraph (1)(iii) of this Article (which is limited to the producing area) or paragraph (1)(iv) of this Article, whenever a mark is used as a geographical indication on specific goods, a collective mark for a geographical indication may be registered for designated goods that use the geographical indication.

### **Article 7 Unregistrable Trademarks**

(1) Notwithstanding Article 6, trademark registration may not be obtained in any of the following cases:

- (i) trademarks that are identical or similar to the following: the national flag, the national emblem, as well as colors, medals, decorations or badges of the Republic of Korea; the national flags or emblems of foreign nations; the medals, decorations or badges of the countries party to the Paris Convention for the Protection of Intellectual Property (referred to as "the Paris Convention") or of the members of the World Trade Organization or of the contracting parties to the Trademark Law Treaty; the titles or marks of the Red Cross, Olympic organizations or well-known international organizations; titles or marks that are identical or similar to seals or signs of the Republic of Korea, or of the countries party to the Paris Convention, the members of the World Trade Organization, the contracting parties to the Trademark Law Treaty or the public organizations of these that are used for indicating supervision or certification;
- (ii) trademarks that falsely indicate a connection with, or that criticize, insult or are liable to defame, any nation, race, ethnic group, public organization, religion or well-known deceased person;
- (iii) trademarks that are identical or similar to well-known marks that indicate a nonprofit business of a State, a public organization or its agencies or public corporations, or a nonprofit public service; however, this provision does not apply where a nonprofit business of a State, a public organization or its agencies or public corporations, or a nonprofit public service apply to register such marks as their business emblems;
- (iv) a trademark itself or, when used in goods, a trademark whose meaning and details are perceived by users as being liable to contravene public order or morality;
- (v) trademarks comprising a mark that is identical or similar to a medal, certificate of merit or decoration awarded at an exhibition held by or with the authorization of the Government of the Republic of Korea or at an exhibition held by or with the authorization of the government of a foreign country, unless a person who has been awarded a medal, certificate of merit or decoration has used it as part of the trademark on the same goods for which the medal, certificate of merit or decoration was awarded at the exhibition;
- (vi) trademarks containing the name, title or trade name, portrait, signature or seal, famous pseudonym, professional name or pen name of well-known persons, or an abbreviation of these, unless the consent of the person concerned has been obtained;

- (vii) trademarks that are identical or similar to another person's registered trademark (excluding a registered collective mark for a geographical indication) when the registration was applied for before the filing date of the trademark applications concerned and when the trademarks are to be used on goods identical or similar to the designated goods;
- (vii**bis**) trademarks that are identical or similar to another person's registered collective mark for a geographical indication when the registration was applied for before the filing date of the trademark applications concerned and when the trademarks are to be used on goods identical or similar to the designated goods;
- (viii) trademarks that are identical or similar to another person's registered trademark (excluding a registered collective mark for a geographical indication) when not more than a year has elapsed since the date on which the trademark right expired (that is, the date on which a trial decision became final for a trial decision invalidating a trademark registration) and when the trademarks are to be used on goods that are identical or similar to the designated goods;
- (viii**bis**) trademarks that are identical or similar to another person's registered collective mark for a geographical indication when not more than a year has elapsed since the date on which the registered collective mark for a geographical indication right expired (or the date on which a trial decision became final for a trial decision invalidating a collective mark for a geographical indication) and when the trademarks are to be used on goods identical to the designated goods;
- (ix) trademarks that are identical or similar to another person's trademark when that other person's trademark (excluding a geographical indication) is well known among consumers to indicate or resemble the other person's goods, and when the trademarks are to be used on goods that are identical or similar to such goods;
- (ix**bis**) trademarks that are identical or similar to another person's geographical indication when that other person's geographical indication is well known among consumers to indicate or resemble a certain region's goods and when the trademarks are to be used on goods that are identical or similar to such goods;
- (x) trademarks that are liable to cause confusion with the goods or services of another person because consumers easily recognize the trademark as designating the goods or services of the other person;
- (xi) trademarks that are liable to mislead or deceive consumers on the quality of the goods;
- (xii) trademarks that are identical or similar to a trademark (excluding a geographical indication) that consumers inside or outside the Republic of Korea easily recognize as indicating the goods of a particular person, and which are used to obtain unjust profits or to inflict harm on a particular person and so on;
- (xii**bis**) trademarks that are identical or similar to a geographical indication that consumers inside or outside the Republic of Korea easily recognize as indicating the goods of a certain region, and which are used to obtain unjust profits or to inflict harm on a legitimate users of the geographical indication and so on;

(xiii) trademarks that consist solely of three-dimensional shapes that are essential for securing the functions of goods, or their packagings, that require trademark registration; or (xiv) trademarks that consist of a geographical indication or include a geographical indication of the origin of wines or spirits in a member state of the World Trade Organization, and which are used for wines, spirits or other similar goods. However, this provision does not apply if a legitimate user of a geographical indication applies to register a collective mark for a geographical indication under Article 9(3) of this Act and the relevant goods are the designated goods.

(2) Where a trademark falls under paragraphs (1)(vi), (ix), (*ixbis*) and (x) of this Article, the respective provisions do not apply if the trademark does not fall under the respective subparagraphs when the applicant applies for trademark registration (however, the matter of whether the applicant for trademark registration pertains to another person under the provisions of paragraphs (1)(vi), (ix), (*ix bis*) and (x) of this Article is excluded from all the matters in those provisions).

(3) Where a trademark falls under paragraph (1)(vii), (*viiibis*), (viii) and (*viiiibis*) of this Article, the respective provisions apply if the trademark falls under the respective subparagraphs when the applicant applies for trademark registration (or if the registered trademark of another person is invalidated under Article 71(3) of this Act); however, the matter of whether the applicant for trademark registration (referred to as "the applicant") pertains to another person in the relevant subparagraphs is not determined on the basis of whether the applicant pertains to another person in the relevant subparagraphs when the applicant applies for the trademark registration.

(4) Paragraphs (1)(viii) and (*viiiibis*) of this Article do not apply to the following cases:

- (i) where the registered trademark has not been used for more than one year retroactively from the date on which the trademark right was extinguished;
- (ii) where a rightful applicant applies to register the trademark, after a decision on invalidation or revocation becomes final because the registered trademark violates paragraphs (1)(vi), (ix), (*ixbis*), (x), (xii) and (*xiiibis*) of this Article or Articles 8 or 73(1)(vii) of this Act; or
- (iii) where an applicant applies to register the trademark after the period of six months as prescribed in Article 43(2) of this Act has elapsed without applying to renew the term of the registered trademark.

(5) Where a trial for the cancellation of a trademark registration is requested under Article 73(1)(ii), (iii), and (v) to (xii) of this Act, and where any of the following subparagraphs occurs after the date of requesting the cancellation trial, the owner of the trademark right and any person using the trademark may not obtain trademark registration for a trademark

that is identical or similar to a registered trademark extinguished with respect to goods (the collective mark for geographical indication is limited to an identical goods) that are identical or similar to the designated goods of the extinguished registered trademark, unless three years have elapsed since the day on which each of the following subparagraphs occurs:

- (i) where the trademark right has been extinguished because the term has expired;
- (ii) where a person with the trademark right abandons the trademark right or some of the designated goods;
- (iii) where the trial decision on the cancellation of a trademark registration has become final;
- (iv) where a person requesting a cancellation trial files an application for trademark registration under Articles 8(5) and 8(6) of this Act; or
- (v) where, under any subparagraph of Article 8(5), an application for trademark registration is filed after the expiry of the period in which a person requesting a cancellation trial may obtain a trademark registration under Article 8(5).

(6) Paragraph (1)(*vii bis*) (*viii bis*) and (*ix bis*) may not be applicable between the collective marks for homonymous geographical indication.

#### **Article 8 First-to-File Rule**

(1) Where two or more applications for trademark registration related to identical or similar trademarks that are to be used on identical or similar goods are filed on different dates, only the applicant filing the application with the earlier filing date may obtain trademark registration for the trademark.

(2) Where two or more applications for trademark registration related to identical or similar trademarks that are to be used on identical or similar goods are filed on the same date, a consultation will be held among all the applicants and the person agreed upon by all the applicants may obtain trademark registration for the trademark. If no agreement is reached or no consultation is possible, the trademark registration may be obtained only by the applicant chosen by a lottery conducted by the Commissioner of the Korean Intellectual Property Office.

(3) Where an application for trademark registration has been abandoned, withdrawn or invalidated, or where an examiner's decision or trial decision to refuse trademark registration has become final, the application, for the purposes of paragraphs (1) and (2) of this Article, is deemed never to have been filed.

(4) In cases under paragraph (2) of this Article, the Commissioner of the Korean Intellectual Property Office shall instruct the applicants to give notice of any agreement

they reach and to report the terms of their agreement. If they do not submit a report within the designated period, the applicants are deemed not to have reached an agreement within the meaning of paragraph (2) of this Article.

(5) Where a trial for the cancellation of a registered trademark is requested under Article 73(1)(iii) of this Act and where each of the following subparagraphs occurs after the day on which the cancellation trial is requested, only the person requesting the cancellation trial may obtain trademark registration for the trademark that is identical or similar to the registered trademark that has been extinguished because of goods that are identical or similar to the designated goods of the registered trademark that has been extinguished for a period of six months after the date on which each of the following subparagraphs occurs (however, in the case of subparagraph (iii) of this Act, when a lawsuit is instituted in relation to a trial decision that cancels a trademark registration and the trial decision consequently becomes final as a result of the withdrawal of a lawsuit or appeal, the six month period of extinguishment begins on the date of the withdrawal of the lawsuit or appeal):

- (i) when the period under Article 43(2) of this Act expires;
- (ii) when a person with the trademark right abandons the trademark right or some of the designated goods; or
- (iii) when the trial decision on the cancellation of a trademark registration has become final.

(6) Where a trial for the cancellation of a registered trademark is requested under Article 73(1)(iii) of this Act, and where an application for trademark registration that falls under either of the following subparagraphs is filed after the date of the request, only the person who requested the cancellation trial may obtain a trademark registration:

- (i) where a registered trademark for which a cancellation trial has been requested is extinguished due to the expiry of the term of the trademark right and where an application to register a trademark which is identical or similar to the extinguished trademark and which is to be used for goods that are identical or similar to the designated goods is filed during the period stipulated in the proviso of Article 43(2); or
- (ii) Where a lawsuit is instituted against a trial decision to cancel a registered trademark and the trial decision subsequently becomes final as a result of a withdrawal of the lawsuit or an appeal to a higher court, and where the registered trademark for which a cancellation trial is requested is extinguished accordingly, and where an application to register a trademark that is identical or similar to the extinguished trademark and intended for use on goods that are identical or similar to the designated goods is filed during the period from the date on which the trial decision becomes final to the date on which the lawsuit or appeal is withdrawn.

(7) Paragraphs (1) and (2) of this Article do not apply in either of the following cases:

- (i) where two or more applications to register a collective mark for a geographical in-

dication, or where an application to register a collective mark and an application to register a trademark for a geographical indication, are filed for identical or similar marks intended for use on nonidentical goods; or

(ii) where two or more applications to register a collective mark for a geographical indication are filed for marks that are homonymous geographical indications.

(8) Paragraph (5) of this Article does not apply in either of the following cases:

(i) where the goods referred to in an application to register a trademark are not identical to the designated goods and the mark in the application is similar or identical to the expired collective mark for a geographical indication; or

(ii) where the mark in an application to register a collective mark for a geographical indication is applicable to a collective mark for a geographical indication with an lapsed registration and a homonymous collective mark for a geographical indication.

#### **Article 9 Application for Trademark Registration**

(1) A person seeking to register a trademark shall file an application with the Commissioner of the Korean Intellectual Property Office, stating the following:

(i) the name and address of the applicant (and, if a legal entity, the name and address of the business);

(ii) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);

(iii) the trademark;

(iv) the list of designated goods and the class of goods;

(v) the matters prescribed under Article 20(3) (only when claiming a priority right);

(vi) deleted;

(vii) the matters prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(2) A person seeking to register a trademark that comprises a three-dimensional shape, color, hologram, action or other visually recognizable construct shall state, in the application, the purpose of receiving the trademark registration as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) A person seeking to register a collective mark shall file an application to register a collective mark stating the matters mentioned in the subparagraphs of paragraph (1) of this Article accompanied by the articles of association that govern the use of the collective mark, as prescribed by Presidential Decree. If the person is seeking to register the collective mark for a geographical indication under Article 2(1)(iii~~quater~~) of this Act, the person shall describe the purpose of the collective mark in the application and submit

the application along with documentary evidence that the mark complies with the definition of a geographical indication under Article 2(1)(iii*bis*) of this Act.

(4) A person seeking to register a business emblem shall file an application to register a business emblem stating the matters mentioned in the subparagraphs of paragraph (1) of this Article accompanied by documents proving the existence of a business management.

**Article 9*bis* According the Filing Date etc.**

(1) The Commissioner of the Korean Intellectual Property Office shall decide to accord as the date of a trademark application the date of receiving a trademark application unless the application falls under any of the following paragraphs:

- (i) where the indication that trademark registration is sought is not clear;
- (ii) where the name or the title of the applicant is not indicated, or the indication is not considered sufficient to the extent to enable the identification of the applicant;
- (iii) where a trademark for which the registration is sought is not indicated; or the indication is not clearly discernable;
- (iv) where the designated goods are not indicated; or
- (v) where the application is not filed in the Korean language.

(2) Where an application for trademark registration falls under any subparagraph of paragraph (1), the Commissioner of the Korean Intellectual Property Office shall instruct the applicant to make the required correction within a designated period.

(3) Where an applicant supplements an application for trademark registration in accordance with the order to supplement under paragraph (2), the applicant shall submit documents for the procedure to supplement the application (referred to as "a request to supplement the procedure").

(4) Where an applicant who has received an order to supplement under paragraph (2) does so within the designated period, the Commissioner of the Korean Intellectual Property Office shall accord as the date of the trademark application the date of receiving the request to supplement the procedure by the Korean Intellectual Property Office.

(5) Where an applicant who has received an order to supplement under paragraph (2) does not do so within the designated period, the Commissioner of the Korean Intellectual Property Office may return the application for trademark registration on the grounds that the application is defective.



**Article 10 A Single Application for a Single Trademark**

(1) A person seeking to register a trademark shall designate one or more classes of goods for the classification of goods prescribed by ordinance of the Ministry of Commerce, Industry and Energy, and file an application for each trademark. In such cases, the person may designate goods and services in a single application as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(2) Specific goods that belong to each class of goods under paragraph (1) of this Article are determined and published by the Commissioner of the Korean Intellectual Property Office.

(3) the classification of goods under paragraph (1) of this Article does not determine the extent of the similarity of goods.

**Article 11 Deleted**

**Article 12 Transfer and Partial Assignment of an Application for Trademark Registration etc.**

(1) The transfer of an application for trademark registration, except for inheritance or other general succession, is not effective against third parties without notification that a change of applicant has been recorded.

(2) An application for trademark registration may be transferred separately for each of the goods designated in the application. In this case, designated goods that are similar must be transferred together.

(3) Deleted.

(4) For inheritance or other general succession, the successor in title shall immediately notify the Commissioner of the Korean Intellectual Property Office of the succession.

(5) Where an application for trademark registration is jointly owned, the owners may not transfer their individual share without the consent of the other owners.

(6) An application for trademark registration that is partially assigned under paragraph (2) of this Article is deemed to have been filed at the time of filing the original application, unless Articles 20(3) and (4) or 21(2) apply.

(7) An application to register a business emblem may not be transferred unless the business emblem is transferred with the business.

(8) An application for trademark registration under Article 7(1)(iii) may be transferred only with a business related to the mark referred to in the main sentence of that Article.

(9) An application to register a collective mark may not be transferred. However, for the merger of legal entities, the application may be transferred with the authorization of the Commissioner of the Korean Intellectual Property Office.

### **Article 13 Amendment of Procedure**

The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may order the amendment of an application, a request or any other procedure within a period designated by the Commissioner or President in any of the following cases:

- (i) where the requirements of Article 3(1) of this Act or Article 6 of the Patent Act, as applied under Article 5 of this Act, have not been complied with;
- (ii) where the formalities requirements prescribed in this Act or by ordinance under this Act have not been complied with; or
- (iii) where the fees required under Article 37 have not been paid.

### **Article 14 Amendment before Decision of Publication of Application**

(1) Excluding the cases specified in Article 15, an applicant may amend a trademark or the list of designated goods in the application for trademark registration if the amendment does not cause a material change to the application.

(2) An amendment under paragraph (1) of this Article may not be made after the transmittal of a certified copy of the examiner's decision to grant or refuse trademark registration (referred to as "a decision to grant or refuse trademark registration"). However, where a trial against a decision of refusal is requested under Article 70*bis*, an amendment may be made within thirty days of the request, or within the period in which the written opinion is to be submitted under Articles 23(2), 45(2), 46*quater*(2) or 48(2), which apply under Article 81.

### **Article 15 Amendment after Decision of Publication of Application**

Within the period set forth under any of the following conditions, an applicant may amend or correct designated goods or a specimen, or both, in response to reasons for refusal,

reasons for opposition, reasons for a decision to refuse trademark registration, or a decision to refuse supplementary registration of the designated goods as long as the subject matter is not materially changed when a rejection notice is served under Article 23(2) or Article 48(2) after the certified copy of the decision on publication of the application under Article 24 is delivered, when an opposition to the trademark registration is brought under Article 25, or when an appeal against a decision of refusal under Article 70(2) is requested against a decision to refuse trademark registration under Article 23(1) or a decision to refuse a supplementary registration of designated goods under Article 48(1):

- (i) the period designated for submitting arguments under Article 23(2) or 48(2);
- (ii) the period designated for submitting a written answer under Article 27(1); or
- (iii) thirty days after the date of the request for a trial against the decision of refusal under Article 70*bis*.

#### **Article 16 Material Change of Application**

(1) An amendment made under Articles 14 or 15 is considered not to cause a material change to an application for trademark registration if the amendment includes any of the following:

- (i) a limitation of the list of designated goods;
- (ii) a correction of errors;
- (iii) a clarification of ambiguous descriptions; or
- (iv) the deletion of any auxiliary part of the trademark.

(2) Where an amendment of an application for trademark registration or designated goods has been made before the transmittal of a certified copy of decision to publish on application and is recognized to have caused a material change after the establishment of a trademark right, the trademark application is deemed to have been filed at the time the written amendment is submitted.

(3) Where an amendment of an application for trademark registration or designated goods has been made after the transmittal of a certified copy of the decision to publish an application and is considered to have violated Article 15 after the establishment of a trademark right, the trademark application is deemed to have been established and registered on the trademark application that has not been amended.

#### **Article 17 Rejection of Amendment**

(1) Where an amendment made under Article 14 causes a material change to an application, an examiner shall decide to reject the amendment to the application for trademark registration.

- (2) An examiner may not grant or refuse the registration of a trademark application if an amendment has been rejected under paragraph (1) of this Article until thirty days after the date on which a certified copy of the decision to reject the amendment has been transmitted. Where a decision to reject an amendment has been made under paragraph (1) of this Article before a decision has been made to publish the application, the examiner may not make a decision to publish the application that is subject to the amendment.
- (3) Where an applicant requests a trial under Article 70ter against a decision to reject an amendment under paragraph (1) of this Article, the examiner shall suspend the examination of the application for trademark registration until the trial decision has become final.
- (4) Where an amendment under Article 15 regarding an application for trademark registration materially changes the application, the examiner shall decide to reject the amendment.
- (5) The decision to reject an amendment under paragraph (1) or (4) of this Article must be in writing and must state the reasons for the decision.
- (6) Except when a trial against a decision of refusal is requested under Article 70bis, a decision to reject an amendment under paragraph (4) may not be appealed.

#### **Article 17bis Submission of Amended Articles of Association**

Where the articles of association need to be amended, an applicant for a collective mark can submit the amended articles of association to the Commissioner of the Korean Intellectual Property Office within the period determined under Articles 14(2) or 15 of this Act.

#### **Article 18 Division of Application for Trademark Registration**

- (1) Where an applicant files an application for trademark registration indicating two or more goods as designated goods, the application may be divided into two or more applications within the period for amendments under Articles 14 and 15.
- (2) An application that has been divided under paragraph (1) of this Article (referred to as "a divided application") is deemed to have been filed when the original application was filed, except when Articles 20(3), (4) or 21(2) apply.

#### **Article 19 Conversion of an Application**

- (1) A person who has filed an application that falls under any of the following subparagraphs may convert the application into another type of application that falls under any of the following subparagraphs:

- (i) an application for trademark registration;
- (ii) an application for service mark registration; or
- (iii) an application for collective mark registration (excluding an application to register a collective mark for a geographical indication).

(2) A person who has filed an application that falls under either of the following subparagraphs may convert the application into an application for trademark registration; however, this provision does not apply where an invalidation trial or cancellation trial is requested in relation to a registered trademark that served as the basis of an application to register the renewal of the term of a trademark right or an application for additional registration of designated goods, or where the registered trademark is extinguished as a result of an invalidation trial or cancellation trial:

- (i) an application to register the renewal of the term of a trademark right; or
- (ii) an application for additional registration of designated goods.

(3) Where a person applies to convert an application under paragraphs (1) and (2) of this Article (referred to as "an application to convert"), the application to convert is deemed to have been filed when the original application was filed in accordance with any subparagraph of paragraph (1) or (2) of this Article; however, this provision does not apply if Article 20(3), 20(4) or 21(2) applies.

(4) A person may not convert an application under paragraphs (1) and (2) of this Article after a decision or a trial decision on the registration of the original application filed under any subparagraph of paragraph (1) or (2) becomes final.

(5) Where an application is converted, the original application filed under any subparagraph of paragraph (1) or (2) is deemed to have been withdrawn.

#### **Article 20 Priority Claim under Treaty**

(1) If a national of a country who is required to recognize a right of priority for an application for trademark registration filed by a national of the Republic of Korea under a treaty or similar instrument (referred to as "a treaty") claims a right of priority for the application for trademark registration in the Republic of Korea based on the earlier application for the trademark registration filed in the national's country or in a country recognized in the treaty, the filing date of the earlier application in the foreign country is deemed under Article 8 of this Act to be the filing date in the Republic of Korea. Where a national of the Republic of Korea files an application for trademark registration in a country that recognizes, under a treaty, the right of priority for applications for trademark registration filed by nationals of the Republic of Korea, and claims the right

of priority for an application for trademark registration in the Republic of Korea based on the earlier application for the trademark registration filed in that country, this provision does also apply.

(2) A person claiming the right of priority under paragraph (1) of this Article shall file the application within six months of the filing date of the earlier application that is the basis of the right of priority.

(3) When filing an application for trademark registration, a person claiming the right of priority under paragraph (1) of this Article shall specify on the application the gist of the claim, the name of the country and the filing date of the earlier application.

(4) A person claiming the right of priority under paragraph (3) of this Article shall submit to the Commissioner of the Korean Intellectual Property Office, within three months of the filing date of the application for trademark registration, a written statement certified by the government of the country where the earlier application was filed setting forth the filing date of the earlier application, the trademark and the list of designated goods.

(5) Where a person claiming the right of priority under paragraph (3) of this Article fails to submit the certified copy within the period prescribed under paragraph (4) of this Article, the claim to the right of priority is invalidated.

#### **Article 21 Special Provisions on the Time of Filing an Application**

(1) Where a person entitled to file an application for trademark registration files an application for trademark registration whose designated goods bearing the trademark have been exhibited at any of the following types of exhibitions within six months of the date of the exhibition, the application is deemed to have been filed at the time the goods were exhibited:

- (i) exhibitions held by the Government or a local government entity;
- (ii) exhibitions held by persons authorized by the Government or a local government entity;
- (iii) exhibitions held in a foreign country with the authorization of the government;
- (iv) international exhibitions held in the territory of a country party to a treaty by the government of that country or by persons authorized by the government of that country.

(2) A person taking advantage of paragraph (1) of this Article in an application for trademark registration shall submit to the Commissioner of the Korean Intellectual Property Office a written statement of intent with the application for trademark registration and, within thirty days of the filing date of the application, a document proving the relevant facts.

**CHAPTER III  
EXAMINATION**

**Article 22 Examination by Examiner**

- (1) The Commissioner of the Korean Intellectual Property Office shall have applications for the trademarks registration and oppositions to trademarks registration examined by examiners.
- (2) The qualifications for examiners are prescribed by Presidential Decree.
- (3) Any person whose application for trademark registration falls within any subparagraph of Article 23(1) may submit to the Commissioner of the Korean Intellectual Property Office relevant information with supporting evidence.

**Article 22bis Request etc. for Inspection of a Trademark by a Specialized Searching Agency**

- (1) Where a specialized searching agency is considered necessary for the examination of an application for trademark registration, the Commissioner of the Korean Intellectual Property Office may designate a specialized searching agency to inspect trademarks.
- (2) When considered necessary for the examination of an application for trademark registration, the Commissioner of the Korean Intellectual Property Office may request assistance or advice from a competent administrative agency, a person with vast knowledge and experience in trademarks, or interested persons.
- (3) Where the items of an application for a collective mark for a geographical indication are subject to the Agricultural Products Quality Control Act or the Fisheries Products Quality Control Act, the Commissioner of the Korean Intellectual Property Office shall obtain an opinion on as to the mark can be considered a geographical indication from the relevant minister of either the Ministry of Agriculture and Forestry or the Ministry of Maritime Affairs and Fisheries.
- (4) Criteria for the designation of the specialized searching agency and requests for the search of trademarks under paragraph (1) of this Article are prescribed by Presidential Decree.

**Article 22ter Revocation of Designation as a Specialized Searching Agency, etc.**

- (1) Where an agency that has be designated as a specialized searching agency under Article 22bis(1) falls under subparagraph (i) of this paragraph, the Commissioner of the

Korean Intellectual Property Office shall cancel the agency's designation as a specialized searching agency. If the agency falls under subparagraph (ii) of this paragraph, the Commissioner may cancel its designation or order a suspension of the agency's search-related business for a period of up to six months:

- (i) where the agency became a specialized searching agency by fraud or other unlawful means; or
- (ii) where the agency failed to satisfy the designation criteria stipulated in Article 22*bis*(4)

(2) When intending to revoke the designation of a specialized searching agency in accordance with paragraph (1) of this Article, the Commissioner of the Korean Intellectual Property Office shall conduct a hearing.

(3) The criteria for canceling the designation of a specialized searching agency, or suspending the agency's business under paragraph (1) of this Article, as well as other necessary matters, are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 23 Decision to Refuse Trademark Registration and Notification of Reasons for Refusal**

(1) An examiner shall refuse trademark registration for an application for trademark registration under any of the following circumstances:

- (i) where the trademark is unregistrable under Articles 3, 6 to 8, 10(1), 12(2) (second sentence), (5) and (7) to (9) of this Act or Article 25 of the Patent Act as applied under Article 5 of this Act;
- (ii) where the trademark violates a treaty;
- (iii) where the trademark is identical or similar to a trademark registered in the territory of a country that is a party to a treaty and has been filed by a person who is or was an agent or a representative of the owner of the trademark, within the one-year period before the filing date, without the owner's authorization, for designated goods that are identical or similar to the designated goods covered by the owner's trademark, if an opposition has been filed or information has been submitted under Article 22(3) of this Act by the owner; or
- (iv) where the trademark does not conform to the definition of a mark under Article 2(1)(i) to (iii) or (iv) of this Act; or where, in the case of a collective mark for a geographical indication, the geographical indication and the mark do not conform to the definitions of a geographical indication or mark under paragraphs (iii*bis*) and (iii*quater*) of the Article 2(1) of this Act; or
- (v) where the applicant's articles of association prohibit a person who conducts business activities such as producing, processing or selling goods that display a geographical



indication from joining or subscribing to the association, or where the articles of association prescribe conditions for subscription that are too difficult for the person to fulfill and so on; or

(vi) where the applicant's articles of association, referred to in Article 9(3) of this Act, fail to mention all of the matters that govern the use of the collective mark as prescribed by Presidential Decree.

(2) When refusing trademark registration under paragraph (1) of this Article, an examiner shall notify the applicant of the reasons for refusal and give the applicant an opportunity to submit a written statement of arguments within a designated period.

#### **Article 24 Publication of an Application**

(1) An examiner who finds no grounds for rejecting an application for trademark registration shall decide to publish the application; however, in any of the following cases, the examiner may decide not to publish the application;

(i) where an applicant who has been issued a certified copy of the decision regarding publication of the application divides the relevant application for trademark registration into two or more trademark registration applications under Article 18 and the examiner finds no grounds for rejecting the divisional application; or

(ii) where the decision of a trial cancels a decision to refuse an application for trademark registration when the application was already published and the examiner finds no other grounds for rejecting the application.

(2) Where a decision under paragraph (1) of this Article is made, the Commissioner of the Korean Intellectual Property Office shall transmit the decision to the applicant and publish the application in the Trademark Gazette.

(3) The Commissioner of the Korean Intellectual Property Office shall make the documents of the application for trademark registration and other related documents available for public inspection at the Korean Intellectual Property Office for a period of two months days following the publication date of the application.

#### **Article 24bis Right to Demand Compensation for Loss**

(1) After an application is published under Article 24(2) (including *mutatis mutandis* application under Article 49(3) and Article 81(1)), an applicant may warn, in writing, a person who has used a trademark that is identical or similar to the trademark of the published application on goods that are identical or similar to the designated goods of the published application. However, an applicant who shows a copy of the application

for trademark registration may send a written warning even before publication of the application.

(2) An applicant who has sent a warning under paragraph (1) may demand compensation equivalent to the loss of business caused by the use of the trademark from the date of the warning to the date of registration of the trademark right.

(3) The right to demand under paragraph (2) may be exercised only after the registration of a trademark right.

(4) Exercising the right to demand under paragraph (2) does not preclude exercising the trademark right.

(5) Articles 52, 66, 69 and 70 of this Act, and Articles 760 and 766 of the Civil Act apply *mutatis mutandis* to the exercise of the right to demand under paragraph (2). In such cases, "the date on which the damaged party or a legal representative became aware of such damage and the identity of the person causing it" in Article 766(1) of the Civil Act reads "the date of registration of the trademark right".

(6) Where an application for trademark registration falls under any of the following subparagraphs, the right to demand under paragraph (2) is deemed never to have existed:

- (i) where an application for trademark registration has been abandoned, withdrawn or invalidated;
- (ii) where a decision to refuse trademark registration for an application for trademark registration has become final; or
- (iii) where a trial decision to invalidate a trademark registration under Article 71 (except Article 71(1)(iv) and (v)) has become final.

### **Article 25 Opposition to a Trademark Registration**

(1) When an application is published, any person may lodge an opposition to a trademark registration that falls under each subparagraph of Article 23(1) and either subparagraph (ii) or (iv) of Article 48(1) with the Commissioner of the Korean Intellectual Property Office within two months of the publication date of the application.

(2) A person making an opposition to a registered trademark shall submit to the Commissioner of the Korean Intellectual Property Office a written opposition specifying the following matters, and supporting evidence:

- (i) the name and address of the opponent to a trademark registration (and, if a legal entity, the name and address of the business);

- (*ibis*) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (ii) the subject of an opposition to a registered trademark;
- (iii) deleted;
- (iv) the particulars of an opposition to a registered trademark; and
- (v) the reasons for opposing a trademark registration and indication of supporting evidence.

#### **Article 26 Amendment of Reasons for an Opposition to a Trademark Registration**

A person who has filed a notice of opposition to a trademark registration under Article 25(1) (referred to as "an opponent") may amend the reasons and evidence submitted in the notice of opposition to a trademark registration within thirty days of the expiry of the period for filing a notice of opposition.

#### **Article 27 Decision on an Opposition to Trademark Registration**

- (1) Where a notice of opposition has been filed, the examiner shall transmit to the applicant a copy of the notice of opposition to the trademark registration and give the applicant an opportunity to submit an answer in writing within a designated period.
- (2) After the expiry of the periods prescribed in paragraph (1) of this Article and Article 26, the examiner shall decide on the opposition to the trademark registration.
- (3) Notwithstanding paragraph (1) of this Article, where an opponent fails to submit reasons and evidence, the examiner may reject the opposition to a trademark registration by decision after the period under Article 26 expires.
- (4) The decision on an opposition to a trademark registration must be in writing and must state the reasons for the decision.
- (5) Where a decision has been made under paragraph (2) of this Article, the Commissioner of the Korean Intellectual Property Office shall transmit a certified copy of the decision to the applicant and the opponent.
- (6) An appeal may not be made against a decision on an opposition to a trademark registration.

(7) In applying paragraph (4) of this Article, where different reasons exist for the decision on the opposition to a trademark registration for two or more designated goods, the examiner shall give specific reasons for the decision for each of the respective goods.

**Article 28 Decision of Refusal to Register a Trademark Made *Ex Officio* after Publication**

(1) An examiner who finds reasons for refusal after the publication of an application may make a decision of refusal *ex officio* under Article 23.

(2) An examiner who refuses an application under paragraph (1) of this Article may not decide on an opposition to a registered trademark even if the opposition has been filed under Article 25.

(3) Where a decision of refusal has been made under paragraph (1) of this Article, the Commissioner of the Korean Intellectual Property Office shall transmit a certified copy of the decision of refusal to the opponent.

**Article 29 Concurrent Oppositions to Trademark Registration**

(1) Where two or more oppositions have been filed, an examiner may examine and rule upon them jointly or separately.

(2) Where two or more oppositions have been filed and one of them is considered to be justified upon examination, the examiner is not required to make a ruling on the other opposition(s).

(3) The Commissioner of the Korean Intellectual Property Office shall transmit a certified copy of the decision of refusal to opponents whose oppositions were not examined under paragraph (2) of this Article.

**Article 30 Decision to Grant Registration of a Trademark**

An examiner who cannot find any reasons for refusing an application for trademark registration shall decide in favor of trademark registration.

**Article 31 Method of Decision to Grant or Refuse Trademark Registration**

(1) A decision to grant or refuse trademark registration must be in writing and must state the reasons for the decision.

(2) When an examiner decides to grant or refuse trademark registration, the Commissioner of the Korean Intellectual Property Office shall transmit a certified copy of the decision to the applicant.

### **Article 32 Suspension of Examination or Litigation Proceedings**

(1) The examination procedure of an application for trademark registration may, if necessary, be suspended until a trial decision becomes final or litigation proceedings are concluded.

(2) The court may, if necessary in the litigation, suspend proceedings until the examiner's decision on the registration of a trademark becomes final.

### **Article 33 *Mutatis Mutandis* Application of the Patent Act**

Articles 142, 148(1) to (5) and (7), and 157 of the Patent Act and Articles 143, 299 and 367 of the Civil Procedure Act apply *mutatis mutandis* to the examination of applications for the registration of trademarks. In such cases, "party or intervener" under subparagraphs (i) to (iii) and (v) of Article 148 of the Patent Act reads "party, intervener or person filing an opposition to a trademark registration", and "decision to grant a patent" in subparagraph (vi) of Article 148 of the Patent Act reads "decision to grant a trademark registration and a decision on an opposition to a trademark registration".

## **CHAPTER IV**

### **TRADEMARK REGISTRATION FEES AND REGISTRATION OF TRADEMARKS**

#### **Article 34 Trademark Registration Fees**

(1) A person applying for a trademark registration, supplementary registration of designated goods or renewal of the term of a registered trademark shall pay the trademark registration fees.

(2) Regardless of whether the person liable to pay the trademark registration fees is willing, any interested person may pay the trademark registration fees under paragraph (1) of this Article.

(3) Matters related to the paying trademark registration fees under paragraph (1) of this Article, including the method and period of payment, are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 34bis Abandoning Some or All Designated Goods When Paying Trademark Registration Fees**

(1) Where a person receives a decision granting registration of a trademark application with more than two designated goods, or receives a decision granting supplementary registration of designated goods in an application for supplementary registration of the designated goods, or receives a decision granting renewal of the term of a registered trademark, the person may abandon the designated goods in part after paying the trademark registration fees.

(2) Matters necessary for the abandonment of designated goods under paragraph (1) of this Article are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 35 Extension of Payment Period for Trademark Registration Fees**

Upon request, the Commissioner of the Korean Intellectual Property Office may extend the period for paying trademark registration fees under Article 34(3) by not more than thirty days.

**Article 36 Abandoning an Application for Trademark Registration as a Consequence of Nonpayment of Trademark Registration Fees**

Where trademark registration fees are not paid within the periods prescribed in Articles 34(3) or 35, an application for trademark registration, supplementary registration of designated goods or renewal of the term of a registered trademark is deemed to have been abandoned.

**Article 36bis Supplementary Trademark Registration Fees**

(1) When a person applying for registration of the establishment of a trademark right, additional registration of designated goods or renewal of the term of a registered trademark fails to pay all of the trademark registration fees within the period prescribed under Articles 34(3) or 35, the Commissioner of the Korean Intellectual Property Office shall order the person to pay supplementary trademark registration fees.

(2) A person who receives an order to pay supplementary trademark registration fees under paragraph (1) shall pay the supplementary fees within one month of receiving the order.

(3) If the period for paying supplementary trademark registration fees under Articles 34(3) or 35 has elapsed, the person required to pay supplementary trademark registration fees under paragraph (2) shall pay twice the amount of the unpaid trademark registration fees.

**Article 36ter Recovery of an Application for Trademark Registration by  
Paying Trademark Registration Fees etc.**

(1) Where an applicant who has submitted an application for trademark registration, an application for supplementary registration of designated goods, or an application to renew a registered trademark deemed to have been abandoned under Article 36, or where an applicant was unable to pay the registration fees under Article 34(3) within the payment period prescribed under Articles 34(3) or 35 due to unavoidable reasons, the applicant may pay the registration fees within 14 days of the date on which unavoidable reasons cease to exist. However, this provision does not apply where a period of six months elapses after the expiry date of the payment period prescribed under Articles 34(3) or 35.

(2) Notwithstanding Article 36, where registration fees are paid in accordance with paragraph (1), an application for trademark registration, an application for supplementary registration of designated goods or the renewal of the term of a registered trademark is deemed not to have been abandoned.

(3) Where an application for trademark registration, an application for supplementary registration of designated goods or a registered trademark has been recovered under paragraph (2), the effect of the recovery of the application for the registration of the trademark, the application for supplementary registration of designated goods or the trademark right does not extend to using a trademark that is identical or similar to a registered trademark on goods identical or similar to the designated goods if the use occurred within a period extending from the expiry date of the payment period under Article 34(3) or 35 to the recovery date of the application for trademark registration, the application for supplementary registration of designated goods or the trademark right.

**Article 37 Official Fees**

(1) Except when requesting an invalidation trial by an examiner under Article 71(1) or 72(1), a person filing an application, making a demand or initiating other trademark-related procedures shall pay official fees.

(2) Matters related to paying official fees under paragraph (i) of this Article, including the method and period of payment, are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) In addition to the fee referred to in paragraph (2) of this Article, a person who applies for renewal of the term of a registered trademark within the period prescribed in Article 43(2) shall pay the amount determined by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 38 Refund of Trademark Registration Fees**

(1) Trademark registration fees and official fees that have been paid may not be refunded; however, in either of the following cases, the fees must be refunded upon request of the person who paid the fees:

- (i) where trademark registration fees and official fees have been paid in error; or
- (ii) where an application for trademark registration (excluding a divisional application, a converted application, an application for trademark registration that serves as the basis of a divisional application or converted application, and an international application for trademark registration, each of which is considered to be an application for trademark registration under Article 86*quaterdecies*(1)) is withdrawn or abandoned within one month of the filing of the application and the only portion of fees already paid is the cost of applying to register the trademark.

(2) Where a person has already paid trademark registration fees and official fees under either subparagraph of paragraph (1) of this Article, the Commissioner of the Korean Intellectual Property Office shall notify the person.

(3) Where a person requests a refund of trademark registration fees and official fees for reasons other than the reasons specified in the subparagraphs of paragraph (1) of this Article, the person may not submit such a request if more than one year has elapsed since the date on which notification of the fees under paragraph 2 of this Article was given.

### **Article 39 Trademark Register**

(1) The Commissioner of the Korean Intellectual Property Office shall keep a Trademark Register at the Korean Intellectual Property Office and shall register the following matters:

- (i) the establishment, transfer, modification, expiry, renewal of the term, reclassification of goods under Article 46*bis*, supplementary registration of designated goods or restriction on disposal, of a trademark right;
- (ii) the establishment, maintenance, transfer, modification, expiry, or restriction on disposal of an exclusive or nonexclusive license; and
- (iii) the establishment, transfer, modification, expiry and restriction on disposal of a pledge on a trademark right for an exclusive or nonexclusive license.



(2) All or part of the Trademark Register referred to in paragraph (1) of this Article may be stored in an electronic format such as a magnetic tape.

(3) Necessary matters related to registration and registration procedures of trademarks not stipulated in paragraphs (1) and (2) of this Article are prescribed by Presidential Decree.

#### **Article 40 Issuance of a Trademark Registration Certificate**

(1) When the establishment of a trademark right has been registered, the Commissioner of the Korean Intellectual Property Office shall issue a trademark registration certificate to the owner of the trademark.

(2) Where the trademark registration certificate does not correspond with the Trademark Register, the Commissioner of the Korean Intellectual Property Office shall correct the certificate and reissue the amended certificate or issue a new certificate upon the request of the applicant or *ex officio*.

### **CHAPTER V TRADEMARK RIGHT**

#### **Article 41 Registration of Establishment of a Trademark Right**

(1) A trademark right comes into effect upon the registration of its establishment.

(2) Where trademark registration fees are paid under Article 34(1) or 35, or where supplementary trademark registration fees are paid under Article 36*bis*(2), or where trademark registration fees or supplementary trademark registration fees are paid under Article 36*ter*(1), the Commissioner of the Korean Intellectual Property Office shall register the establishment of a trademark right.

#### **Article 42 The Term of a Trademark Right**

(1) The term of a registered trademark is for ten years after the registration date of its establishment.

(2) The term of a registered trademark may be renewed for an additional ten years upon applying to renew the term.

- (i) deleted;
- (ii) deleted.

**Article 43 Application to Renew the Term of a Registered Trademark**

(1) A person renewing the term of a registered trademark under Article 42(2) shall submit an application to the Commissioner of the Korean Intellectual Property Office, including the following:

- (i) requirements under Article 9(1)(i), (ii), (iv) and (vii);
- (ii) the registration number of the trademark concerned;
- (iii) deleted.

(2) An application to renew the term of a registered trademark must be filed within the one-year period before the date on which the term of the registered trademark expires. However, a person who does not apply to renew the term of a registered trademark within this period may do so not later than six months after date on which the registered trademark expires.

(3) Where a registered trademark is jointly owned, the owners shall jointly file an application to renew the term.

(4) In addition to paragraphs (1) to (3) of this Article, all other necessary matters required to file an application to renew the term of a registered trademark are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 44 Division of an Application to Renew the Term of a Registered Trademark**

(1) Where the designated goods of a registered trademark cover two or more goods, the application for renewal of the term of a registered trademark may be divided into each of the goods.

(2) In an application to renew the term of a registered trademark under Article 43(1), an applicant who designates two or more goods may divide the application into two or more applications within the amendment period prescribed in Article 14.

(3) A divisional application to renew the term of a registered trademark under paragraph (2) of this Article is deemed to have been filed when the original application to renew of the term was filed.

**Article 45 Refusal of Registration for Renewal of the Term and Notification of Reasons for Refusal**

(1) An examiner shall refuse to renew the term of a registered trademark under any of the following circumstances:

- (i) deleted;
- (ii) where the applicant is not the owner of the registered trademark concerned;
- (iii) where the application violates Article 43(2);
- (iv) deleted;
- (v) deleted; and
- (vi) where the designated goods of the application to renew the term of a registered trademark are not the designated goods of the registered trademark, or where the application expands the actual scope of the designated goods.

(2) An examiner who intends to refuse renewal of the term of a registered trademark under paragraph (1) of this Article shall notify the applicant of the reasons for the refusal and give the applicant an opportunity to submit a written statement of arguments within a designated period.

**Article 46 Effects of an Application to Renew the Term of a Registered Trademark etc.**

(1) Where an application to renew the term of a registered trademark has been filed within the period prescribed in Article 43(2), the term is deemed to have been renewed, unless a decision of refusal to renew the term of the registered trademark has become final.

(2) The registration for renewal of the term of a registered trademark commences on the day after the expiry date of the original registration.

**Article 46bis Application to Register the Reclassification of Goods**

(1) A trademark right owner who has obtained trademark registration, a supplementary registration of designated goods or a registration for renewal of the term of a registered trademark for designated goods in accordance with the classification of goods prescribed by ordinance of the Ministry of Commerce, Industry and Energy under the previous Article 10(1) of this Act, before enforcement of the amendment of Article 10(1) under the enactment of Act No. 5355, shall reclassify the designated goods (referred to as "the reclassification of goods"), as prescribed by ordinance of the Ministry of Commerce, Industry and Energy. However, this provision does not apply where the person has obtained registration for renewal of the term of a registered trademark for designated goods in accordance with the classification of goods as prescribed by ordinance of the Ministry of Commerce, Industry and Energy under Article 10(1) of this Act as amended under the enactment of Act No. 5355.

(2) A person who seeks registration of the reclassification of goods under paragraph (1) (referred to as "the registration of the reclassification of goods") shall submit to the Commissioner of the Korean Intellectual Property Office a written application to register the reclassification of goods, specifying the particulars prescribed in each of the following subparagraphs; persons intending to simultaneously file an application to register the reclassification of goods and an application to renew the term of a registered trademark under Article 43(1) may instead file a single application to renew the term of a registered trademark by specifying their intention in the application as well as the particulars prescribed under subparagraph (4):

- (i) the name and address of the applicant for the reclassification of goods (and, if a legal entity, the name and address of the business);
- (ii) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (iii) the registration number of the registered trademark; and
- (iv) the designated goods and the corresponding classification that the applicant seeks to reclassify.

(3) An application to register the reclassification of goods must be filed within the period beginning one year before the date on which the term of the trademark right expires and not later than six months after the expiry date of the term.

(4) Where a registered trademark is jointly owned, the owners shall jointly file an application to register the reclassification of goods.

#### **Article 46ter Division of an Application to Register the Reclassification of Goods**

(1) Where an applicant files an application to renew the term of a registered trademark in which the designated goods are divided under Article 44(1), the applicant shall file an application to divide the registration of the reclassification of goods.

(2) Where an application to renew the term of a registered trademark is divided under Article 44(2), the applicant shall file an application to divide the registration of the reclassification of goods, or divide the application to register the reclassification of goods that has already been filed.

(3) Where an application to register the reclassification of goods that has already been filed under paragraph (2) is divided, the concerned application for registration of the reclassification of goods will be deemed to have been filed when the original application for registration of the reclassification of goods was filed.

**Article 46<sup>quater</sup> Decision to Refuse Registration of the Reclassification of Goods and Notification of the Reasons for Refusal**

(1) An examiner shall refuse registration of the reclassification of goods under any of the following circumstances:

- (i) where the designated goods for which an application to register the reclassification of goods has been filed are not the goods designated under the registered trademark or where the applicant expands the actual scope of the designated goods;
- (ii) where the designated goods of an application to register the reclassification goods does not correspond with the classifications of goods prescribed by ordinance of the Ministry of Commerce, Industry and Energy;
- (iii) where the applicant is not the owner of the trademark right concerned;
- (iv) where the requirements for an application to register the reclassification of goods under Article 46<sup>bis</sup> are not met; or
- (v) where the trademark right is extinguished, or an application to register the renewal of the term of the trademark right is abandoned, withdrawn or invalidated, or a decision to refuse an application to register the renewal of the term of the trademark right becomes final.

(2) An examiner who intends to refuse registration of the reclassification of goods under paragraph (1) of this Article shall notify the applicant of the reasons for the refusal and give the applicant an opportunity to submit a written response within a designated period.

**Article 46<sup>quinquies</sup> Registration of the Reclassification of Goods**

Where an examiner decides to register the reclassification of goods under Article 30 as applied under Article 49(2), the Commissioner of the Korean Intellectual Property Office shall register the reclassification of the designated goods.

**Article 47 Application for Supplementary Registration of Designated Goods**

(1) The owner of a registered trademark or an applicant for trademark registration may obtain supplementary registration of designated goods to be added to the designated goods of the registered trademark or to the application for trademark registration.

(2) A person applying for supplementary registration of designated goods under paragraph (1) of this Article shall submit an application for supplementary registration of designated goods to the Commissioner of the Korean Intellectual Property Office that includes the following:

- (i) the requirements under Article 9(1)(i) to (ii), (v) and (vii);

- (ii) the registration number of the trademark or the number of the application for trademark registration; and
- (iii) the supplementary goods to be designated and the corresponding class of the classification.

**Article 48 Decision to Refuse Supplementary Registration of Designated Goods and Notification of Reasons for Refusal**

(1) Where an application for supplementary registration of designated goods falls under any of the following subparagraphs, the examiner shall make a decision of refusal:

- (i) the application falls under any subparagraph of Article 23(1);
- (ii) the applicant is not the owner of the trademark right or the applicant for registration of the trademark concerned;
- (iii) deleted; or
- (iv) the right under the registered trademark has expired or the application for trademark registration has been withdrawn, abandoned or invalidated, or a decision to refuse the application has become final.

(2) An examiner who intends to refuse an application for supplementary registration of designated goods under paragraph (1) of this Article shall notify the applicant of the reasons for the refusal and give the applicant an opportunity to submit a written statement of arguments within a designated period.

**Article 49 *Mutatis Mutandis* Application of the Patent Act**

(1) Articles 10(1), 13, 14, 16, 17, 22 and 30 to 32 of this Act and Article 148(i) to (v) and (vii) of the Patent Act apply *mutatis mutandis* to an application to renew the term of a registered trademark.

(2) Articles 10(1), 13, 14, 16, 17, 22 and 30 to 32 of this Act and Article 148(i) to (v) and (vii) of the Patent Act apply *mutatis mutandis* to an application to register the reclassification of goods.

(3) Articles 9*bis*, 10(1), 13 to 17*bis*, 20 to 22 and 24 to 32 of this Act, Articles 142, 148(i) to (v) and (vii) and 157 of the Patent Act and Articles 143, 299 and 367 of the Civil Procedure Act apply *mutatis mutandis* to applications for supplementary registration of designated goods.

**Article 50 Effects of a Trademark Right**

The owner of a trademark right is entitled to the exclusive right to use the registered

trademark for the designated goods. However, under Article 55(3), where the trademark right is the subject of an exclusive license, this provision does not apply to the extent to which the licensee has the exclusive right to use the registered trademark.

### **Article 51 Limitations of a Trademark Right**

(1) The effects of a trademark right (excluding a collective mark for a geographical indication) do not extend to any of the following:

(i) trademarks that indicate in a common way a person's own name, title or trade name, portrait, signature, seal, famous pseudonym, professional name or pen name, or a famous abbreviation of these; however, this provision does not apply where, after registration of the trademark right, the mark has been used with the intention of violating the rules of fair competition;

(ii) trademarks that indicate in a common way the common name, origin, place of sale, quality, raw materials, efficacy, use, quantity, shape (including the shape of the packaging) or price of the designated goods concerned or similar goods, or the method or time of manufacturing, processing or using such goods;

(iibis) trademarks that have the three-dimensional shape referred to in Article 9(2), where that shape is identical or similar to the three-dimensional shape of a registered trademark used on goods that are identical or similar to the designated goods of the registered trademark in cases where the three-dimensional shape does not have sufficient identifiable traits to distinguish which goods pertain to which business;

(iii) trademarks customarily used on the designated goods or goods similar to the designated goods, and marks consisting of a famous geographical name or its abbreviations or a map; or

(iv) trademarks that consist solely of three-dimensional shapes that are essential to secure the functions of the designated goods of a registered trademark or their packaging.

(2) The effects of a collective mark right for a geographical indication do not extend to any of the following:

(i) trademarks that fall under paragraphs (1)(i), (ii) (excluding origin) and (iv) of this Article;

(ii) trademarks customarily used for goods that are identical to the designated goods of a registered collective mark for a geographical indication;

(iii) geographical indications or homonymous geographical indications used on goods which are identical to the designated goods of a registered collective mark for a geographical indication, and which are used by a person who conducts business activities such as producing, manufacturing, processing or certifying such goods; or

(iv) registered trademarks used by the owner, exclusive licensee or nonexclusive licensee on the designated goods of a trademark which has been registered with an earlier filing

date than any other trademark application and which includes a geographical indication that is identical or similar to a registered collective mark for a geographical indication.

**Article 52 Extent of Protection of a Registered Trademark etc.**

(1) The extent of protection conferred by a registered trademark is based on the trademark reproduced in the documents accompanying the application for trademark registration.

(2) The extent of protection conferred to the designated goods is based on the goods listed in the documents accompanying the application for trademark registration or the application to register the reclassification of goods.

**Article 53 Relationship with Another Design Right etc.**

Where the use of a registered trademark on designated goods conflicts with another person's patent right, utility model right or design right that has been applied for before the date of the application for the registration of the trademark, or with another person's copyright that has been in effect before that date, the owner of the trademark right or the exclusive or nonexclusive licensee may not use the registered trademark on the portion of the designated goods that gives rise to the conflict without a license from the owner of the earlier patent right, utility model right, design right or copyright.

**Article 54 Assignment and Joint Ownership of a Trademark etc.**

(1) A trademark right may be assigned separately for each of the designated goods. In such cases, the rights for similar designated goods are assigned with the assignment of the trademark.

(2) to (4) Deleted.

(5) Where a trademark right is jointly owned, the owners may not assign or pledge their individual share without the consent of the other owners.

(6) Where a trademark is jointly owned, an owner may not grant an exclusive or non-exclusive license of the trademark right without the consent of the other owners.

(7) A business emblem right may not be assigned unless the business emblem is assigned with the business.

(8) A trademark right registered under Article 7(1)(iii) may not be assigned unless assigned with the business related to the mark referred to in the main sentence of Article 7(1)(iii).



(9) A collective mark right may not be transferred. However, for a merger of a legal entity, the collective mark may be assigned if authorized by the Commissioner of the Korean Intellectual Property Office.

(10) A pledge right may not be established for a business emblem right, a trademark right and a collective mark right under Article 7(1)(iii).

#### **Article 54bis Division of a Trademark Right**

(1) Where two or more goods are designated under a single trademark right, the trademark right may be divided for each of the designated goods.

(2) Where a request for an invalidation trial is made under Article 71(2), the division under paragraph (1) of this Article may be made until the decision of the invalidation trial becomes final even if the trademark right expires.

#### **Article 55 Exclusive License**

(1) The owner of a trademark right may grant an exclusive license on the trademark right.

(2) An exclusive license may not be granted for a business emblem or a collective mark right.

(3) An exclusive licensee granted an exclusive license under paragraph (1) of this Article has the exclusive right to use the registered trademark on the designated goods to the extent allowed in the license agreement.

(4) Exclusive licensees shall indicate their own name or title on goods.

(5) An exclusive licensee may not assign the license without the consent of the owner of the trademark right, except in the case of inheritance or other general succession.

(6) An exclusive licensee may establish a pledge or grant a nonexclusive license on the exclusive license only with the consent of the owner of the trademark right.

(7) Article 54(5) and (6) apply *mutatis mutandis* to exclusive licenses.

#### **Article 56 Effects of Registration on Trademark Right and Exclusive License**

(1) The following items have no effect unless registered:

(i) the transfer (except for inheritance or other general succession), modification, ex-

tinguishment by abandonment, renewal of the term of a registered trademark, reclassification of goods, supplement to designated goods or restriction on the disposal of these;

(ii) the grant, transfer (except for inheritance or other general succession), modification or extinguishment (except in cases caused by a confusion of rights) by abandonment of an exclusive license, or restriction on the disposal of these; or

(iii) the establishment, transfer (except for inheritance or other general succession), modification or extinguishment by abandonment of a pledge on a trademark right or exclusive license, or restriction on the disposal of these.

(2) For inheritance or other general succession related to a trademark right, exclusive license or pledge under paragraph (1) of this Article, the Commissioner of the Korean Intellectual Property Office must be notified immediately.

#### **Article 57 Nonexclusive License**

(1) The owner of a trademark right may grant to others a nonexclusive license on the trademark right.

(2) A nonexclusive licensee granted a nonexclusive license under paragraph (1) of this Article is entitled to use the registered trademark on the designated goods to the extent allowed in the license agreement.

(3) Except for inheritance or other general succession, a nonexclusive license may not be transferred without the consent of the owner of the trademark right (or, for a non-exclusive license on an exclusive license, the owner of the trademark right and the exclusive licensee).

(4) A pledge may not be established on a nonexclusive license without the consent of the owner of the trademark right (or, for a nonexclusive license on an exclusive license, the owner of the trademark right and the exclusive licensee).

(5) Articles 54(5) and 55(2) and (4) apply *mutatis mutandis* to a nonexclusive license.

#### **Article 57bis Right to Use a Trademark after the Term of a Patent Right Expires etc.**

(1) Where a patent right under a patent application filed on or before the filing date of a trademark application conflicts with the trademark right under the trademark application and the term of the patent right has expired, the patentee is entitled to use, within

the scope of the original patent right, the registered trademark or another similar trademark for the designated goods covered by the trademark application or similar goods if the registered trademark is used without intending to violate the rules of fair competition.

(2) Where a patent right under a patent application filed on or before the filing date of a trademark application conflicts with the trademark right under the trademark application and the term of the patent right has expired, any person who has an exclusive license for the patent right or a nonexclusive license for the patent right or its exclusive license effective under Article 118(1) of the Patent Act at the time of its expiry is entitled to use, within the scope of the original right, the registered trademark or another trademark similar to the registered trademark on the designated goods or goods similar to the designated goods. However, this provision applies only where the registered trademark is used without violating the rules of fair competition.

(3) A person granted the right to use a trademark under paragraph (2) shall pay reasonable remuneration to the owner of the trademark right or exclusive licensee.

(4) The owner of a trademark or an exclusive licensee may demand a person who has a right to use the trademark under paragraph (1) or (2) to make the necessary indications to prevent confusion between the goods of the trademark owner or exclusive licensee's business and the goods of the other person's business.

(5) Except for inheritance or other general succession, the right to use a trademark under paragraph (1) or (2) may not be transferred without the consent of the owner of the trademark or the exclusive licensee.

(6) Paragraphs (1) to (5) apply *mutatis mutandis* where a utility model right, a design right under a utility model application, or a design application filed on or before the filing date of a trademark application conflict with the trademark right under the trademark application and the term of the utility model right or the design right has expired.

#### **Article 57ter Right to Continued Use of a Trademark by Virtue of Prior Use**

(1) Where a person uses a trademark that is identical or similar to another person's registered trademark on goods that are identical or similar to the designated goods of the other person's registered trademark, and where the person (referred to as "a prior user" in this Article, including any person who succeeds to the position of the prior user) meets each of the following requirements, the person is entitled to continue using the relevant trademark on such goods:

(i) where the person began to use the trademark in the Republic of Korea before another

person applied to register the trademark and the person has been using the trademark continuously with no intention of engaging in unfair competition; and  
(ii) where users in the Republic of Korea, as a result of using the trademark under subparagraph (i) of this Article, recognize the trademark as indicating the goods of a specific person at the time the other person applied to register the trademark.

(2) The owner of a trademark right or an exclusive licensee may request a prior user to use a proper indication to prevent any misunderstanding or confusion regarding the source of the owner's goods and the goods of the prior user.

**Article 58 Effects of Registration of a Nonexclusive License etc.**

(1) The following have no effect on any third parties unless they are registered:  
(i) the grant, transfer (except for inheritance or other general succession), modification, extinguishment by abandonment of a nonexclusive license or restriction on the disposal of these; and  
(ii) the establishment, transfer (except for inheritance or other general succession), modification, extinguishment by abandonment of a pledge on a nonexclusive license or restriction on the disposal of these.

(2) A registered nonexclusive license is effective against any person who subsequently acquires the trademark right or exclusive license.

(3) For inheritance or other general succession related to a nonexclusive license or a pledge under paragraph (1) of this Article, the Commissioner of the Korean Intellectual Property Office must be notified immediately.

**Article 59 Abandonment of a Trademark Right**

The owner of a trademark right may abandon the trademark right for any of the designated goods.

**Article 60 Restriction on Abandonment of a Trademark Right etc.**

(1) The owner of a trademark right may not abandon the trademark right without the consent of the exclusive or nonexclusive licensee(s) or pledgee(s).

(2) An exclusive licensee may not abandon the exclusive license without the consent of the pledgee(s) or nonexclusive licensee(s) under Article 55(6).

(3) A nonexclusive licensee may not abandon the nonexclusive license without the consent of the pledgee(s) under Article 57(4).

#### **Article 61 Effect of Abandonment**

Where a trademark right, an exclusive license, a nonexclusive license or a pledge is abandoned, the trademark right, the exclusive license, the nonexclusive license or the pledge is extinguished.

#### **Article 62 Pledge**

Where a pledge is established for a trademark right or an exclusive or nonexclusive license, the pledgee may not use the registered trademark.

#### **Article 63 Subrogation for Right of Pledge**

A pledge may be exercised for remuneration under this Act or for goods to be received for using the trademark right; however, an attachment order must be obtained before paying the remuneration or delivering the goods.

#### **Article 64 Extinguishment of a Trademark Right**

(1) Where an application to transfer a registered trademark is not filed by a successor in title within three years of the death of the original owner of the trademark, the trademark right is extinguished on the day after the expiry of a three-year period following the death of the original trademark owner.

(2) A trademark right of a legal entity in the process of liquidation is extinguished on the date immediately following the registered completion date of the liquidation of the legal entity, provided the transfer of the trademark right is not registered until the registered completion date of liquidation (however, where the liquidation affairs are yet to be completed in practice, then, even if the completion of the liquidation is registered, the registered completion date of the liquidation of the legal entity is considered to be the earlier date of either the date on which the liquidation affairs are actually completed or the date that marks the elapse of six months from the registered completion date of liquidation; the same provision applies for the remainder of this Article).

#### **Article 64bis Extinguishment of a Trademark Right in the Absence of Registration of the Reclassification of Goods**

(1) Under any of the following circumstances, a trademark right covering the designated

goods of an application to register the reclassification of goods is extinguished on the expiry date of the term of the registered trademark that is contained within the period prescribed under Article 46*bis*(3) for registering the reclassification of goods.

- (i) where a person who is entitled to register the reclassification of goods does not file an application to this effect within period prescribed under Article 46*bis*(3);
- (ii) where the application to register the reclassification of goods has been withdrawn;
- (iii) where a procedure related to the reclassification of goods has been invalidated under Article 16(1) of the Patent Act as applied under Article 5 of this Act;
- (iv) where a decision to refuse registration of the reclassification of goods is final; or
- (v) where a trial ruling invalidating registration of the reclassification of goods under Article 72*bis*(2) is final.

(2) A trademark right covering designated goods that are the object of reclassification of goods but not indicated in a registration application under Article 46*bis*(2) is extinguished on the date on which the designated goods indicated in the application are reclassified and registered under Article 46*quinquies*; however, if the reclassification of goods is registered before the term of a trademark right expires, the trademark right is extinguished on the date immediately following the expiry of the term of the trademark right.

## **CHAPTER VI PROTECTION OF OWNER OF A TRADEMARK RIGHT**

### **Article 65 Injunction etc. against an Infringement**

(1) The owner of a trademark right or an exclusive licensee may request a person who is infringing or is likely to infringe on the trademark right or exclusive license to discontinue or refrain from the infringement.

(2) The owner of a trademark right or exclusive licensee who is acting under paragraph (1) of this Article may demand the destruction of the infringing articles, the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

### **Article 66 Acts Considered to be an Infringement**

(1) The following acts are considered to infringe an exclusive license or a trademark right (excluding a collective mark for a geographical indication): A trademark similar to the registered trademark

- (i) acts of using a trademark that is identical to another person's registered trademark on goods that are similar to the designated goods, or using a trademark similar to the registered trademark of another person on goods that are identical or similar to the designated goods;
- (ii) acts of delivering, selling, counterfeiting, imitating or possessing a trademark ii that is identical or similar to the registered trademark of another person in order to use or cause a third party to use the trademark on goods that are identical or similar to the designated goods;
- (iii) acts of manufacturing, delivering, selling or possessing instruments in order iii to counterfeit or imitate another person's registered trademark or to cause a third party to counterfeit or imitate the trademark; and
- (iv) acts of possessing goods for the purpose of assignment or delivery when those goods are identical to the designated goods and display a trademark that is identical or similar to another person's registered trademark

(2) The following acts are considered to infringe a collective mark for a geographical indication:

- (i) acts of using a trademark (excluding a homonymous collective mark for a geographical indication) that is similar to another person's registered collective mark for a geographical indication on goods that are identical to the designated goods;
- (ii) acts of delivering, selling, counterfeiting, imitating or possessing a trademark that is identical or similar to another person's registered collective mark for a geographical indication in order to use or cause a third party to use the trademark on goods that are identical or similar to the designated goods;
- (iii) acts of manufacturing, delivering, selling or possessing instruments to counterfeit or imitate another person's registered collective mark for a geographical indication or to cause a third party to counterfeit or imitate the trademark;
- (iv) acts of possessing goods for the purpose of assignment or delivery when those goods are identical or similar to the designated goods and display a trademark that is identical or similar to another person's registered collective mark for a geographical indication.

#### **Article 67 Presumption etc. of the Amount of Damages**

(1) Where the owner of a trademark right or an exclusive licensee claims compensation from a person who has intentionally or negligently infringed a trademark right or exclusive license for damages caused by the infringer's transfer of infringing articles, the amount of damages is calculated as the number of transferred articles multiplied by the profit per unit of the articles that the owner of the trademark right or exclusive licensee might have sold in the absence of the infringement. However, the compensation must not exceed

an amount calculated as follows: the estimated profit per unit multiplied by the number of articles that the trademark right owner or licensee could have produced subtracted by the number of articles actually sold. If the owner of the trademark right or exclusive licensee was unable to sell the article for reasons other than infringement, a sum calculated according to the number of articles subject to the reasons must be deducted.

(2) Where the owner of a trademark right or an exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed the trademark right or the exclusive license, the profits gained by the infringer from the infringement are considered to be the amount of damage suffered by the owner of the trademark right or exclusive licensee.

(3) Where the owner of a trademark right or an exclusive licensee claims compensation from a person who has intentionally or negligently infringed the trademark right or exclusive license due to damages caused by the infringement, the amount of money that the owner or exclusive licensee would normally be entitled to receive by using the registered trademark may be claimed as the amount of damages suffered.

(4) Notwithstanding paragraph (3) of this Article, where the amount is in excess of the amount referred to in paragraph (3), the excess amount may also be claimed as compensation for damage. When awarding damages in such cases, the court may consider whether the person who infringed the trademark right or the exclusive license was willful or grossly negligent.

(5) In litigation related to the infringement of a trademark right or exclusive license, where the court recognizes that the nature of the facts of the case make it difficult to provide evidence proving the amount of damage that has occurred, notwithstanding paragraphs (1) to (4), the court may determine a reasonable amount based on an examination of the evidence and on a review of all the arguments.

#### **Article 68 Presumption of Intent**

A person who has infringed a trademark right or an exclusive license on a trademark marked with an indication of trademark registration in accordance with Article 90 is presumed to have known that the trademark was registered.

#### **Article 69 Measures for Recovering the Business Reputation of the Owner of a Trademark Right etc.**

Upon a request of the owner of a trademark right or an exclusive licensee, the court



may, in lieu of damages or in addition to damages, order a person who has injured the business reputation of the owner of the trademark right or exclusive licensee, by intentional or negligent infringement of the trademark right or exclusive license, to take necessary measures to restore the business reputation of the owner or exclusive licensee.

#### **Article 70 Submission of Documents**

In litigation related to the infringement of a trademark right or an exclusive license, the court may, upon the request of either party, order the other party to submit documents necessary for the assessment of damages caused by the infringement, unless the person who possesses the documents has justifiable reasons for refusing to submit them.

### **CHAPTER VII TRIAL**

#### **Article 70bis Trial against Decision of Refusal**

Any person dissatisfied with a decision to refuse registration of a trademark, to refuse supplementary registration of designated goods, to refuse to renew the term of a registered trademark or to refuse to registration of the reclassification of goods (referred to as "a decision of refusal") may request a trial within thirty days of the date of receiving a certified copy of the decision of refusal.

#### **Article 70ter Trial against a Decision to Reject an Amendment**

Any person dissatisfied with a decision to reject an amendment under Article 17(1) may request a trial within thirty days of the date of receiving a certified copy of the decision.

#### **Article 71 Invalidation Trial of a Trademark Registration**

(1) In the following cases, an interested person or an examiner may demand a trial to invalidate a registered trademark or the supplementary registration of designated goods. In such a case, if two or more designated goods are covered by the trademark registration, a request for an invalidation trial may be made for each of the designated goods:

- (i) the registration is in breach of Articles 3 (the proviso), 6 to 8, or 12(2) (second sentence), (5) and (7) to (9) or 23(1)(iv) to (vi) of this Act; or Article 25 of the Patent Act, which applies under Article 5 of this Act;
- (ii) the registration or the supplementary registration of designated goods violates a treaty;

(iii) the registration or the supplementary registration of designated goods has been effected on the basis of an application filed by a person who is not a successor in title to the right deriving from the trademark application;

(iii**bis**) the additional registration of designated goods violates Article 48(1)(iv);

(iv) following registration, the owner of the trademark right is no longer capable of enjoying the right under Article 25 of the Patent Act, which applies under Article 5 of this Act, or the registration no longer complies with a treaty;

(v) following registration, the registered trademark falls under any of subparagraphs of Article 6(1) of this Act (unless Article 6(2) of this Act applies); and

(vi) following the registration of a collective mark for a geographical indication under Article 41, the geographical indication of the registered collective mark for a geographical indication ceases to be protected or is no longer used in the country of origin.

(2) A trial for invalidation under paragraph (1) of this Article may be requested even after the extinguishment of a trademark right.

(3) Where a trial decision invalidating a trademark registration has become final, the trademark right is deemed never to have existed. However, where a trial decision invalidating a trademark right has become final under paragraphs (1)(iv) or (vi) of this Article, the trademark right is deemed not to have existed from the time the trademark registration applies under paragraphs (1)(iv) or (v) of this Article.

(4) When applying the proviso of Article 3 of this Act, where the exact date on which a registered trademark falls under paragraph (1)(iv) or (vi) of this Article cannot be specified, the present trademark right is deemed not to have existed from the date on which a request for an invalidation trial under paragraph (1) of this Article is made known to the public.

(5) Where a trial under paragraph (1) of this Article has been requested, the presiding trial examiner shall notify the exclusive licensee of the trademark right and other persons who have any registered rights related to the trademark of the subject of the request.

#### **Article 72 Invalidation Trial for Renewal of the Term of a Registered Trademark**

(1) In the following cases, an interested person or an examiner may request a trial to invalidate the renewal of the term of a registered trademark. If two or more designated goods are covered by the renewed registered trademark, a request for an invalidation trial may be made for each of the designated goods.

- (i) Deleted;
- (ii) the registration for the renewal violates Article 43(2);
- (iii) the registration for the renewal has been applied for by a person who is not the owner of the trademark right concerned.

(2) A trial for invalidation under paragraph (1) of this Article may be requested after the extinguishment of a trademark right.

(3) Where a trial decision invalidating the renewal of the term of a registered trademark has become final, the renewed registration is deemed never to have existed.

(4) Article 71(5) applies *mutatis mutandis* to the request for an invalidation trial under paragraph (1) of this Article.

#### **Article 72bis Invalidation Trial of a Registration for the Reclassification of Goods**

(1) An interested person or an examiner may request a trial to invalidate a registration of the reclassification of goods where any of the following subparagraphs apply; if two or more designated goods related to the registration for the reclassification of goods exist, a request for an invalidation trial may be made for each of the designated goods:

- (i) where the registration of the reclassification of goods has been granted for designated goods not covered by the present registered trademark or where the scope of the designated goods has been expanded;
- (ii) where an application to register the reclassification of goods has been filed by a person who is not the owner of the concerned trademark right; or
- (iii) where the registration for the reclassification of goods violates Article 46bis(3).

(2) Article 71(2) and (5) applies *mutatis mutandis* to an invalidation trial against a registration of the reclassification of goods.

(3) Where a trial decision invalidating a registration of the reclassification of goods has become final, the registration of the reclassification of goods is deemed to have never existed.

#### **Article 73 Trial for the Cancellation of a Registered Trademark**

(1) A trial may be requested to cancel a registered trademark that falls under any of the following circumstances:

- (i) deleted;

- (ii) the owner of the trademark right intentionally uses a trademark similar to the registered mark on the designated goods or uses the registered trademark or a trademark similar to the registered trademark on goods similar to the designated goods in a manner that is liable to mislead consumers on the quality of the goods or cause confusion regarding the goods of another person;
- (iii) the owner of the trademark right or the exclusive or nonexclusive licensee has not been continuously using the registered trademark for a period in excess of three years before the date of the cancellation trial for the designated goods in the Republic of Korea and no justifiable reasons exist for such nonuse;
- (iv) the trademark is contrary to Article 54(1) (second sentence), (5) and (7) to (9) of this Act;
- (v) a member of an association allows a third party to use its collective mark in violation of the statutes of the association or a member of an association uses the collective mark in violation of the statutes of the association, in a manner that is liable to mislead consumers on the quality or the geographical origin of goods or cause confusion regarding the goods of another person's business; however, an exception is made when the owner of the collective mark right has exercised reasonable supervision of the member of the association.
- (vi) when a concern exists that a collective mark could mislead consumers on the quality of goods or cause confusion regarding the goods of another person's business due to a change of the statutes of the association under Article 9(3) of this Act;
- (vii) a trademark falling under Article 23(1)(iii) of this Act has been registered and the owner of the original trademark requests a cancellation trial within five years of the trademark's registration date;
- (viii) the exclusive or nonexclusive licensee uses the registered trademark or a similar trademark on the designated goods or similar goods, in a manner that is liable to mislead consumers on the quality of the goods or cause confusion regarding the goods of another person's business, except when the owner of the trademark right has taken reasonable care; or
- (ix) when similar trademarks belong to different persons who have a trademark right due to the assignment of a trademark right, and one of the persons misleads consumers on the quality of goods or causes confusion regarding the goods of another person by using the registered trademark on goods identical or similar to the designated goods of their own registered trademark in acts of unfair competition;
- (x) where, notwithstanding a third party's use of a collective mark, the owner of the collective mark right intentionally misleads consumers on the quality or the geographical origin of goods or causes confusion regarding the goods of another person's business by failing to take reasonable measures;
- (xi) where the owner of a registered collective mark for a geographical indication prevents a person who conducts the business activities of producing, manufacturing or processing designated goods that display a geographical indication from joining or subscribing to the owner's association, or where the association's articles of association prescribe conditions

for subscription that are too difficult for the person to fulfill, or where the owner admits to the association a person who is not entitled to use the geographical indication; or (xii) where the owner of a collective mark for a geographical indication or the member of the owner's association use the collective mark in violation of Article 90*bis* of this Act, in a manner that is liable to mislead consumers on the quality of the goods.

(2) Deleted.

(3) Where a cancellation trial is requested for the reasons referred to in paragraph (1)(iii) of this Article, a cancellation trial may be requested for a part of the designated goods if two or more of the designated goods are covered by the registered trademark.

(4) Where a cancellation trial is requested for the reasons referred to in paragraph (1)(iii) of this Article, the owner of the trademark right does not avoid the cancellation of the registration of the trademark for the designated goods if the defendant cannot prove that the registered trademark has been used in the Republic of Korea within a three-year period before the date of the request for a trial on one or more of the designated goods in the request, unless the defendant can provide a justifiable reason for failing to use the registered trademark.

(5) The reasons for cancellation referred to in paragraphs (1)(ii), (iii), (v), (vi), and (viii) to (xii) of this Article are not affected even when the facts that give rise to the request for a cancellation trial no longer exist after the request for a trial is made.

(6) A cancellation trial under paragraph (1) of this Article may be requested only by an interested person, except that a trial requested for the reasons referred to in paragraphs (1)(ii), (v), (vi), and (viii) to (xii) of this Article may be requested by any person.

(7) Where a trial decision ordering the cancellation of a trademark registration has become final, the trademark right is extinguished on that date.

(8) Article 71(5) of this Act applies *mutatis mutandis* to the request for a trial under paragraph (1) of this Article.

#### **Article 74 Trial for the Cancellation of the Registration of an Exclusive or Nonexclusive License**

(1) Where an exclusive or nonexclusive licensee performs an act referred to in Article 73(1)(viii), a trial for the cancellation of the registration of the exclusive or nonexclusive license may be requested.

(2) The reasons for cancellation are not affected even when the facts that give rise to the request for a cancellation trial no longer exist after the request for a trial for the cancellation of the registration of an exclusive or nonexclusive license is made under paragraph (1) of this Article.

(3) Any person may request a trial for the cancellation of an exclusive or nonexclusive license under paragraph (1) of this Article.

(4) Where a trial decision ordering the cancellation of the registration of an exclusive or nonexclusive license has become final, the exclusive or nonexclusive license is extinguished on that date.

(5) Where a trial under paragraph (1) of this Article has been requested, the presiding trial examiner shall notify the nonexclusive licensee and other persons who have any registered rights related to the trademark right and the persons who have any registered right for the exclusive or nonexclusive license of the demand.

#### **Article 75 Trial to Confirm the Scope of a Trademark Right**

The owner of a trademark right or an interested person may request a trial to confirm the scope of a trademark right.

#### **Article 76 Term of Exclusion**

(1) A trial to invalidate a registered trademark, the renewal of the term of a registered trademark and the registration of a reclassification of goods under Articles 7(1)(vi) to (ix*bis*) and (xiv), 8, 72(1)(ii) and 72*bis*(1)(iii) of this Act may not be requested more than five years after the registration date of the trademark, after the registration date for renewal of the term of the registered trademark or after the registration date of the reclassification of goods.

(2) A trial for the cancellation of a trademark registration and of the registration of an exclusive or nonexclusive license under Articles 73(1)(ii), (v), (vi), (viii) to (xii) and 74(1) of this Act may not be requested more than after three years after the date on which the alleged facts have ceased to exist or after the registration date of the reclassification of goods.

#### **Article 77 *Mutatis Mutandis* Application of the Patent Act**

Articles 139, 140, 141 to 153, 153*bis* and 154 to 166 of the Patent Act apply *mutatis mutandis* to trials. In such cases, "an invalidation trial under Article 133(1), 134(1) or

137(1)" in Article 139(1) of the Patent Act reads "an invalidation trial under Article 71(1), 72(1) and 72*bis*(1), a cancellation trial under Article 73(1)", "a trial for invalidating a patent Article 133(1)" in Article 161(2) of the Patent Act reads "an invalidation trial under Article 71(1), 72(1) and 72*bis*(1)", "Article 133(1), 134(1), 135 and 137(1)" in Article 165(1) of the Patent Act reads "Article 71(1), 72(1), 72*bis*(1), 73(1) and 75", and "Article 132*ter*, 136 or 138" in Article 165(3) of the Patent Act reads "Article 70*bis* or 70*ter*".

### **Article 78 Deleted**

#### **Article 79 Formal Requirements for Requesting a Trial against an Examiner's Decision to Refuse or Reject an Amendment**

- (1) A person who requests a trial against an examiner's decision of refusal under Article 70*bis* or a trial against the decision to reject an amendment under Article 70*ter* shall submit a written request to the President of the Intellectual Property Tribunal, stating the following:
- (i) the name and address of the parties (and, if a legal entity, the name and address of the business);
  - (*ibis*) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);
  - (ii) the number and date of the application that is the subject of the rejection;
  - (iii) the designated goods and the classes of the goods;
  - (iv) the date of the examiner's decision to refuse or reject an amendment;
  - (v) the identification number of the trial case;
  - (vi) the purpose and reasons for the request; and
  - (vii) deleted.
- (2) Where a trial against an examiner's decision of refusal has been requested under Article 70*bis*, the President of the Intellectual Property Tribunal shall notify the opponent of the request for the trial if the decision of refusal was based on an opposition to the trademark registration.

### **Article 80 Deleted**

#### **Article 81 *Mutatis Mutandis* Application of Provisions Concerning Examination in the Trial against the Decision of Refusal**

- (1) Articles 15, 17, 18, 23(2), 24 to 30, 45(2), 46*quater*(2) and 48(2) apply *mutatis mutandis* to a trial against a decision of refusal; however, Article 24 does not apply where

an application for trademark registration or supplementary registration of designated goods have already been published.

(2) When Article 17 is applied under paragraph (1) of this Article, "where an applicant has requested a trial against the decision to reject an amendment under Article 70<sup>ter</sup>" in Article 17(3) means "where a lawsuit is brought under Article 186(1) of the Patent Act as applied under Article 86(2) of this Act"; and "until the trial decision of the trial has become final" means "until the judgement has become final".

(3) Articles 17(4) to (6), 23(2), 45(2) 46<sup>quater</sup>(2) and 48(2) applied under paragraph (1) of this Article apply *mutatis mutandis* where reasons for refusal other than those contained in the decision of refusal are found.

#### **Article 82 Special Provisions of a Trial against the Decision to Refuse or the Decision to Reject an Amendment**

(1) Articles 172 and 176 of the Patent Act apply *mutatis mutandis* to a trial on the decision to refuse and the decision to reject an amendment. In this case, "132<sup>ter</sup>" in Article 176(1) of the Patent Act reads "70<sup>bis</sup> or 70<sup>ter</sup>" and "ruling of refusal to grant a patent, refusal to extend the term of a registered patent or revocation of a patent" in Article 176(1) of the Patent Act reads "decision to refuse or reject an amendment".

(2) Articles 147(1) and (2), 155 and 156 of the Patent Act, which apply *mutatis mutandis* under Article 77, do not apply to the trial against the decision of refusal referred to in Article 70<sup>bis</sup> and the decision to reject an amendment referred to in Article 70<sup>ter</sup>.

### **CHAPTER VIII RETRIAL AND LITIGATION**

#### **Article 83 Request for a Retrial**

(1) Any party may request a retrial against a trial decision that has become final.

(2) Articles 451 and 453 of the Civil Procedure Act apply *mutatis mutandis* to the request for a retrial under paragraph (1) of this Article.

#### **Article 84 Request for a Retrial on Account of Collusion**

(1) Where the parties to a trial colluded to bring about a trial ruling that damages the



rights or interests of a third party, the third party may request a retrial against the trial ruling that has become final.

(2) In a retrial on account of collusion, the parties to the initial trial are the joint defendants.

#### **Article 85 Restriction on the Effects of a Trademark Right Restored by a Retrial**

In any of the following cases, the effects of a trademark right do not extend to the good-faith use of a trademark that is identical to the registered trademark on goods identical to the designated goods and acts referred to in Article 66(1)(i), (2)(i), after the decision concerned became final but before the request for a retrial has been registered:

- (i) where the trademark registration or the registration for renewal of the term of the invalidated trademark right has been restored by a retrial;
- (ii) where the trademark registration that had been cancelled has been restored by a retrial; or
- (iii) where a trial decision that a product was outside the scope of the trademark right became final, and a decision to the contrary was subsequently made at a retrial.

#### **Article 86 *Mutatis Mutandis* Application of the Patent Act**

(1) Articles 180 and 184 of the Patent Act and Article 459(1) of the Civil Procedure Act apply *mutatis mutandis* to procedures and requests for a retrial.

(2) Articles 186 to 188, 189 and 191(2) of the Patent Act apply *mutatis mutandis* to litigation under this Act.

Where Article 186(1) of the Patent Act applies, "action against a trial decision" means "action against a trial decision and a decision to reject an amendment under Article 17(1) as applied under Article 81(1) (including Article 184 of the Patent Act as applied under 86(1))" and "Articles 133(1), 134(1), 135(1), 137(1) 138(1) and (3)" in Article 187 of the Patent Act means "Articles 71(1), 72(1), 72*bis*(1), 73(1) and (2), 74(1) and 75".

### **CHAPTER VIII*bis*** **INTERNATIONAL APPLICATIONS UNDER THE PROTOCOL**

#### **Part I. International Applications etc.**

#### **Article 86*bis* International Applications**

A person who desires to applying for an international registration referred to in Article

2(1) of the Protocol shall file with the Commissioner of the Korean Intellectual Property Office an international application based on a trademark registration or an application for trademark registration that falls under any of the following subparagraphs:

- (i) the applicant's application for trademark registration;
- (ii) the applicant's trademark registration; or
- (iii) the applicant's application for trademark registration and the applicant's trademark registration.

#### **Article 86ter Entitlement to File**

(1) A person who falls under any of the following subparagraphs may file an international application with the Commissioner of the Korean Intellectual Property Office:

- (i) a national of the Republic of Korea; or
- (ii) a person who resides (or, if a legal entity, has a real and effective industrial or commercial establishment) in the territory of the Republic of Korea.

(2) Two or more persons who jointly file an international application shall meet the requirements for an entitlement to file as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 86quater Procedure for an International Application**

(1) A person filing an international application shall submit in a language prescribed by ordinance of the Ministry of Commerce, Industry and Energy a request for an international application and the documents necessary for an international application (referred to as "a request for an international application") to the Commissioner of the Korean Intellectual Property Office.

(2) The following particulars must be indicated in a request for an international application:

- (i) the name and address of the applicant (and, if a legal entity, the name and address of the business);
- (ii) indications concerning entitlement to file under Article 86ter
- (iii) the names of the contracting states and intergovernmental organizations (referred to as "the designated states") where protection for the trademark is secured;
- (iv) the filing date and the application number of the basic application under Article 2(1) of the Protocol (referred to as "the basic application") or the registration date and the registration number of the basic registration under Article 2(1) of the Protocol (referred to as "the basic registration");
- (v) the trademark for which international registration is sought;

(vi) goods for which international registration is sought and the classes of the goods; and  
(vii) the other particulars prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) Where a person filing an international application claims color as a distinctive feature of the trademark, the person shall state the fact of this claim and file a notice specifying the color or combination of colors claimed along with a request for an international application; the person shall also append color copies of the trademark to a request for an international application.

**Article 86quinquies Examination of the Particulars of an International Application etc.**

(1) Where the particulars appearing in a request for an international application correspond to the particulars appearing in the basic application or the basic registration, the Commissioner of the Korean Intellectual Property Office shall indicate in the request for an international application an acknowledgement of the correspondence and the date of receiving the request for an international application.

(2) After indicating the date of receipt and so on under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall transmit promptly the request for an international application and the documents necessary for the international application to the International Bureau as prescribed under Article 2(1) of the Protocol (referred to as "the International Bureau") and a copy of the request for an international application to the applicant.

**Article 86sexies Subsequent Designation**

(1) The holder of an international registration who designates additional states or inter-governmental organizations where the protection of the internationally registered mark is sought (referred to as "a subsequent designation") may present a request for a subsequent designation to the Commissioner of the Korean Intellectual Property Office as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(2) For the purpose of paragraph (1), the holder of an international registration may request a subsequent designation for all or some of the goods of the internationally registered trademark.

**Article 86septies Renewal of Term**

(1) The holder of an international registration may renew the term of the international registration for an additional period of ten years.

(2) A person renewing the term of an international registration under paragraph (1) shall present a request for renewal of the term of the international registration to the Commissioner of Korean Intellectual Property Office as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 86octies Recording a Change of Ownership of an International Registration**

(1) The holder of an international registration or the holder's assignee may change the ownership of the international registration for all or some of the designated goods or the designated states.

(2) A person changing the ownership of an international registration under paragraph (1) shall present a request for recording the change of ownership to the Commissioner of Korean Intellectual Property as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 86novies Payment of Official Fees**

(1) The following persons shall pay the official fees to the Commissioner of the Korean Intellectual Property Office:

- (i) a person filing an international application;
- (ii) a person requesting a subsequent designation;
- (iii) a person requesting renewal of the term of an international registration under Article 87septies or
- (iv) a person requesting that a change of ownership be recorded in the international registration under Article 87octies.

(2) Matters necessary for paying official fees, including procedures and time limits for paying under paragraph (1), are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 86decies Amendment concerning Nonpayment of Official Fees**

Where a person who falls under any subparagraph of Article 86novies(1) fails to pay the official fees required under Article 86novies(2), the Commissioner of the Korean Intellectual Property Office may instruct the person to pay the fees within a designated period.

**Article 86undecies Invalidation of a Procedure**

Where a person who has been instructed to pay the official fees under Article 86decies

fails to pay the official fees within the designated period, the Commissioner of the Korean Intellectual Property Office may invalidate the procedure.

**Article 86*duodecies* Recording a Change in International Registration Matters**

A request for recording a change in matters concerning an international registration or in any other matters necessary for an international application are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 86*terdecies* Exclusion of Business Emblems**

Article 86*bis* to 86*duodecies* does not apply to business emblems.

**Part II. Special Provisions on an International Application for Trademark Registration**

**Article 86*quaterdecies* International Application for Trademark Registration**

(1) An international application that has been registered internationally under the Protocol and that designates the Republic of Korea as a designated State (including subsequent designations) is considered to be an application for trademark registration under this Act.

(2) In paragraph (1), the date of an international registration under Article 3(4) of the Protocol (referred to as "the date of the international registration") is considered to be the filing date of the application for trademark registration under this Act. However, if an international application subsequently designates the Republic of Korea, the date (referred to as "the date of subsequent designation") on which the subsequent designation is recorded in the International Register defined in Article 2(1) of the Protocol (referred to as "the International Register") is considered to be the filing date of the application for trademark registration under this Act.

(3) Where an international application is considered to be an application for trademark registration under paragraph (1) (referred to as "an international application for trademark registration"), the name and address of the owner of the international registration (or, if a legal entity, its name and business address), the trademark, the designated goods and the classification(s) of the goods that are recorded in the International Register are deemed to be the name and address of the applicant (or, if a legal entity, its name and business address), the trademark, the designated goods and the classification(s) of the goods, respectively, under this Act.

**Article 86quindecies Special Provision on Business Emblems**

The provisions for a business emblem do not apply to an international application for trademark registration.

**Article 86sedecies Special Provisions on an International Application for Trademark Registration**

(1) In applying this Act to an international application for trademark registration, the purport of the priority claim, the name of the country in which the earlier application was filed and the filing date of the earlier application recorded in the International Register are deemed to be the purport of the priority claim, the name of the country in which the earlier application was filed and the filing date of the earlier application that are indicated in the application for trademark registration.

(2) In applying this Act to an international application for trademark registration, the purport of a trademark that comprises a three-dimensional shape, color, hologram, action or other visually recognizable construct that is recorded in the International Register is deemed to be the purport of a trademark that comprises a three-dimensional shape, color, hologram, action or other visually recognizable construct indicated in the application for trademark registration.

(3) A person seeking to register a collective mark shall submit the articles of association prescribed in Article 9(3) of this Act within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy. A person seeking to register a collective mark for a geographical indication under Article 2(1)(iii<sup>quater</sup>) of this Act shall submit a document in which the purport to register a collective mark for a geographical indication is stated; as prescribed by Presidential Decree, the document should prove that the collective mark complies with the definition of a geographical indication under Article 2(1)(iii<sup>bis</sup>) of this Act as well as with the statutes of association.

**Article 86septiesdecies Effect of an International Application for Trademark Registration of a Domestically Registered Trademark**

(1) Except for trademark registrations resulting from an international application for trademark registration, when the holder of a trademark right registered in the Republic of Korea (referred to in this Article as "a domestically registered trademark") files an international application for trademark registration, the international application is deemed to be filed on the filing date of the domestically registered trademark with respect to the overlapping scope of designated goods if all the following conditions are fulfilled:

- (i) the trademark registered in the International Register as a result of an international application for trademark registration (referred to as an "internationally registered trademark") is identical to a domestically registered trademark;
- (ii) the holder of the internationally registered trademark is identical to the holder of the domestically registered trademark;
- (iii) all the designated goods listed in the domestically registered trademark are included as the designated goods of the internationally registered trademark; and
- (iv) territorial extension under Article 3(3) of the Protocol takes effect after the registration date of the domestically registered trademark.

(2) Where recognition is given to a priority under the Treaty for an application for trademark registration that is related to a domestically registered trademark under paragraph (1) of this Article, the priority is also recognized for an international application for trademark registration under the same paragraph.

(3) Where the right of a domestically registered trademark is cancelled or extinguished under either of the following subparagraphs, the effect of the concerned international application for trademark registration under paragraphs (1) and (2) of this Article is not recognized within the same scope of the designated goods of the cancelled or extinguished trademark right:

- (i) if a trial decision canceling the trademark registration under Article 73(1)(ii), (iii) and (v) to (xii) of this Act has become final; or
- (ii) if a trial for the cancellation of a trademark registration is requested ii under Article 73(1)(ii), (iii) and (v) to (xii) of this Act, and the trademark right has become extinguished due to the expiry of the trademark term or to the abandonment of some of the trademark rights or designated goods after the request date of the cancellation trial.

(4) Any person seeking to file an application under Article 4bis(2) of the Protocol shall submit an application to the Commissioner of the Korean Intellectual Property Office, stating each of the following:

- (i) the name and address of the holder of the international registration (and, if a legal entity, the name and place of the business);
- (ii) the international registration number;
- (iii) the related domestic trademark registration number;
- (iv) any overlapping designated goods; and
- (v) other matters prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(5) Upon the filing of an application under paragraph (4) of this Article, an examiner shall notify the applicant of whether the effects of paragraphs (1) to (3) of this Article are approved with respect to the international application for trademark registration.

**Article 86*duodevicies* Special Provisions for the Transfer and Partial Assignment of an Application for Trademark Registration etc.**

(1) For an international application for trademark registration, "except for inheritance or other general succession, are not effective against third parties without recording the change" in Article 12(1) reads "are not effective against third parties without recording the change in the International Bureau".

(2) Where all or some of the designated goods of an international registration have been transferred separately by a change in the ownership of the international registration, each international application for trademark registration is deemed to have been filed by each changed holder of the international registration.

(3) Article 12(4) does not apply to an international application for trademark registration.

**Article 86*undevicies* Special Provisions for Amendments**

(1) For an international application for trademark registration, "the trademark or the list of designated goods in the application for trademark registration" in Article 14(1) reads "the list of designated goods in the application for trademark registration only when the applicant has been notified of the reasons for refusal under Article 23(2)".

(2) For an international application for trademark registration, "designated goods or a specimen, or both" in Article 15 reads "designated goods".

(3) Article 16(1)(iv) does not apply to an international application for trademark registration.

(4) For an international application for trademark registration, "an application for trademark registration or designated goods" in Article 16(2) or (3) reads "the designated goods".

**Article 86*vicies* Special Provision for the Division of Applications**

Article 18 does not apply to an international application for trademark registration.

**Article 86*unvicies* Special Provision for the Conversion of Applications**

Article 19(1) to (4) does not apply to an international application for trademark registration.



**Article 86*duovicies* Special Provision for a Priority Claim under the Paris Convention**

Article 20(4) and (5) does not apply if an applicant of an international application for trademark registration claims priority under the Paris Convention.

**Article 86*tervicies* Special Provision on the Time of Filing an Application**

For an international application for trademark registration, "submit to the Commissioner of the Korean Intellectual Property Office a written statement of intent with the application for trademark registration and, within thirty days of the filing date of the application, a document proving the relevant facts" in Article 21(2) reads "submit to the Commissioner of the Korean Intellectual Property Office a written statement of intent and a document proving the relevant facts within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy".

**Article 86*quatervicies* Special Provision for Notification of Grounds for Refusal**

Where Article 23(2) of this Act is applied to an international application for trademark registration, "to the applicant" reads "to the applicant through the International Bureau".

**Article 86*quinvicies* Special Provision for Publication of an Application**

For an international application for trademark registration, "Where an examiner finds no grounds for rejecting an application for trademark registration" in Article 24(1) reads "Where an examiner finds no grounds for rejecting an application for trademark registration within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy".

**Article 86*sevicies* Special Provision for the Right to Demand Compensation for Losses**

For an international application for trademark registration, "a copy of the application for trademark registration" in the proviso of Article 24*bis*(1) reads "a copy of the international application".

**Article 86*septiesvicies* Special Provisions for a Decision to Register a Trademark**

When applying the proviso to an international application for trademark registration, "cannot find any reasons for refusing an application for trademark registration" in Article 30 reads

"cannot find any reasons for refusing an application for trademark registration within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy".

**Article 86*duodetricies* Special Provisions for Trademark Registration Fees**

(1) A person filing an international application for trademark registration or renewing the term of a registered trademark that has been registered under Article 86*untricies* (referred to as "a trademark right based on international registration") shall pay the individual fee under Article 8(7)(a) of the Protocol to the International Bureau.

(2) Matters related to paying individual fees under paragraph (1) of this Article are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) Articles 34, 34*bis*, 35, 36, 36*bis* and 36*ter* do not apply to an international application for trademark registration or to a trademark right based on international registration.

**Article 86*undetricies* Special Provision for Refunding Trademark Registration Fees etc.**

For an international application for trademark registration, "Trademark registration fees and official fees that have been paid" in the proviso of Article 38(1) reads "official fees that have been paid", and "fees" in the proviso of Article 38(1) and in paragraphs (2) and (3) of Article 38 reads "official fees".

**Article 86*tricies* Special Provisions for Registration in the Trademark Register**

(1) For a trademark right based on international registration, "the establishment, transfer, modification, expiry, renewal of the term, conversion of the classification of goods under Article 46*bis*, supplementary registration of designated goods or restriction on disposal, of a trademark right" in Article 39(1)(i) reads "the establishment or restriction on disposal, of a trademark right".

(2) The transfer, modification, expiry or renewal of the term of a registered trademark based on international registration are based on the registration of the International Register.

**Article 86*untricies* Special Provision for Registering the Establishment of a Trademark Right**

For an international application for trademark registration, "Where trademark registration fees are paid under Article 34(1) or 35, or where supplementary trademark registration

fees are paid under Article 36*bis*(2), or where trademark registration fees or supplementary trademark registration fees are paid under Article 36*ter*(1)" in Article 41(2) reads "When the decision on the registration of the trademark has been made".

**Article 86*duotricies* Special Provisions for the Term of a Trademark Right**

(1) The term of a trademark right based on international registration is from the date of registration of its establishment under Article 86*untricies* to the expiry of a ten-year period following the date of the international registration.

(2) The term of a trademark right based on international registration may be renewed for an additional ten-year period upon renewal of the term of the international registration.

(3) Where the term of a trademark right based on international registration is renewed under paragraph (2), it is deemed to have been renewed on the expiry date of the term.

(4) Articles 42 to 46*quinquies*, 49(1) and (2) and 64*bis* do not apply to a trademark right based on international registration.

**Article 86*tertricies* Special Provision for an Application for Supplementary Registration of Designated Goods**

Articles 47, 48 and 49(3) do not apply to an international application for trademark registration or to a trademark right based on international registration.

**Article 86*quatertricies* Special Provision for the Division of a Trademark Right**

Article 54*bis* does not apply to a trademark right based on international registration.

**Article 86*quintricies* Special Provisions for the Effects of a Trademark Right**

(1) The transfer, modification, expiry by abandonment or renewal of the term of a registered trademark right based on international registration have no effect unless recorded in the International Register.

(2) Article 56(1)(i) (excluding the part related to the restriction on disposal) does not apply to a trademark right based on international registration.

(3) For a trademark right based on international registration, "a trademark right, exclusive license" in Article 56(2) reads "an exclusive license".

**Article 86<sup>setricies</sup> Effects of Canceling an International Registration**

(1) Where all or part of an international registration on which an international application for trademark registration is based has been cancelled, the international application for trademark registration is deemed to have been withdrawn for all or some of the designated goods to the extent of which the international registration has been cancelled.

(2) Where all or part of the international registration on which a trademark right based on international registration is based has been cancelled, the trademark right is deemed to have been extinguished for all or some of the designated goods to the extent of which the international registration has been cancelled.

(3) The effects under paragraphs (1) or (2) enter into force from the date on which the international registration in the International Register has been cancelled.

**Article 86<sup>septiestricies</sup> Special Provisions on Abandoning a Trademark Right**

(1) Article 60(1) does not apply to a trademark right based on international registration.

(2) For a trademark right based on international registration, "a trademark right, an exclusive" under Article 61 reads "an exclusive".

**Article 86<sup>duodequadrages</sup> Special Provision on an Invalidation Trial for Renewal of the Term of a Registered Trademark**

Articles 72 and 72<sup>bis</sup> do not apply to a trademark right based on international registration.

**Part III. Special Provisions on an Application for Trademark Registration**

**Article 86<sup>undequadrages</sup> Special Provisions on an Application for Trademark Registration after Cancellation of an International Registration**

(1) Where international registration of a trademark that is the subject of an international registration designating (including subsequent designations) the Republic of Korea has been cancelled under Article 6(4) of the Protocol for all or some of the designated goods, the holder of the international registration may file an application for trademark registration with the Commissioner of the Korean Intellectual Property Office for all or some of the designated goods.

(2) Where an application for trademark registration under paragraph (1) fulfills all the requirements of the following subparagraphs, the application is deemed to have been filed on the date of the international registration (or, for a subsequent designation, the date of the subsequent designation):

- (i) the application under paragraph (1) is filed within three months of the date on which the international registration was cancelled under the same paragraph;
- (ii) the designated goods of the application for the trademark registration under paragraph (1) are covered by the list of the designated goods contained in the international registration under the same paragraph; and
- (iii) the trademark for which trademark registration is sought is identical to the trademark of the cancelled international registration.

(3) Where a right of priority under a treaty is recognized for an international application for trademark registration that is filed for an international registration under paragraph (1), the right of priority is recognized for the application for the trademark registration under the same paragraph.

**Article 86<sup>quadrages</sup> Special Provisions on an Application for Trademark Registration after Denunciation of the Protocol**

(1) Where the holder of an international registration designating (including subsequent designation) the Republic of Korea is no longer entitled to file an international application under Article 15(5)(b) of the Protocol, the holder of the international registration may file an application for trademark registration with the Commissioner of the Korean Intellectual Property Office for all or some of the designated goods registered in the International Register.

(2) Article 86<sup>undequadrages</sup>(2) and (3) applies *mutatis mutandis* to an application for trademark registration under paragraph (1). In such cases, "within three months of the date on which the international registration was cancelled under the same paragraph" under Article 86<sup>undequadrages</sup>(2)(i) reads "within two years of the date on which the denunciation became effective under Article 15(3) of the Protocol".

**Article 86<sup>unquadrages</sup> Special Provision on Examinations**

Where an application for trademark registration that falls under any of the following subparagraphs (referred to as "a reapplication") is related to a trademark registered under Article 86<sup>untricies</sup>, Articles 23, 24, and 25 to 29 do not apply to the application:

- (i) an application for trademark registration that fulfills the requirements of all the subparagraphs of Article 86<sup>undequadrages</sup> (2) and is filed in accordance with Article 86<sup>undequadrages</sup>(1); or

(ii) an application for trademark registration that fulfills the requirements of all the subparagraphs of Article 86*undequadragies* (2), which applies *mutatis mutandis* under Article 86*quadragies*(2) and is filed in accordance with Article 86*quadragies*(1).

**Article 86*duoquadragies* Special Provision on the Statute of Limitation**

Where a trademark has been registered as a result of a reapplication and the statute of limitations under Article 76(1) for the previous trademark right based on international registration has lapsed, an invalidation trial against the trademark that was registered as a result of the reapplication may not be requested.

**CHAPTER IX  
SUPPLEMENTARY PROVISIONS**

**Article 87 Inspection of Documents etc.**

A person may request the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal for certification of an application for trademark registration, a trial certificate, a certified copy or extract of documents, or to inspect or copy the Trademark Register or other documents.

**Article 88 Prohibition of Opening or Removing the Trademark Register and Documents Related to an Application for a Trademark Registration, Examination, Trial or Retrial**

(1) Removal of the Trademark Register or documents related to an application for a trademark registration, examination, trial or retrial is prohibited, except in any of the following cases:

- (i) where documents related to an application for trademark registration, application for and an examination of the registration of a collective mark for a geographical indication, examination or an opposition to a registered trademark are removed for the purpose of a trademark search under Articles 22*bis*(1) to 22*bis*(3);
- (ii) where documents related to an application for trademark registration, an examination, an opposition to a registered trademark, a trial or retrial, or the Trademark Register are removed for the purpose of commissioning the digitization of trademark documents under Article 217*bis*(1) of the Patent Act as applied *mutatis mutandis* under Article 92 of this Act; or
- (iii) where documents related to an application for trademark registration, an examination,

an opposition to a registered trademark, a trial or retrial, or the Trademark Register are removed for the purpose of on-line remote performance of duties under Article 30 of the Act on Promotion of the Digitization of Administrative Affairs, etc. for the Creation of Electronic Government.

(2) An answer may not be given to a request for an expert opinion, testimony or inquiry regarding the contents of an ongoing case involving an application for trademark registration, examination, trial or retrial, or regarding the contents of a decision to grant or refuse trademark registration.

#### **Article 89 Trademark Gazette**

- (1) The Korean Intellectual Property Office shall publish the Trademark Gazette.
- (2) The Trademark Gazette may be published in electronic media as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.
- (3) When publishing the Trademark Gazette in electronic media, the Commissioner of the Korean Intellectual Property Office shall publicize on a communication network matters regarding the Trademark Gazette's publication, main contents and service.
- (4) Matters to be inserted in the Trademark Gazette are determined by Presidential Decree.

#### **Article 90 Indication of Trademark Registration**

The owner of a trademark right or an exclusive or nonexclusive licensee may use the indication "Registered Trademark" on designated goods or their packaging.

#### **Article 90bis Indication of a Registered Homonymous Collective Mark for a Geographical Indication**

When two or more registered collective marks for a geographical indication are homonymous, the owner of each collective mark and the members of each association may use the registered mark if the mark is accompanied by an indication that does not confuse consumers about the geographical origin.

#### **Article 91 Prohibition of False Indication**

- (1) A person may not perform any of the following acts:
  - (i) indicating on goods a trademark that is not registered, or for which trademark registra-

tion has not been applied for, as if the mark was a registered trademark or its registration had been applied for;

(ii) indicating on advertisements, signboards, labels or packaging of goods or other business transaction documents and so on a trademark that is not registered or for which trademark registration has not been applied for, as if the mark was a registered trademark or its registration had been applied for; or

(iii) marking an indication that the trademark is registered for goods other than the designated goods, or marking an indication that is liable to cause confusion if the registered trademark is used on goods other than the designated goods.

(2) Acts indicating a trademark under paragraph (1)(i) and (ii) of this Article include goods and packaging, advertisement, signboards, or labels that have become shapes of marks.

**Article 91bis Special Provision on a Trademark etc. that is Similar to a Registered Trademark**

(1) "The registered trademark" referred to in Articles 50, 53, 55(3), 57(2), 62, 67(3), 73(1)(iii) and (iv), 85, 90 and 91 of this Act includes trademarks that are similar to a registered trademark; if the colors of a similar trademark are the same as the colors of the registered trademark, the similar trademark is deemed identical to the registered trademark.

(2) "A trademark similar to the registered trademark" referred to in Articles 66(1)(i) and 73(1)(ii) of this Act does not include trademarks that are similar to a registered trademark if those trademarks are deemed identical to the registered trademark because the colors of the similar trademark are the same as the colors of the registered trademark.

(3) "A trademark that is similar to another person's registered collective mark for a geographical" referred to in Article 66(2)(i) of this Act does not include trademarks that are similar to a registered collective mark; if the colors of a similar trademark are the same as the colors of the registered collective mark for a geographical indication, the similar trademark is deemed identical to the registered collective mark for a geographical indication.

(4) Paragraphs (1) to (3) of this Article do not apply to a registered trademark consisting solely of a color or a combination of colors.

**Article 92 *Mutatis Mutandis* Application of the Patent Act**

Articles 217bis to 220, 222 and 224bis of the Patent Act apply *mutatis mutandis* to trademarks; however, Article 220(1) of the Patent Act does not apply *mutatis mutandis* to those cases in which an examiner notifies an international applicant for trademark



registration of the reason for refusal through the International Bureau in accordance with Article 86*quatervicies* of this Act.

## **CHAPTER X PENAL PROVISIONS**

### **Article 93 Offense of Infringement**

A person who has infringed a trademark right or an exclusive license is liable to imprisonment with labor not exceeding seven years or to a fine not exceeding 100 million won.

### **Article 94 Offense of Perjury**

(1) Having taken an oath under law, a witness, expert witness or interpreter who makes a false statement or gives a false expert opinion or interprets falsely before the Intellectual Property Tribunal is liable to imprisonment with labor not exceeding five years or to a fine not exceeding 10 million won.

(2) Having committed an offense under paragraph (1) of this Article, a person who reveals the offense before the examination of the case is concluded, before the examiner's decision to grant or refuse trademark registration is made or before a trial decision on the case becomes final may be partially or totally exempted from the application of the penalty.

### **Article 95 Offense of False Marking**

A person who violates Article 91 is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

### **Article 96 Offense of Fraud**

A person who fraudulently or unjustly obtains a trademark registration, the supplementary registration of designated goods, the registration for renewal of the term of a trademark right, the registration of the reclassification of goods or a trial decision is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

### **Article 97 Dual Liability**

Where a representative of a legal entity or an agent, employee or any other servant of

a legal entity or natural person violates Articles 93, 95 or 96 with regard to the business of the legal entity or natural person, in addition to the offender, the legal entity is liable to a fine as prescribed in either of the following subparagraphs, and the natural person is liable to a fine as prescribed in the relevant Article:

- (i) under Article 93, a fine not exceeding 300 million won; or
- (ii) under Articles 95 or 96, a fine not exceeding 60 million won.

#### **Article 97bis Confiscation**

(1) A trademark or packaging that infringes trademark rights or the exclusive use of the rights of another under Article 93, or a trademark obtained by such an infringement, or machinery used for the production of such goods, must be confiscated.

(2) Notwithstanding paragraph (1) of this Article, if, to remove an infringement, goods can be easily detached from their trademarks or packagings without affecting the function or feature of those goods, the goods may not be confiscated.

#### **Article 98 Administrative Fine**

(1) A person who commits any of the following acts is liable to an administrative fine not exceeding 500,000 won:

- (i) making a false statement before the Intellectual Property Tribunal after having taken an oath under Articles 299(2) and 367 of the Civil Procedure Act;
- (ii) failing to comply, without justifiable reasons, with an order of the Intellectual Property Tribunal to submit or show documents or other materials related to taking or preserving evidence; or
- (iii) failing to comply, without justifiable reasons, with a subpoena of the Intellectual Property Tribunal to appear as a witness, expert witness or interpreter, or refusing to take an oath, make a statement, testify, give an expert opinion or interpret.

(2) The Commissioner of the Korean Intellectual Property Office shall impose and collect the administrative fine referred to in paragraph (1) of this Article as prescribed by Presidential Decree.

(3) A person who objects to the imposition of an administrative fine under paragraph (2) of this Article may protest to the Commissioner of the Korean Intellectual Property Office within thirty days of the date of notification of the imposition.

(4) Upon receipt of a protest under paragraph (3) of this Article, the Commissioner of the Korean Intellectual Property Office shall immediately notify the competent court,

which shall adjudicate the case of the administrative fine according to the Noncontentious Case Litigation Procedure Act.

(5) Where an objection has not been raised within the period prescribed in paragraph (3) of this Article and where the fine has not been paid, the Commissioner of the Korean Intellectual Property Office shall collect the fine in accordance with the rules of collecting national taxes in arrears through the head of the competent tax office.

**ADDENDUM** <No. 4210, January 13, 1990>

**Article 1 Date of Entry into Force**

This Act enters into force on September 1, 1990.

**Article 2 General Transitional Measures**

Except as otherwise provided in Articles 3 to 8 of this addendum, this Act applies to matters that have taken place before this Act enters into force. However, any effect taken under the previous provisions is not affected.

**Article 3 Transitional Measures on the Dismissal of a Correction**

A correction made before this Act enters into force is subject to the previous provisions.

**Article 4 Transitional Measures on an Application for Trademark Registration etc.**

The examination of an application for trademark registration, an application for renewal of the term of a registered trademark and an application for additional registration of designated goods and an appeal on a ruling of refusal made before this Act enters into force are subject to the previous provisions (excluding Article 73(1)(i)).

**Article 5 Transitional Measures on the Effect of Renewing the Term of a Registered Trademark**

Where a trademark is registered in the previous provisions before this Act enters into force, and the renewal of the term of a trademark right is registered under this Act, the registered trademark is deemed to have been registered under this Act.

**Article 6 Transitional Measures on the Effect of a License**

The effect of a license registered under the previous provisions before this Act enters into force is subject to the previous provisions.

**Article 7 Transitional Measures on Trials Related to a Registered Trademark etc.**

(1) A trial, appeal, retrial and lawsuit related to an invalidation trial and a trial to confirm the scope of a trademark registered by an application for trademark registration, an application for renewal of the term of a trademark right and an application for additional registration of designated goods, made before this Act enters into force, is subject to the previous provisions. However, this provision does not apply to the request referred to in the latter part of the main sentence of Article 72(1).

(2) Any trial, appeal, retrial and lawsuit on the revocation trial of a trademark registration requested before this Act enters into force is subject to the previous provisions.

(3) Any trial, appeal, retrial and lawsuit on a revocation trial of a license registered under the previous provisions before this Act enters into force is subject to the previous provisions, except for the request referred to in Article 74(3).

**Article 8 Transitional Measures on the Procedures and Expenses of Trials and Compensation for Damages etc.**

The previous provisions govern the procedure, expenses, compensation for damages and so on for a trial, appeal, retrial and lawsuit requested against any act committed before this Act enters into force.

**ADDENDUM (Government Organization Act) <No. 4541, March 6, 1993>**

**Article 1 Date of Entry into Force**

This Act enters into force on the date of its promulgation. (Proviso deleted.)

**Articles 2 and 3 Deleted**

**Article 4 Amendment of Other Acts**

Following the New Establishment of the Ministry of Commerce, Industry and Energy (1) and <49> Deleted

<50> The following provisions of the Trademark Act are amended as follows:  
In Articles 9(1)(vii), 10(1), 34(3) and 37(2), "Decree of the Ministry of Commerce and Industry" reads "Decree of the Ministry of Commerce, Industry and Energy".  
<51> or <100> Deleted

**Article 5 Deleted**

**ADDENDUM** <No. 4597, December 10, 1993>

**Article 1 Date of Entry into Force**

This Act enters into force on January 1, 1994.

**Article 2 Transitional Measures on Applications for Trademark Registration etc.**

Any appeal against a ruling of refusal and the examination of an application for trademark registration, registration for renewal of the term of a trademark right or additional registration of designated goods made before this Act enters into force is subject to the previous provisions.

**Article 3 Transitional Measures on Refunding Trademark Registration Fees etc.**

The refund of trademark registration fees or other fees paid by mistake before this Act enters into force is subject to the previous provisions.

**Article 4 Transitional Measures on Trials Related to a Registered Trademark etc.**

Any trial, appeal, retrial or litigation on a trademark registered by an application for trademark registration, renewal of the term of a registered trademark or additional registration of the designated goods made before this Act enters into force is subject to the previous provisions.

**ADDENDUM** <No. 4895, January 5, 1995>

**Article 1 Date of Entry into Force**

This Act enters into force on March 1, 1998.

## **Article 2 Transitional Measures on Pending Cases**

(1) Any case in which a request has been made before this Act enters into force for a trial or appeal against a ruling of refusal or against a decision to dismiss a correction is deemed to be continued with the Intellectual Property Tribunal under this Act and to be pending at the Intellectual Property Tribunal.

(2) Any case in which a request has been made before this Act enters into force for an appeal against the decision of a trial or for an immediate appeal against a decision to dismiss the request is deemed to be continued with the Patent Court under this Act and to be pending at the Patent Court.

## **Article 3 Transitional Measures on Cases etc. that May Be Appealed**

(1) With regard to a case that a decision of a trial, a decision to dismiss a request for trial, a ruling of refusal or an examiner's decision to dismiss an amendment are transmitted when this Act enters into force and that an appeal has not been brought to the Patent Tribunal, within thirty days of the enforcement date of this Act, litigation under Article 186(1) of the Patent Act as applied *mutatis mutandis* under Article 86(2) may be brought against a decision of trial and decision to dismiss a request for trial and a trial under Article 70*bis* or 70*ter* may be requested against a ruling of refusal or an examiner's decision to dismiss an amendment. However, this provision does not apply if the period for appeal has expired under the previous provisions when this Act enters into force.

(2) When this Act enters into force, an appeal against the decision of an appeal, the decision to dismiss a request for an appeal and the decision to dismiss a correction by the appellate trial examiner may be brought to the Supreme Court within thirty days of the enforcement date of this Act. However, this provision does not apply if the period for appeal has expired under the previous provisions when this Act enters into force.

(3) A pending case against which an appeal has been brought to the Supreme Court before this Act enters into force and any case against which an appeal is made under paragraph (2) of this Article is deemed to have been pending or to have been brought to the Supreme Court.

## **Article 4 Transitional Measures on Retrials**

Articles 2 and 3 of this addendum apply *mutatis mutandis* to a pending retrial.

**Article 5 Transfer etc. of Documents**

(1) The Commissioner of the Korean Intellectual Property Office shall immediately transfer the documents of a pending case referred to in Article 2(1) of this addendum (including those applied *mutatis mutandis* under Article 4 of this addendum) to the President of the Industrial Patent Tribunal.

(2) The Commissioner of the Korean Intellectual Property Office shall immediately transfer the documents of a pending case referred to in Article 2(2) of this addendum (including those applied *mutatis mutandis* under Article 4 of this addendum) to the President of the Intellectual Property Tribunal. In this case, matters necessary for the transfer and so on of documents are prescribed by Supreme Court regulations.

**ADDENDUM** <No. 5083, December 29, 1995>

This Act enters into force on January 1, 1996.

**ADDENDUM (Patent Act)** <No. 5329, April 10, 1997>

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 1997. (Proviso deleted.)

**Articles 2 to 4 Deleted**

**Article 5 Amendment of Other Acts**

(1) The following provisions of the Trademark Act are amended as follows:  
Article 16(2) is amended as follows, and paragraph (3) of the same Article is added as follows:

(2) Where an amendment of an application for trademark registration or designated goods has been made before the transmittal of a certified copy of decision to publish on application and is recognized to have caused a material change after the establishment of a trademark right, the trademark application is deemed to have been filed at the time the written amendment is submitted.

(3) Where an amendment of an application for trademark registration or designated goods has been made after the transmittal of a certified copy of the decision to publish an

application and is considered to have violated Article 15 after the establishment of a trademark right, the trademark application is deemed to have been established and registered on the trademark application that has not been amended.

Article 89(2) becomes paragraph (4) of the same Article, and paragraphs (2) and (3) of the same Article are added as follows:

(2) The Trademark Gazette may be published in electronic format under conditions determined by ordinance of the Ministry of Commerce, Industry and Energy.

(3) When publishing the Trademark Gazette in electronic media, the Commissioner of the Korean Intellectual Property Office shall publicize on a communication network matters regarding the Trademark Gazette's publication, main contents and service.

(2) Deleted

**ADDENDUM** <No. 5355, August 22, 1997>

**Article 1 Date of Entry into Force**

This Act enters into force on March 1, 1998.

**Article 2 Transitional Measures on an Application for Trademark Registration etc.**

The examination of an application for trademark registration, an application for renewal of the term of a registered trademark and an application for additional registration of designated goods and a trial against a ruling of refusal before this Act enters into force are subject to the previous provisions (excluding Article 73(1)(i)).

**Article 3 Transitional Measures on Trials Related to a Registered Trademark etc.**

Trials, retrials and litigation on trademarks registered by an application for trademark registration, an application for renewal of the term of a registered trademark and an application for additional registration of designated trademarks before this Act enters into force are subject to the previous provisions.

**Article 4 Transitional Measures on a Associated Trademark**

(1) An application for an associated trademark registration or for the trademark rights on an associated trademark filed before this Act enters into force is deemed an application for trademark registration or a trademark right under this Act.



(2) Where an invalidation or revocation trial based on the grounds of violating the previous provisions of Articles 11(1) or (3) or 54(2) is pending when this Act enters into force, the trial is subject to the previous provisions.

**Article 5 Transitional Measures on the Revocation Trial of a Trademark  
Registration**

Notwithstanding amended Article 73(4), a revocation trial requested under Article 73(1)(iii) within three years of the enforcement date of this Act is subject to the previous provisions.

**Article 6 Transitional Measures on Three-Dimensional Trademarks**

(1) Where a person who has submitted goods with a three-dimensional trademark at an exhibition under Article 21(1) files an application for registration of the three-dimensional trademark under amended Article 2 before this Act enters into force, the enforcement date of this Act is deemed to be the submission date of the exhibited goods.

(2) Where a person who has filed an application for registration of a three-dimensional trademark with one of the parties to the treaties under Article 20 files an application for registration of the three-dimensional trademark under amended Article 2 before this Act enters into force, the enforcement date of this Act is deemed to be the filing date of the application for trademark registration filed in one of the countries to the treaty.

**ADDENDUM (Patent Act) <No. 5576, September 23, 1998>**

**Article 1 Date of Entry into Force**

This Act enters into force on January 1, 1999. (Proviso deleted.)

**Articles 2 to 4 Deleted**

**Article 5 Amendment of Other Acts**

(1) Deleted

(2) The following provisions of the Trademark Act are amended as follows:  
In Article 5, "Article 28 of this Act" reads "Article 28 and Article 28(5) of this Act".  
In Article 92, "Article 218 of the Patent Act" reads "Article 217(2) of the Patent Act".

**ADDENDUM** <No. 6414, February 3, 2001>

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2001. However, amended Article 38 enters into force on the date of its promulgation, and the provisions related to the international application in amended Article 5 and amended Articles 86*bis* to 86*duoquadragies* enter into the force on the date on which the Protocol becomes effective in the Republic of Korea.

**Article 2 Application Examples on the Right to Demand Compensation for Loss**

Amended Article 24*bis* is applied to an application for trademark registration or an application for additional registration of designated goods filed after July 1, 2001.

**Article 3 Transitional Measures on Examining Applications for Trademark Registration etc.**

The examination of an application for trademark registration, an application for renewal of the term of a registered trademark, an application for additional registration of designated goods and a trial against a ruling of refusal, a retrial and litigation initiated before this Act enters into force are subject to the previous provisions.

**Article 4 Transitional Measures on Trials Related to a Registered Trademark etc.**

A trial, retrial and litigation on a trademark registered by an application for trademark registration, an application for renewal of the term of a registered trademark or an application for additional registration of designated goods initiated before this Act enters into force are subject to the previous provisions. However, amended Article 3 of the addendum to the Trademark Act, amended by Act No. 5355, applies to a request for a trial, a trial, retrial and litigation to revoke a trademark registration under Article 73(1)(i) after July 1, 2001.

**ADDENDUM (Civil Procedure Act)** <No. 6626, January 26, 2002>

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2002.

**Articles 2 to 5 Deleted**

**Article 6 Amendment of Other Acts**

(1) to (12) Deleted

(13) The following provisions of the Trademark Act are amended as follows:

In Articles 33 and 49(3), "Article 133, Article 271 of the Civil Procedure Act and Article 339 of this Act" reads "Article 143 and Article 299 of the Civil Procedure Act and Article 367 of this Act".

In Article 83(2), "Article 422 of the Civil Procedure Act and Article 424 of this Act" reads "Article 451 of the Civil Procedure Act and Article 453 of this Act".

In Article 86(1), "Article 429(1) of the Civil Procedure Act" reads "Article 459(1) of the Civil Procedure Act".

In Article 98(1)(1), "Article 271(2) of the Civil Procedure Act and Article 339 of this Act" reads "Article 299(2) of the Civil Procedure Act and Article 367 of this Act".

(14) and <29> Deleted

**Article 7 Deleted**

**ADDENDUM** <No. 6765, December 11, 2002>

This Act enters into force five months after its promulgation.

**ADDENDUM (Design Protection Act)** <No. 7289, December 31, 2004>

**Article 1 Date of Entry into Force**

This Act enters into force six months after its promulgation.

**Articles 2 to 4 Deleted**

**Article 5 Amendment of Other Acts**

(1) to (12) Deleted

(13) The following provisions of the Trademark Act are amended as follows:  
In the title of Article 53, "design right" [uijang] reads "design right" [dijain], and in the main text of this Article, "design right" [uijang] reads "design right" [dijain], and "holder of a design right" [uijang] to "holder of a design right" [dijain].  
In Article 57*bis* (6), "design right" [uijang] reads "design right" [dijain].

(14) to <16> Deleted

**ADDENDUM** <No. 7290, December 31, 2004>

This Act enters into force six months after its promulgation.

**ADDENDUM** <No. 8190, January 3, 2007>

**Article 1 Date of Entry into Force**

This Act enters into force on the date of its promulgation; however, the amended Articles 2(1)(i), 5, 7(1) to 7(4), 8(5), 8(6), 9(2), 19, 22*bis*, 22*ter*, 24(3) and 25, the latter part of Article 33, Articles 38, 46*quater*(1)(v), 56(1)(ii), 56(1)(iii), 57*ter* and 64(2), the proviso of Article 64*bis*(2), Articles 77, 86*sedecies*(2), 86*septiesdecies*(4), 86*septiesdecies*(5), 86*quatervicies* to 86*sevicies* and 91*bis*(4), and the proviso of Article 92 enter into force on July 1, 2007.

**Article 2 Application Examples on Application for Trademark Registration and Requirements for Trademark Registration**

(1) The application of amended Articles 2(1)(i), 7(1)(xiii), 9(2), 86*sedecies*(2) and 91*bis*(4) begins when the first application for trademark registration or for additional registration of designated goods is filed on or after July 1, 2007.

(2) The application of amended Article 7(4)(ii) begins when an application for trademark registration or for additional registration of designated goods is filed by a lawful applicant on or after July 1, 2007, after an invalidation trial decision becomes final on the grounds of a violation of Article 7(1)(xi).

**Article 3 Application Examples on Prior Application**

The application of amended Articles 8(5) and 8(6) begins when a trial for the cancellation of a trademark registration is requested on or after July 1, 2007, on the grounds of Article 73(1)(iii).

**Article 4 Application Examples on Publication of Application for, and Opposition to, a Trademark Registration**

The application of amended Articles 24(3), 25(1) and 25(2) begins when an application for trademark registration is published on or after July 1, 2007.

**Article 5 Application Examples on the Refund of Trademark Registration Fees, etc.**

The application of amended Article 38 begins when the first application for trademark registration is filed on or after July 1, 2007.

**Article 6 Application Examples on Reasons for Refusal of Application for Goods Reclassification Registration**

The application of amended Article 46<sup>quater</sup>(1)(v) begins when the first application for the registration of reclassification of goods is filed on or after July 1, 2007.

**Article 7 Application Examples on the Right to the Continued Use of Trademark by Virtue of Prior Use**

The application of amended Article 57<sup>ter</sup> begins when a prior user meets the requirements of the amended provisions for the first trademark to be registered as a result of another person's application after July 1, 2007

**Article 8 Application Examples on Extinguishment of Trademark Right in the Event of No Registration of Goods Reclassification**

The application of amended proviso of Article 64<sup>bis</sup>(2) begins when the first registration of goods reclassification is performed after July 1, 2007.

**Article 9 Application Examples on Remuneration for Patent Attorneys**

The application of amended Article 86(2) begins when a patent attorney represents a relevant party in a litigation after this Act enters into force.

**Article 10 Special Provision on Claiming Priority Right under a Treaty When Applying to Register a Trademarks Comprising a Color, Hologram or Action**

In the application of Articles 20 and 21, where an application to register a trademark comprising a color or a combination of colors only, or a hologram, or an action falls

under either of the following cases, the application is deemed to have been filed on July 1, 2007, notwithstanding Articles 20 and 21:

- (i) where an application for trademark registration is filed in the country concerned before July 1, 2007, in accordance with Article 20, and an application for trademark registration is filed in the Republic of Korea after July 1, 2007, in accordance with paragraph (2) of the same Article; or
- (ii) where goods are put on display at one of the exhibition referred to in any of the subparagraphs of Article 21(1) before July 1, 2007, and an application to register the trademark that is to be used on those goods is filed under Article 21 on or after July 1, 2007.

**Article 11 Transitional Measures Regarding Applications and Requirements for Trademark Registration**

(1) Notwithstanding the amended subparagraphs (xii) and (xii*bis*) of Articles 7(1), the previous provisions apply to a trial, retrial or lawsuit regarding an examinations and decision to refuse an applications that is filed before July 1, 2007, for trademark registration or for additional registration of designated goods.

(2) Notwithstanding the amended subparagraphs (xii) and (xii*bis*) of Article 7(1), any trial, retrial or lawsuit regarding a trademark registered or to be registered in relation to an application filed before July 1, 2007, is subject to the previous provisions.







**INDUSTRIAL DESIGN PROTECTION ACT**

Act No. 951, Promulgated on December 31, 1961  
As last amended by Act No. No. 8357, April 17, 2007

**TABLE OF CONTENTS**

**CHAPTER I : General Provisions**

Article 1 Purpose .....	259
Article 2 Definitions .....	259
Article 3 Persons Entitled to Obtain Design Registration .....	259
Article 4 <i>Mutatis Mutandis</i> Application of the Patent Act .....	259

**CHAPTER II : Requirements for Design Registration and Design Applications**

Article 5 Requirements for Design Registration .....	260
Article 6 Unregistrable Designs .....	261
Article 7 Similar Designs .....	261
Article 8 Exception to Loss of Novelty .....	261
Article 9 Applications for Design Registration .....	261
Article 10 Joint Application .....	263
Article 11 A Single Application for a Single Design Registration .....	263
Article 11 <i>bis</i> Application for Multiple Design Registration .....	263
Article 12 Design of a Set of Articles .....	263
Article 13 Secret Designs .....	264
Article 14 Application for Design Registration Filed by an Unentitled Person and Protection of the Lawful Holder of a Right .....	264
Article 15 Design Registration Granted to an Unentitled Person and Protection of the Lawful Holder of a Right .....	265
Article 16 First-to-File Rule .....	265
Article 17 Amendment of Procedure .....	266
Article 18 Amendment to Application and Change of Gist .....	266
Article 18 <i>bis</i> Rejection of Amendment .....	267
Article 19 Division of Applications for the Registration of Designs .....	267
Article 20 Deleted .....	268
Article 20 <i>bis</i> Deleted .....	268

Article 21 Deleted .....	268
Article 22 Deleted .....	268
Article 23 Priority Claim under a Treaty .....	268
Article 23 <i>bis</i> Laying Open an Application .....	269
Article 23 <i>ter</i> Effect of Laying Open an Application .....	269
Article 23 <i>quater</i> Transfer etc. of the Right to Obtain Design Registration .....	270
Article 23 <i>quinquies</i> Furnishing of Information .....	271
Article 23 <i>sexies</i> Publication of Applications Determined to Be Refused in the Design Gazette .....	271
Article 24 <i>Mutatis Mutandis</i> Application of the Patent Act .....	271

**CHAPTER III : Examination**

Article 25 Examination by an Examiner .....	271
Article 26 Decision to Refuse Design Registration .....	271
Article 27 Notification of Reasons for Refusal .....	272
Article 28 Decision to Grant Design Registration .....	273
Article 29 Method of Deciding to Grant or Refuse Design Registration .....	273
Article 29 <i>bis</i> Opposition to the Registration of an Unexamined Design .....	273
Article 29 <i>ter</i> Amendment to Grounds for an Opposition to Unexamined Design Registration etc. ....	274
Article 29 <i>quater</i> Collegial Body for Examinations and Decisions etc. ....	274
Article 29 <i>quinquies</i> <i>Ex Officio</i> Examination of an Opposition to an Unexamined Design Registration .....	275
Article 29 <i>sexies</i> Combination or Separation of Oppositions to Unexamined Design Registration .....	275
Article 29 <i>septies</i> Decision on Opposition to Unexamined Designs Registration ..	275
Article 29 <i>octies</i> Method of Deciding upon an Opposition to an Unexamined Design Registration .....	276
Article 29 <i>nonies</i> Withdrawal of an Opposition to an Unexamined Design Registration .....	276
Article 30 <i>Mutatis Mutandis</i> Application of the Patent Act .....	277

**CHAPTER IV : Registration Fees and Registration of Designs**

Article 31 Design Registration Fees .....	277
Article 31 <i>bis</i> Abandonment for Each Design at the Time of Paying Registration Fees .....	277

Article 32 Payment of Registration Fees by an Interested Party .....	278
Article 33 Late Payment of Registration Fees .....	278
Article 33 <i>bis</i> Remaining Payment of Registration Fees .....	278
Article 33 <i>ter</i> Restoration of an Application for Design Registration or a Design Right by Late Payment of Registration Fees etc. ....	279
Article 34 Official Fees .....	280
Article 35 Reduction or Exemption of Registration Fees or Official Fees .....	280
Article 36 Refund of Registration Fees etc. ....	281
Article 37 Design Register .....	281
Article 38 Issuance of a Design Registration Certificate .....	281

#### **CHAPTER V : Design Right**

Article 39 Registration of Establishment of a Design Right .....	282
Article 40 The Term of a Design Right .....	282
Article 41 Effects of a Design Right .....	282
Article 42 Design Right Related to a Similar Design .....	283
Article 43 Scope of Protection of a Registered Design .....	283
Article 44 Limitations of a Design Right .....	283
Article 45 Relationship with another Person's Registered Design .....	283
Article 46 Assignment and Joint Ownership of a Design Right .....	284
Article 47 Exclusive License .....	285
Article 48 Deleted .....	285
Article 49 Nonexclusive License .....	285
Article 50 Nonexclusive License by Virtue of Prior Use .....	285
Article 50 <i>bis</i> Nonexclusive License by Virtue of Prior Application .....	286
Article 51 Nonexclusive License Due to Working before Registration of Demand for an Invalidation Trial .....	286
Article 52 Nonexclusive License after a Design Right Expires etc. ....	287
Article 53 Abandonment of a Design Right .....	287
Article 54 Restriction on Abandonment of a Design Right etc. ....	287
Article 55 Effect of Abandonment .....	288
Article 56 Pledge .....	288
Article 57 Subrogation for the Right of a Pledge .....	288
Article 58 Nonexclusive License when Transferring the Design Right by Exercising the Pledge Right .....	288
Article 59 Extinction of a Design Right in the Absence of a Successor .....	288
Article 60 Deleted .....	289
Article 61 <i>Mutatis Mutandis</i> Application of the Patent Act .....	289

**CHAPTER VI : Protection of Owner of Design Right**

Article 62 Injunction against an Infringement etc. ....	289
Article 63 Acts Considered to be Infringing .....	289
Article 64 Presumption etc. of the Amount of Damages .....	290
Article 65 Presumption of Negligence .....	290
Article 66 Measures for Recovering the Reputation of the Owner of a Design Right etc. ....	291
Article 67 <i>Mutatis Mutandis</i> Application of the Patent Act .....	291

**CHAPTER VII : Trial**

Article 67bis Trial against a Decision to Reject an Amendment .....	291
Article 67ter Trial against a Decision to Refuse or Revoke Design Registration ..	291
Article 68 Trial to Invalidate a Design Registration .....	291
Article 69 Trial to Confirm the Scope of a Design Right .....	292
Article 70 Trial for Granting a Nonexclusive License .....	293
Article 71 <i>Mutatis Mutandis</i> Application of the Provisions of Examination to Trial against the Decision to Refuse Design Registration .....	293
Article 72 <i>Mutatis Mutandis</i> Application of the Patent Act .....	294

**CHAPTER VIII : Retrial and Litigation**

Article 73 Request for a Retrial .....	295
Article 74 Restriction on Effects of Design Rights Restored by a Retrial .....	295
Article 75 <i>Mutatis Mutandis</i> Application of the Patent Act .....	296

**CHAPTER IX : Supplementary Provisions**

Article 76 Inspection of Documents .....	296
Article 77 Prohibition of Opening or Removing a Design Register and Documents Related to an Application, Examination or Trial .....	296
Article 78 Design Gazette .....	297
Article 79 Design Registration Marking .....	297
Article 80 Prohibition of False Marking .....	298
Article 81 <i>Mutatis Mutandis</i> Application of the Patent Act .....	298

**CHAPTER X : Penal Provisions**

Article 82 Offense of Infringement .....	298
Article 83 Offense of Perjury .....	298
Article 84 Offense of False Marking .....	299
Article 85 Offense of Fraud .....	299
Article 86 Offense of Divulging Secrets .....	299
Article 87 Dual Liability .....	299
Article 88 Administrative Fine .....	299
Article 89 <i>Mutatis Mutandis</i> Application of the Patent Act .....	300
<b>ADDENDA</b> .....	300



**CHAPTER I  
GENERAL PROVISIONS**

**Article 1 Purpose**

The purpose of this Act is to encourage the creation of designs by ensuring their protection and utilization so as to contribute to the development of industry.

**Article 2 Definitions**

The definitions of the terms used in this Act are as follows:

- (i) "design" means the shape, pattern, color or a combination of these in an article that produces an aesthetic impression in the sense of sight; the same applies to a part of an article and the style of calligraphy unless Article 12 of this Act applies;
- (*ibis*) "style of calligraphy" means a script (including numbers, marks, symbols etc.) made in the form of common features for use in recording, marking or printing;
- (ii) "registered design" means a design for which design registration has been granted;
- (iii) "design registration" means registration of examined or unexamined designs;
- (iv) "examined design registration" means registration of a design that is subject to examination as to whether it is completely qualified for registration;
- (v) "unexamined design registration" means registration of a design that is subject to examination as to whether the application for design registration satisfies the requirements for registration under this Act, with the exception of the requirements that are not applied under Article 26(2) of this Act.
- (vi) "working" of a design means any act of manufacturing, using, assigning, leasing, importing or offering for assignment or lease (as well as displaying for assignment or lease) the article to which the design has been applied.

**Article 3 Persons Entitled to Obtain Design Registration**

(1) A person who creates a design or the person's successor is entitled to obtain design registration under this Act; however, employees of the Korean Intellectual Property Office and the Intellectual Property Tribunal may not obtain design registration during their employment except in the case of inheritance or a bequest.

(2) If two or more persons jointly create a design, the right to obtain design registration is jointly owned.

**Article 4 *Mutatis Mutandis* Application of the Patent Act**

Articles 3 to 26 and 28 to 28*quinquies* of the Patent Act apply *mutatis mutandis* to

designs. In such cases, "trial" in Article 3(2) of the Patent Act reads "opposition to an unexamined design registration and trial", "person that requests an examination of a patent application or requests a trial" in Article 4 of the Patent Act reads "person that files an opposition to an unexamined design registration or requests a trial", "Article 132*ter*" in Articles 6, 11(1)(iv) and 17 of the Patent Act reads "Article 67*bis* or Article 67*ter*", and "Article 132*ter*" in Article 15(1) of the Patent Act reads "period in which the grounds and so on for an opposition to an unexamined design registration may be amended under Articles 29*ter*, 67*bis* or 67*ter*".

## **CHAPTER II**

### **REQUIREMENTS FOR DESIGN REGISTRATION AND DESIGN APPLICATIONS**

#### **Article 5 Requirements for Design Registration**

(1) Designs that are industrially applicable may be registered unless they fall under any of the following subparagraphs:

- (i) the design is publicly known or publicly worked in the Republic of Korea or in a foreign country before the design application is filed;
- (ii) the design is described in a publication distributed in the Republic of Korea or in a foreign country or published electronically before the application for design registration is filed;
- (iii) the design is similar to a design referred to in subparagraph (i) or (ii) of this Article.

(2) Notwithstanding paragraph (1) of this Article, where a design is a design that could have been easily created by a person with ordinary skill in the art to which the design pertains, and the design is a combination of the designs under paragraph (1)(i) or (ii) of this Article, or the design comprises a shape, pattern, color, or any combination of these, that is widely known in the Republic of Korea (other than a design referred to in any subparagraph of paragraph (1) of this Article) before the application for design registration is filed, the design may not be registered.

(3) Notwithstanding paragraph (1) of this Article, where a design for which a registration application has been filed is identical or similar to a part of a design that is indicated in a description of, or represented in a drawing, photograph or sample attached to, another application for design registration that was filed before, and laid open, declared in a public notice, or published in the Design Gazette in accordance with Article 23*sexies* of this Act after the filing date of the application for design registration, the design may not be registered.



### **Article 6 Unregistrable Designs**

Notwithstanding Article 5 of this Article, the following designs are unregistrable:

- (i) designs that are identical or similar to the national flag, national emblem, military flags, decorations, orders of merit, badges and medals of public organizations, national flags and national emblems of foreign countries, or characters or indications of international organizations;
- (ii) designs whose meaning or content is liable to contravene the public order or morality;
- (iii) designs liable to give rise to confusion over articles connected with another person's business; and
- (iv) designs consisting solely of a shape that is essential to secure the functions of the article.

### **Article 7 Similar Designs**

(1) The owner of a design right or an applicant for design registration is entitled to obtain design registration for a design that is similar only to the owner's registered design (referred to as "the principal design") or a design for which a registration application has been filed as a similar design (referred to as "a similar design").

(2) Paragraph (1) of this Article does not apply to a design that is similar only to a similar design that is registered or for which registration has been applied for under paragraph (1) of this Article.

### **Article 8 Exception to Loss of Novelty**

(1) Where a design owned by a person entitled to design registration has fallen under either subparagraph (i) or (ii) of Article 5(1), and where the person files the application for the design within six months of the date on which the design fell under subparagraph (i) or (ii) of Article 5(1), the application is deemed to have not fallen under subparagraph (i) or (ii) of Article 5(1) if Article 5(1) or (2) applies to the application.

(2) When applying for design registration, a person intending to take advantage of paragraph (1) of this Article shall submit an application for design registration specifying the purport of such intention to the Commissioner of the Korean Intellectual Property Office, and submit documents proving the relevant facts within thirty days of the date of application for design registration; however, this does not apply where the designs concerned fall under each subparagraph of Article 5(1) of this Act against the person's will.

### **Article 9 Applications for Design Registration**

(1) A person seeking to register a design shall file a request for an application for exam-

ined design registration or a request for an application for unexamined design registration with the Commissioner of the Korean Intellectual Property Office, stating the following:

- (i) the name and address of the applicant (and, if a legal entity, the name and address of the business);
- (ii) the name and residential or business address of the agent, if any (and, if a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (iii) deleted;
- (iv) the article that is the object of the design;
- (iv*bis*) whether the application is an application for independent design registration or similar design registration;
- (v) the registration or application number of the principal design (only where the applicant seeks design registration as a similar design under Article 7(1) of this Act);
- (vi) the name and address of the creator of the design; and
- (vii) matters prescribed in Article 23(3) of this Act (only when claiming a priority right).

(2) An application for examined design registration or an application for unexamined design registration under paragraph (1) of this Article must be accompanied by a drawing or drawings in which the following matters are indicated for each design:

- (i) the article that is the object of the design;
- (ii) an explanation of the design and the essentials of the creation; and
- (iii) serial numbers of the design (only if the application is for multiple design registration under Article 11*bis* of this Act).

(3) An applicant for design registration may submit a photograph or a sample of the design instead of the drawing(s) referred to in paragraph (2) of this Article.

(4) A person applying for unexamined design registration shall indicate in a request for an application for unexamined design registration whether the application is an application for multiple design registration under Article 11*bis* of this Act, the number of designs and the matters referred to in the subparagraphs of paragraph (1) of this Article.

(5) A person applying for multiple design registration under Article 11*bis* of this Act shall indicate in an application for unexamined design registration the particulars prescribed under paragraph (1)(i) of this Article and the serial numbers of the designs.

(6) Designs that qualify for unexamined design registration are limited to the goods designated by ordinance of the Ministry of Commerce, Industry and Energy among the goods classified by Article 11*bis* of this Act. For the designated goods, an application may be made only for unexamined design registration.

(7) Matters other than those as prescribed in paragraphs (1) to (6) of this Article, which are necessary for the application for design registration, are determined by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 10 Joint Application**

Where the right to obtain design registration is jointly owned under Article 3(2), the owners shall jointly file an application for design registration.

#### **Article 11 A Single Application for a Single Design Registration**

- (1) An application for design registration must relate to a single design only.
- (2) A person applying for design registration may do so only for the classes of articles prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 11bis Application for Multiple Design Registration**

- (1) Notwithstanding Article 11(1) of this Act, an application for unexamined design registration may be made for twenty designs or less (referred to as "an application for multiple design registration"). In such cases, each design must be represented separately.
- (2) The scope of designs that qualify for an application for multiple design registrations is limited to designs that pertain to the classes of articles which, as mentioned in Article 11(2) of this Act, are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.
- (3) A person applying for multiple design registration may file, with the principal design, an application for a similar design registration that falls within the category of a principal design.
- (4) Notwithstanding paragraph (3) of this Article, where a person files an application for multiple design registration of designs similar to the person's registered design or a design for which the person has applied for design registration, the person may file an application for multiple design registration only for similar designs belonging to one principal design.

#### **Article 12 Design of a Set of Articles**

- (1) Where two or more articles are used together as a set of articles, the design of the set may be registered if the set constitutes a coordinated whole.

(2) The set of articles referred to in paragraph (1) of this Article is governed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) Deleted.

### **Article 13 Secret Designs**

(1) An applicant for design registration may request that the design be kept secret for a period designated in the request not exceeding three years after the date on which the establishment of the design right was registered. When applying for multiple design registration, a request must be made for each design for which design registration is sought.

(2) An applicant for design registration may make a request under paragraph (1) of this Article between the application date for design registration and the date of the initial payment of the design registration fees. However, if the registration fees are waived under Articles 35(1)(i) and 35(2) of this Act, the applicant may make the request up until the time the design right is registered in accordance with Article 39(2) of this Act.

(3) An applicant for design registration or the owner of a design right may reduce or extend the period designated under paragraph (1) of this Article by a request. The period may not be extended by more than three years after the registration date of the establishment of the design right.

(4) In any of the following cases, the Commissioner of the Korean Intellectual Property Office shall allow persons to have access to a confidential design under paragraph (1) of this Article:

- (i) where the request is made by a person who has obtained the consent of the owner of the design right;
- (ii) where the request is made by a party or an intervener in examination, opposition to registration of an unexamined design, trial, retrial or litigation proceedings related to a design identical or similar to the design kept secret;
- (iii) where the request is made by a person who clearly claims to have been warned of infringing the registered design; or
- (iv) where the request is made by a court or the Intellectual Property Tribunal.

(5) When requesting the laying open of an application under Article 23(2) of this Act, the request referred to paragraph (1) of this Article is deemed to have been withdrawn.

### **Article 14 Application for Design Registration Filed by an Untitled Person and Protection of the Lawful Holder of a Right**

Where a person applies to register a design but the person (referred to as an "untitled

person") is not the creator of the design nor a successor of the right to obtain design registration, and where the unentitled person fails to obtain design registration because the application falls under Article 26(1)(iii) of this Act on the grounds that the person is not entitled to design registration pursuant to the main part of Article 3(1) of this Act, an application for design registration filed by the lawful right holder after the filing of the application by the unentitled person is deemed to have been filed on the date of the application by the unentitled person. However, this provision does not apply where the subsequent application is filed by the lawful holder of the right more than thirty days after the application by the unentitled person was rejected.

**Article 15 Design Registration Granted to an Unentitled Person and  
Protection of the Lawful Holder of a Right**

If design registration is revoked or invalidated by a trial decision for the lack of entitlement to obtain design registration under Article 3(1) of this Act, a subsequent application for design registration filed by the lawful holder of the right is deemed to have been filed on the date of filing the application that led to the grant of the design registration that was revoked or invalidated; however, this provision does not apply if the subsequent application is filed more than thirty days after the decision to revoke or to invalidate it became final.

**Article 16 First-to-File Rule**

(1) Where two or more applications for design registration related to the same or a similar design are filed on different dates, only the applicant with the earlier filing date may obtain design registration for the design.

(2) Where two or more applications for design registration related to the same or a similar design are filed on the same date, only the person agreed upon by all applicants after consultation may obtain design registration for the design. If no agreement is reached or no consultation is possible, none of the applicants may obtain design registration.

(3) Where an application for design registration is invalidated, withdrawn or abandoned, or where a decision to refuse the application or a trial decision of refusal becomes final, the application, for the purposes of paragraphs (1) and (2) of this Article, is deemed to have never been filed; however, this provision does not apply if the decision to refuse the application or the trial decision of refusal becomes final in accordance with the latter part of paragraph (2) of this Article.

(4) Where a person who is not the creator of a design or the successor in title to the

right to obtain design registration files an application for design registration, the application is deemed never to have been filed, for the purposes of paragraphs (1) and (2) of this Article.

(5) In the case referred to in paragraph (2) of this Article, the Commissioner of the Korean Intellectual Property Office shall instruct the applicants to give notice of the results of the consultation within a designated period. If the notice is not submitted within the designated period, the applicants are deemed not to have reached an agreement within the meaning of paragraph (2) of this Article.

#### **Article 17 Amendment of Procedure**

The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may order the correction of a design-related procedure within a designated period in any of the following cases:

- (i) where the requirements of Article 3(1) or (6) of the Patent Act as applied under Article 4 of this Act have not been complied with;
- (ii) where the procedure does not comply with the formalities prescribed in this Act or by Presidential Decree; or
- (iii) where the fees required under Article 34 of this Act have not been paid.

#### **Article 18 Amendment to Application and Change of Gist**

(1) Where the gist of an application for design registration is not changed, an applicant may amend the application's description of the design, as well as any drawing or description of any drawing, or any photograph or sample attached to the application.

(2) An applicant for design registration may convert an application for a similar design registration to an application for a single design registration; the applicant may also convert an application for a single design registration to an application for a similar design registration.

(3) Notwithstanding Article 8(2) of this Act, where an applicant for design registration who amends an application for a similar design registration to an application for a single design registration in accordance with the paragraph (2) of this Article intends the amendment to be subject to Article 8(1) of this Act, the applicant shall specify the purport of this intention in the written amendment and submit the written amendment to the Commissioner of the Korean Intellectual Property Office, and, within thirty days of the date on which the written amendment is submitted, submit to the Commissioner documents that prove the relevant facts.

(4) An applicant for design registration may convert an application for unexamined design registration to an application for examined design registration; the applicant may also convert an application for examined design registration to an application for unexamined design registration.

(5) Where an applicant for design registration has not been notified of either the decision to grant design registration under Article 28 of this Act or the decision to refuse design registration under Article 26 of this Act (referred to as "a decision to grant or refuse design registration"), the applicant may amend the application under paragraphs (1) to (4) of this Article. However, if the applicant requests a trial against the decision to refuse design registration, the applicant may amend the application within thirty days of the date of requesting the trial.

(6) Where an applicant for design registration amends an application under paragraphs (1) to (4) of this Article after the design has been registered, and where the amendment is considered to change the gist of the initial application for design registration, the filing date of the application for design registration is deemed to be the submission date of the amendment.

#### **Article 18bis Rejection of Amendment**

(1) Where an amendment under Article 18 of this Act changes the gist of an application for design registration, the examiner shall reject the amendment by decision.

(2) Where a decision under paragraph (1) of this Article has been made, the examiner may not decide to grant or refuse design registration for the concerned application until more than thirty days after the date on which a certified copy of the decision was transmitted.

(3) Where an applicant has requested a trial under Article 67bis of this Act against a decision to reject an amendment under paragraph (1) of this Article, the examiner shall suspend examination of the application for design registration until the trial decision has become final.

(4) The decision to reject an amendment under paragraph (1) of this Article must be in writing and the reasons for the decision must be stated.

#### **Article 19 Division of Applications for the Registration of Designs**

(1) A person falling under any of the following subparagraphs may divide a part of an application for design registration into one or more new applications:

- (i) a person who has applied for registration of two or more designs in contravention of Article 11 of this Act;
- (ii) a person who has applied for multiple design registration; or
- (iii) deleted.

(2) Except under Articles 8(2) or 23(3) and (4) of this Act, divisional applications (referred to as "divisional applications") are deemed to have been filed at the time of filing the original application.

(3) The division of an application for design registration under paragraph (1) of this Article may be made within the period for amendment under Article 18(4) of this Act.

(4) Deleted.

**Article 20 Deleted.**

**Article 20bis Deleted.**

**Article 21 Deleted.**

**Article 22 Deleted.**

**Article 23 Priority Claim under a Treaty**

(1) Where a national of a member country of a treaty that recognizes the right of priority for an application filed by a national of the Republic of Korea claims a right of priority for an application for design registration in the Republic of Korea based on an earlier application for the same design filed in the national's country or in one of the treaty countries, the filing date of the earlier application in the foreign country is deemed to be the filing date in the Republic of Korea under Articles 5 and 16 of this Act. Where a national of the Republic of Korea has applied for design registration in a country that recognizes, under a treaty, the right of priority for an application for design registration filed by nationals of the Republic of Korea and claims the right of priority for the application for design registration in the Republic of Korea based on an earlier application for the same design in a treaty country, this provision also applies.

(2) A person claiming a right of priority under paragraph (1) of this Article shall file an application for design registration within six months of the filing date of the earlier application that serves as the basis for claiming the right of priority.



(3) When applying for design registration, a person claiming a right of priority under paragraph (1) of this Article shall specify the claim, the name of the country in which the earlier application was filed and the filing date of the application.

(4) A person who has claimed a right of priority under paragraph (3) of this Article shall submit a written statement setting forth the filing date of the application, certified by the government of the country where the earlier application was filed, and a certified copy of the drawing of the design, to the Commissioner of the Korean Intellectual Property Office within three months of the filing date of the application for design registration.

(5) Where a person who has claimed a right of priority under paragraph (3) of this Article fails to submit the document prescribed in paragraph (4) of this Article within the required period, the claim to the right of priority loses its effect.

#### **Article 23bis Laying Open an Application**

(1) Applicants for an examined design registration may request the laying open of their application by ordinance of the Ministry of Commerce, Industry and Energy. However, a request for the laying open of an application for a multiple design registration is limited to cases in which the applicant makes the request for all the designs in the application.

(2) Where the laying open of an application is requested under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall lay open the design application in the Design Gazette in accordance with Article 78. However, the Commissioner of the Korean Intellectual Property Office may not lay open the application under either of the following cases:

- (i) designs whose meaning or detail is liable to contravene public order or morality; or
- (ii) where the design must be kept secret for the sake of national security under Article 41 of the Patent Act as applied *mutatis mutandis* under Article 24 of this Act.

(3) When initial certified copies of a decision to grant or refuse design registration on an application for design registration have been transmitted, a person may not request the laying open of an application prescribed in paragraph (1) of this Article.

(4) Deleted.

#### **Article 23ter Effect of Laying Open an Application**

(1) After an application is laid open, the applicant may give a written warning indicating

that an application for design registration has been filed to any person who has commercially or industrially worked the filed design or a design similar to the filed design.

(2) An applicant may demand a person who has been warned under paragraph (1) of this Article or who has worked a filed design or a design similar to a filed design knowing that the design has been laid open to pay compensation equivalent to the amount the applicant would normally receive for working the registered design or a design similar to the registered design from the date of warning or the date on which the person became aware that the design application had been filed to the date of registration of the filed design.

(3) The right to demand compensation under paragraph (2) of this Article may be exercised only after registration of the filed application.

(4) Exercising the right to demand compensation under paragraph (2) of this Article does not preclude exercising the design right.

(5) Articles 63 and 67 of this Act and Articles 760 and 766 of the Civil Act apply *mutatis mutandis* to the exercise of the right to demand compensation under paragraph (2) of this Article. In such a case, "the time when the damaged party or his legal representative became aware of such damage and of the identity of the person causing it" in Article 766(1) of the Civil Act reads "the date of registration of the design right".

(6) Where an application for design registration is abandoned, invalidated or withdrawn after the laying open of the application, a decision to refuse design registration, a decision to revoke design registration under Article 29<sup>septies</sup>(3) of this Act or a trial decision to invalidate a design registration under Article 68 of this Act (unless Article 68(1)(iv) of this Act applies) has become final, the right under paragraph (2) of this Article is deemed to have never existed.

#### **Article 23<sup>quater</sup> Transfer etc. of the Right to Obtain Design Registration**

(1) The right to obtain registration of a design may be transferable. However, the right to obtain a principal design and the right to obtain a similar design must be transferred together.

(2) The right to obtain registration of a design may not be pledged.

(3) Where the right to obtain registration of a design is jointly owned, the owners may not assign their individual share without the consent of the other owners.

**Article 23<sup>quinqies</sup> Furnishing of Information**

Any person may furnish the Commissioner of the Korean Intellectual Property Office with information about a design for which an application for design registration has been filed with evidence that the concerned design is unregistrable under any subparagraph of Article 26(1) of this Act.

**Article 23<sup>sexies</sup> Publication of Applications Determined to Be Refused in the Design Gazette**

In cases where a decision refusing an application for design registration or a trial decision to the effect that such application is refused becomes final in accordance with the latter part of Article 16(2) of this Act, the Commissioner of the Korean Intellectual Property Office shall publish the particulars of the application in the Design Gazette as provided for in Article 78 of this Act; however, if a design for which an application for registration was filed falls under any of the subparagraphs of Article 23<sup>bis</sup>(2) of this Act, the particulars of the application may not be published.

**Article 24 *Mutatis Mutandis* Application of the Patent Act**

Articles 38 and 41 of the Patent Act apply *mutatis mutandis* to the registrability of designs and to applications for design registration.

**CHAPTER III  
EXAMINATION**

**Article 25 Examination by an Examiner**

(1) The Commissioner of the Korean Intellectual Property Office shall have applications for design registration and oppositions to an unexamined design registration examined by an examiner.

(2) The qualifications of examiners are prescribed by Presidential Decree.

**Article 26 Decision to Refuse Design Registration**

(1) An examiner shall decide to refuse design registration under any of the following reasons (referred to as "the reasons for refusal"):

- (i) where the design in the application for design registration is unregistrable under Articles 5 to 7, 9(6), 10 to 12, 16(1) and (2) of this Act or Article 25 of the Patent Act as applied under Article 4 of this Act;
- (ii) deleted;
- (iii) where a person is not entitled to design registration under Article 3(1) of this Act, or where the design in the application for design registration is unregistrable under the proviso of Article 3(1) of this Act;
- (iv) where an application for design registration violates a treaty; or
- (v) where an application for a similar unexamined design registration falls under any of the following subparagraphs:
  - (a) where a design registered as a similar design or a design for which an application for similar design registration has been filed is indicated as the principal design;
  - (b) where the term of the design right of a principal design has expired; or
  - (c) where an application for a principle unexamined design registration has been invalidated, withdrawn or abandoned, or where a decision to refuse design registration becomes final;
  - (d) where an applicant for similar unexamined design registration is not identical to the owner of a design right related to a principle design or an applicant for principle design registration; or
  - (e) where the design of a filed application for similar unexamined design registration is dissimilar to the principle design.

(2) Notwithstanding paragraph (1) of this Article, Articles 5, 7, 11(1) and 16(1) and (2) of this Act do not apply to an application for unexamined design registration; however, if the design of such an application is not industrially applicable as required under the main part of Article 5(1) of this Act or if the design can be easily created by means of a shape, pattern, color, or any combination of these that is widely known in the Republic of Korea as required under Article 5(2) of this Act, a decision must be made to refuse registration of the design.

(3) Notwithstanding Article 2 of this Act, where a person offers information and evidence against an application for unexamined design registration under Article 23<sup>quinquies</sup> of this Act, an examiner may decide on the basis of the information and evidence to refuse the design registration under paragraph (1) of this Article.

#### **Article 27 Notification of Reasons for Refusal**

(1) An examiner who intends to refuse design registration under Article 26 of this Act shall notify the applicant of the reason for refusal (referring to any of the reasons for refusal in the subparagraphs of Article 26(1) of this Act; referred to as "reason for refusal")

and give the applicant an opportunity to submit a written opinion within a designated period.

(2) Where reasons exist to refuse some of the designs in an application for multiple design registration, the serial number of the designs concerned, the article that is the object of the design and the reasons for refusal must be indicated.

#### **Article 28 Decision to Grant Design Registration**

An examiner who finds no reason to refuse an application for design registration shall decide to grant the design registration.

#### **Article 29 Method of Deciding to Grant or Refuse Design Registration**

(1) An examiner's decision to grant or refuse design registration must be in writing and must state the reasons for the decision.

(2) Where an examiner decides to grant or refuse design registration, the Commissioner of the Korean Intellectual Property Office shall transmit a certified copy of the decision to the applicant.

#### **Article 29bis Opposition to the Registration of an Unexamined Design**

(1) From the date of the registration of establishment of a design right under an application for unexamined design registration to the expiry of the three-month period after the publication date of an unexamined design registration, any person may file an opposition to the grant of the design right with the Commissioner of the Korean Intellectual Property Office based on the grounds that the registration falls under any of the following subparagraphs; for registration of designs under an application for multiple design registration, an opposition may be filed for each design:

- (i) where the design in the application for design registration violates Articles 5, 6, 7(1), 10 and 16(1) and (2) of this Act or Article 25 of the Patent Act as applied under Article 4 of this Act;
- (ii) where a person is not entitled to design registration under Article 3(1) of this Act or the design in the application for design registration is unregistrable under the proviso of Article 3(1) of this Act; or
- (iii) where an application for design registration violates a treaty.

(2) A person filing an opposition to an unexamined design registration (referred to as a "person filing an opposition to an unexamined design registration") shall submit an

application for an opposition to an unexamined design registration with supporting evidence to the Commissioner of the Korean Intellectual Property Office, stating the following:

- (i) the name and address of the person filing the opposition (and, if a legal entity, the name and address of the business);  
(*ibis*) the name and residential or business address of the agent, if any (and, if a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (ii) the indication of the registered design(s) subject to the opposition to an unexamined design registration;
- (iii) the purpose of the opposition to an unexamined design registration; and
- (iv) the grounds for the opposition to an unexamined design registration and indication of supporting evidence.

(3) When an opposition to an unexamined design registration is filed, the presiding trial examiner appointed under Article 29*quater*(3) of this Act shall transmit a certified copy of the opposition to an unexamined design registration to the owner of the registered design right subject to the opposition and give the owner an opportunity to submit a written reply within a designated period.

(4) Article 68(6) of this Act applies *mutatis mutandis* to the filing of an opposition to an unexamined design registration under paragraph (1) of this Article.

**Article 29<sup>ter</sup> Amendment to Grounds for an Opposition to Unexamined Design Registration etc.**

A person filing an opposition to an unexamined design registration may amend the grounds or evidence indicated on the written opposition to an unexamined design registration within thirty days of the date of filing the opposition.

**Article 29<sup>quater</sup> Collegial Body for Examinations and Decisions etc.**

(1) A collegial body consisting of three examiners shall examine and decide an opposition to an unexamined design registration.

(2) The Commissioner of the Korean Intellectual Property Office shall designate examiners constituting a collegial body for each opposition to an unexamined design registration.

(3) The Commissioner of the Korean Intellectual Property Office shall appoint one of the examiners designated by paragraph (2) of this Article as a presiding examiner.

(4) Articles 144(2), 145(2) and 146(2) and (3) of the Patent Act apply *mutatis mutandis* to the collegial body of examiners and the presiding examiner.

**Article 29quinquies Ex Officio Examination of an Opposition to an Unexamined Design Registration**

(1) When examining an opposition to an unexamined design registration, the examiner may examine any facts even if those facts were not presented by either the owner of the design right or the person who filed the opposition to the unexamined design registration. In such cases, the owner of the design right or the person who filed the opposition to the unexamined design registration must be granted an opportunity to give an opinion on the facts within a designated period.

(2) When examining an opposition to an unexamined design registration, the examiner may not examine any registered design that the person who filed the opposition to the unexamined design registration failed to include in the opposition.

**Article 29sexies Combination or Separation of Oppositions to Unexamined Design Registration**

A collegial body of examiners may examine and decide upon two or more oppositions to an unexamined design registration by combining or separating the oppositions.

**Article 29septies Decision on Opposition to Unexamined Designs Registration**

(1) A collegial body of examiners shall decide on an opposition to an unexamined design registration after the period provided under Articles 29bis(3) and 29ter of this Act has elapsed.

(2) Notwithstanding Article 29bis(3) of this Act, where a person filing an opposition to an unexamined design registration fails to submit the grounds and evidence for the opposition, the presiding trial examiner may reject the opposition by decision after the period provided under Article 29ter of this Act has elapsed.

(3) Where an opposition to an unexamined design registration is considered to have merit, the collegial body of examiners shall decide to revoke the registered design (referred to as "a decision to revoke design registration").

(4) Where a decision to revoke design registration becomes final, the design right is deemed never to have existed.

(5) Where an opposition to an unexamined design registration is considered to have no merit, the collegial body of examiners shall decide to maintain the registered design (referred to as "a decision to maintain design registration").

(6) An appeal may not be made against a decision to refuse or maintain design registration in an opposition to an unexamined design registration.

**Article 29octies Method of Deciding upon an Opposition to an Unexamined Design Registration**

(1) Where an examiner decides upon an opposition to an unexamined design registration, the examiner shall announce the decision in a document, with the examiner's seal and signature attached, stating the following:

- (i) the docket number of the opposition to the unexamined design registration
- (ii) the name and address of the owner of the design right and the person who filed the opposition to the unexamined design registration (and, if a legal entity, the name and address of the business)
- (iii) the name and residential or business address of the agent, if any, of the owner of the design right and of the person who filed the opposition to the unexamined design registration (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (iv) an indication of the design that pertains to the decision
- (v) conclusion and rationale of the decision; and
- (vi) the date of the decision.

(2) After deciding upon an opposition to an unexamined design registration, the presiding examiner shall issue a certified copy of the decision to the owner of the design right and to the person who filed the opposition to the unexamined design registration.

**Article 29nonies Withdrawal of an Opposition to an Unexamined Design Registration**

(1) Where a person has either been notified to present an opinion under the latter part of Article 29quinquies(1) of this Act or issued a certified copy of a decision under Article 29octies(2) of this Act, the person may not withdraw an opposition to an unexamined design registration.

(2) Paragraphs (2) and (3) of Article 161 of the Patent Act apply *mutatis mutandis* to the withdrawal of an opposition to an unexamined design registration.



**Article 30 *Mutatis Mutandis* Application of the Patent Act**

(1) Articles 58, 58*bis*, 61, 68 and 78 of the Patent Act apply *mutatis mutandis* to examination of applications for design registration.

(2) Articles 78, 142, 148(1) to (5) and (7), 154(8), 157, 165(3) to (6) and 166 of the Patent Act apply *mutatis mutandis* to an examination or decision on an opposition to an unexamined design registration. In such cases, "the examination procedure of a patent application may, if necessary" in Article 78(1) of the Patent Act reads "the examination of an application for a design registration or an opposition to an unexamined design registration may, if necessary, ~ until a decision on an opposition to an unexamined design registration becomes final or", "a decision on a patent application" in Article 78(2) of the Patent Act reads "a decision on an application for design registration or a decision on an opposition to an unexamined design registration", "a party or intervener" in subparagraphs (i) to (iii) and (v) of Article 148 of the Patent Act reads "a party, intervener, or a person filing an opposition to an unexamined design registration", and "the requester" in paragraphs (3) and (4) of Article 165 of the Patent Act reads "the requester or the person filing an opposition to an unexamined design registration".

**CHAPTER IV  
REGISTRATION FEES AND REGISTRATION OF DESIGNS**

**Article 31 Design Registration Fees**

(1) The owner of a design right or a person seeking to register the establishment of a design right shall pay the design registration fees (referred to as "the registration fees").

(2) Matters related to paying registration fees, including the method and period of payment and other necessary matters under paragraph (1) of this Article, are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 31*bis* Abandonment for Each Design at the Time of Paying  
Registration Fees**

(1) A person who receives a decision to grant design registration for an application for multiple design registration may abandon some individual designs when paying the registration fees.

(2) Necessary matters related to the abandonment of a design under paragraph (1) of this Article are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 32 Payment of Registration Fees by an Interested Party**

(1) Regardless of the intent of a person responsible for paying registration fees, any interested party may pay the fees.

(2) An interested party who has paid the registration fees under paragraph (1) of this Article may demand reimbursement of the fees from the responsible party if the party is currently making a profit.

**Article 33 Late Payment of Registration Fees**

(1) The owner of a design right or a person seeking to register the establishment of a design right has a period of six months after the expiry of the payment period prescribed under Article 31(2) of this Act to pay the registration fees.

(2) Where registration fees are paid late under paragraph (1) of this Article, an amount equivalent to twice the registration fees must be paid.

(3) Where the owner of a design right or a person seeking to register the establishment of a design right fails to pay the registration fees within the extended period prescribed under paragraph (1) of this Article (or, if the extended period has expired but not the period for paying the remaining balance of the registration fees, where the owner fails to pay the remaining balance within the period for payment prescribed under Article 33bis(2) of this Act), the application for design registration is deemed to have been abandoned or the design right concerned is deemed to have been extinguished retroactively from the date on which the initial period for paying the fees expired.

**Article 33bis Remaining Payment of Registration Fees**

(1) If the owner of a design right or any person seeking to register a design right fails to pay any portion of the registration fees within the period of late payment under Articles 31(2) or 33(1) of this Act, the Commissioner of the Korean Intellectual Property Office shall order payment of the remaining balance.

(2) A person who has been ordered to pay the remaining balance in accordance with paragraph (1) of this Article may pay the remaining portion of the registration fees within one month of the date of receiving the order.

(3) A person who pays the remaining portion of the registration fees shall pay an amount equivalent to twice the remaining balance if payment of the remaining balance under paragraph (2) of this Article falls under either of the following subparagraphs:

- (i) where the remaining portion of the registration fees is paid after the payment period under Article 31(2) of this Act expires; or
- (ii) where the remaining portion of the registration fees is paid after the late payment period under Article 33(1) of this Act expires.

**Article 33ter Restoration of an Application for Design Registration or a Design Right by Late Payment of Registration Fees etc.**

(1) Where the owner of a design right or a person seeking to register a design right is unable to pay late registration fees within the period of late payment under Article 33(1) of this Act for unavoidable reasons or fails to pay the remaining balance of the registration fees within the period of payment prescribed in Article 33bis(2), the person has a period of fourteen days from the date on which the reasons cease to exist in which to pay the late registration fees. However, this provision does not apply where six months have elapsed from the latest expiry date of either the period of late payment or the period for paying the remaining balance.

(2) Notwithstanding Article 33(3) of this Act, where late registration fees are paid in accordance with paragraph (1) of this Article, the application for the design registration is deemed not to have been abandoned and the design right concerned is deemed to have existed retroactively to the date on which the period for paying the registration fees expired.

(3) Where the design right of a registered design being worked is extinguished on the grounds of a failure to pay registration fees within the period of late payment under Article 33(1) of this Act or a failure to pay the remaining balance within the period of payment prescribed under Article 33bis(2) of this Act, the owner of the design right may apply for restoration of the right by paying an amount three times the amount of the registration fees stipulated in Article 31 of this Act within three months of the expiry of the period of late payment or the period of paying the remaining balance. Where a design right is restored in this manner, the design right is deemed to have existed retroactively from when the period for paying the registration fees expired.

(4) The effects of an application for design registration or a design right under paragraph (2) or (3) of this Article do not extend to the act of working the design or a similar design by another person from the date on which the period for late payment of the registration fees expires to the date on which the registration fees are paid or the remaining balance of the registration fees is paid (referred to as "the term of limited effect").

(5) During the term of limited effect, where a person has, in good faith, been commercially or industrially working or preparing to work in the Republic of Korea a design for which an application for design registration has been filed, or for which a design or similar design is registered under paragraph (2) or (3) of this Article, the person is entitled to have a nonexclusive license for the design right concerned within the scope of the objectives of the design or business that the person is working or preparing to work.

(6) A person who has a nonexclusive license under paragraph (5) of this Article shall pay reasonable remuneration to the owner of the design right or the exclusive licensee.

#### **Article 34 Official Fees**

(1) A person who files an application for design registration, makes a request or initiates any other procedure shall pay the official fees.

(2) Matters related to paying official fees, including the method and period of payment and other necessary matters under paragraph (1) of this Article, are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 35 Reduction or Exemption of Registration Fees or Official Fees**

(1) Notwithstanding Articles 31 and 34 of this Act, the Commissioner of the Korean Intellectual Property Office shall grant an exemption from paying registration fees or official fees in the following situations:

- (i) official fees or registration fees for an application for design registration or for a design right belonging to the State; or
- (ii) fees for requesting an invalidation trial by an examiner under Article 68(1) of this Act.

(2) Notwithstanding Articles 31 and 34 of this Act, where an application for design registration has been filed by an entitled person under Article 3 of the National Assistance Act, or a person prescribed by ordinance of the Ministry of Commerce, Industry and Energy, the Commissioner of the Korean Intellectual Property Office may reduce or exempt from payment, the registration fees equivalent to the first three years for the registration of the establishment of a design right and official fees as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) A person taking advantage of reduced registration fees or exemption from paying registration fees or official fees under paragraph (2) of this Article shall submit the documents prescribed by ordinance of the Ministry of Commerce, Industry and Energy to the Commissioner of the Korean Intellectual Property Office.

**Article 36 Refund of Registration Fees etc.**

(1) Registration fees and official fees that have already been paid may not be refunded; however, any of the following fees may be refunded at the request of the person who paid the fees in any of the following cases:

- (i) the registration fees and official fees, where the fees were paid by mistake;
- (ii) the registration fee for the year following the year in which the decision on revocation or invalidation of the design registration becomes final or
- (iii) the application fee for a design registration, where the application for design registration (excluding applications for design registration that include a request for a preferential examination divisional applications or applications for design registration that serve as the basis of divisional applications) is withdrawn or abandoned within one month of the filing date of the application for design registration.

(2) Where a person has paid registration fees and official fees in the circumstances of any of the subparagraphs in paragraph (1) of this Article, the Commissioner of the Korean Intellectual Property Office shall notify the person.

(3) Where one year or more has elapsed since the date on which a person received the notification referred to in paragraph (2) of this Article, the person may not request a refund of registration fees and official fees under the proviso of paragraph (1) of this Article.

**Article 37 Design Register**

(1) The Commissioner of the Korean Intellectual Property Office shall keep a Design Register at the Korean Intellectual Property Office and shall register the following matters:

- (i) the establishment, transfer, extinguishment or restriction on disposal of a design right;
- (ii) the establishment, maintenance, transfer, modification, extinguishment or restriction on disposal of an exclusive or nonexclusive license; and
- (iii) the establishment, transfer, modification, extinguishment or restriction on disposal of a pledge on a design right or on an exclusive or nonexclusive license.

(2) The Design Register under paragraph (1) of this Article may be stored electronically in whole or in part in format such as an electronic recording medium.

(3) Relevant matters related to the particulars and procedures of registration not stipulated in paragraphs (1) and (2) of this Article are prescribed by Presidential Decree.

**Article 38 Issuance of a Design Registration Certificate**

(1) When the establishment of a design right has been registered, the Commissioner of

the Korean Intellectual Property Office shall issue a design registration certificate to the owner of the registered design.

(2) When a design registration certificate does not coincide with the Design Register or other documents, the Commissioner of the Korean Intellectual Property Office shall, upon request or *ex officio*, reissue the design registration certificate with amendments or issue a new design registration certificate.

## **CHAPTER V DESIGN RIGHT**

### **Article 39 Registration of Establishment of a Design Right**

(1) A design right is effective upon the registration of its establishment.

(2) Where registration fees are paid under Article 31(1) of this Act or paid as a late payment under Article 33(1) of this Act, or the remaining balance of registration fees is paid under Article 33*bis* (2) of this Act, or the registration fees or the remaining balance of the registration fees is paid under Article 33*ter* (1) of this Act, or the registration fees are exempted under Articles 35(1)(i) and 35(2) of this Act, the Commissioner of the Korean Intellectual Property Office shall register the establishment of a design right.

(3) When a right is registered under paragraph (2) of this Article, the Commissioner of the Korean Intellectual Property Office shall publish particulars of the design registration in the Design Gazette, including the name and address of the owner of the design right and the registration number of the design, as prescribed by Presidential Decree.

### **Article 40 The Term of a Design Right**

(1) The term of a design right is for fifteen years after the registration date of its establishment. However, the expiry date of the term of a design right related to a similar design is the expiry date of the term of the design right related to the principal design.

(2) Where design registration is bestowed to a lawful holder under Article 15, the term of the design right under paragraph (1) of this Article starts on the day after the date of registration of the design right previously filed by the unentitled person.

### **Article 41 Effects of a Design Right**

The owner of a design right has the exclusive right to commercially and industrially

work the registered design and a similar design. However, where the design right is subject to an exclusive license, this provision does not apply to the extent that the exclusive licensee has the exclusive right to work the registered design or similar design under Article 47(2) of this Act.

#### **Article 42 Design Right Related to a Similar Design**

A person may incorporate a design right related to a similar design as defined in Article 7(1) of this Act in a design right related to the principal design.

#### **Article 43 Scope of Protection of a Registered Design**

The scope of protection conferred by a registered design is determined by the terms of the description in the application, the design represented in a drawing attached to the application or shown in a photograph or sample attached to the application, and in the explanation of the intent and purpose of the design attached to the drawing.

#### **Article 44 Limitations of a Design Right**

- (1) The effects of a design right do not extend to any of the following:
  - (i) the use of a registered design for research or an experiment;
  - (ii) vessels, aircraft or vehicles merely passing through the Republic of Korea or the machinery, instruments, equipment or other accessories used in the vessels, aircraft or vehicles; or
  - (iii) identical products existing in the Republic of Korea at the time the application for registration of a design was filed.
  
- (2) Where a style of calligraphy has been registered as a design right, the effects of the design right do not extend to the following:
  - (i) the use of the style of calligraphy in ordinary process such as typing, typesetting or printing;
  - (ii) the result from using the style of calligraphy under subparagraph (i) of this Article.

#### **Article 45 Relationship with another Person's Registered Design**

- (1) Where working a registered design would utilize another person's registered design or design similar to the registered design, or patented invention, registered utility model or registered trademark under an application filed before the filing date of the application for the registration of the design concerned, or where a design right conflicts with another person's patent right, utility model right or trademark right under an application filed

before the filing date of the application for registration of a design concerned, the owner of the design right or exclusive or nonexclusive licensee may not work the registered design commercially or industrially without the consent of the owner of the earlier patent right, utility model right or trademark right, unless Article 70 of this Act applies.

(2) Where working a design similar to a registered design would utilize another person's registered design or design similar to the registered design, or patented invention, registered utility model or registered trademark under an application filed before the filing date of the application for the registration of the design concerned, or where a design right of the design similar to the registered design conflicts with another person's registered design, patent right, utility model right or trademark right under an application filed before the filing date of the application for registration of the design concerned, the owner of the design right or exclusive or nonexclusive licensee may not work the design similar to the registered design commercially or industrially without the consent of the owner of the earlier patent right, utility model right or trademark right, unless Article 70 of this Act applies.

(3) Where working a registered design or a design similar to the registered design would utilize or conflict with another person's copyright, effective before the filing date of the application for registration of the design concerned, the owner of the design right or exclusive or nonexclusive licensee may not work the registered design or similar design commercially or industrially without the consent of the owner of the copyright.

#### **Article 46 Assignment and Joint Ownership of a Design Right**

(1) A design right may be assigned. However, a design right related to a principal design and a design right related to a similar design must be assigned together.

(2) Where a design right is jointly owned, the owners may not assign or pledge their individual share without the consent of the other owners.

(3) Where a design right is jointly owned, and unless otherwise agreed in a contract of the owners, an owner may individually work the registered design or similar design without the consent of the other owners.

(4) Where a design is jointly owned, an owner may not grant an exclusive license or a nonexclusive license under the design right without the consent of the other owners.

(5) A design right registered as a multiple design may be divided and transferred for each design right.



**Article 47 Exclusive License**

- (1) The owner of a design right may grant an exclusive license on the design right.
- (2) An exclusive licensee granted an exclusive license under paragraph (1) of this Article has the exclusive right to commercially and industrially work the registered design or similar design to the extent allowed in the license contract.
- (3) An exclusive licensee may not transfer the license without the consent of the owner of the design right, except when the license is transferred with the business in which it is worked or in the case of inheritance or other general succession.
- (4) An exclusive licensee may establish a pledge or grant a nonexclusive license on the exclusive license only with the consent of the owner of the design right.
- (5) Article 46(2) to (4) of this Act applies *mutatis mutandis* to exclusive licenses.

**Article 48 Deleted.**

**Article 49 Nonexclusive License**

- (1) The owner of a design right may grant a nonexclusive license on the design right.
- (2) A nonexclusive licensee is entitled to work the registered design and a design similar to the registered design commercially and industrially to the extent allowed in this Act or by the license contract.
- (3) Article 46(2) and (3) of this Act and Article 102(4) to (6) of the Patent Act apply *mutatis mutandis* to a nonexclusive license.

**Article 50 Nonexclusive License by Virtue of Prior Use**

Where a person has been commercially or industrially working, or making preparations to work, a design that is identical or similar to a design for which an application has been filed in the Republic of Korea, and where the person created the design without knowledge of the contents of the design in the application at the time the application was filed, the person is entitled to have a nonexclusive license on the design right of the design in the application, provided the license is limited to the scope of the design that has been worked or for which preparations for working have been made by the person, and to the purpose of the working or preparations.

**Article 50bis Nonexclusive License by Virtue of Prior Application**

Where a person falls under both of the following subparagraphs, and where the person (excluding any person who falls under Article 50 of this Act) has been commercially or industrially working, or making preparations to work, a design that is identical or similar to a design for which an application has been filed in the Republic of Korea, and where the person created the design without knowledge of the contents of the design in the application at the time the application was filed, the person is entitled to have a nonexclusive license on the design right of the design in the application, provided the license is limited to the scope of the design that has been worked or for which preparations for working have been made by the person, and to the purpose of the working or preparations:

- (i) before the date on which another person files an application to register the design, the person files an application to register the same design or a similar design and has commercially or industrially worked, or made preparations to work, the design in the registration application and
- (ii) the person's design for which an application for registration was filed earlier, as indicated in subparagraph (i) of this paragraph, falls under any of the subparagraphs of Article 5(1) of this Act and, accordingly, a decision to refuse the application or a trial decision of refusal becomes final.

**Article 51 Nonexclusive License Due to Working before Registration of Demand for an Invalidation Trial**

(1) Where a person falling under any of the following subparagraphs has, in good faith, been commercially or industrially working, or has been making preparations to work, a registered design or a similar design in the Republic of Korea before the registration of a request for an invalidation trial of the design registration concerned, without knowing that the registered design is subject to invalidation, the person is entitled to have a non-exclusive license on the relevant design right or on the exclusive license existing at the time the design registration was invalidated, provided the license is limited to the scope of the design that has been worked or for which preparations for working have been made by the person, and to the purpose of the working or preparations;

- (i) the original owner of the design right, where one of two or more design registrations granted for the same or similar design has been invalidated;
- (ii) the original owner of the design right, where the design registration has been invalidated and design registration for the same or similar design has been granted to an entitled person;
- (iii) in the cases referred to in subparagraphs (i) and (ii) of this Article, a person who, at the time of registration of the request for an invalidation trial of the design right that has been invalidated, has been granted an exclusive or nonexclusive license or non-

exclusive license on the exclusive license and the license has been registered. However, a person falling under Article 118(2) of the Patent Act as applied under Article 61 of this Act is not required to register the license.

(2) A person granted a nonexclusive license under paragraph (1) of this Article shall pay reasonable remuneration to the owner of the design right or the exclusive licensee.

**Article 52 Nonexclusive License after a Design Right Expires etc.**

(1) Where a design similar to a registered design conflicts with a design right registered on or before the date of application for registration of the design (referred to as "a primary design right"), the owner of the primary design right is entitled to have a nonexclusive license for the design right not exceeding the scope of the primary design right when the term of the primary design right expires, or a nonexclusive license for an exclusive license of the design right that exists when the term of the primary design right expires.

(2) Under paragraph (1), an exclusive licensee of a primary design right that exists when the term of the primary right expires, or a nonexclusive licensee under Article 118(1) of the Patent Act, as applied *mutatis mutandis* under Article 61 of this Act, is entitled to have a nonexclusive license for a design right not exceeding the scope of the primary design right, or a nonexclusive license for the exclusive license of the design right that exists when the term of the primary design right expires.

(3) Paragraphs (1) and (2) of this Article apply *mutatis mutandis* where a registered design or a design similar to a registered design conflicts with a patent right or a utility model right registered on or before the date of application for registration of design, and where the term of the patent right or utility model right expires.

(4) The owner of a nonexclusive license paragraph (2) of this Article (including when (3) of this Article applies *mutatis mutandis*) shall pay reasonable remuneration to the owner of the design right or the exclusive licensee for the design right.

**Article 53 Abandonment of a Design Right**

The owner of a design right may abandon the design right.

**Article 54 Restriction on Abandonment of a Design Right etc.**

(1) The owner of a design right may not abandon the design right without the consent of the exclusive licensee, pledgee or nonexclusive licensee under Articles 47(4) or 49(1)

of this Act or Article 8(1) of the Invention Promotion Act as applied *mutatis mutandis* under Article 24 of this Act.

(2) An exclusive licensee may not abandon the exclusive license without the consent of the pledgee or nonexclusive licensee under Article 47(4) of this Act.

(3) A nonexclusive licensee may not abandon the nonexclusive license without the consent of the pledgee.

#### **Article 55 Effect of Abandonment**

When a design right or an exclusive or nonexclusive license is abandoned, the design right or the exclusive or nonexclusive license on the design right is extinguished.

#### **Article 56 Pledge**

Where a design right or an exclusive or nonexclusive license is the subject of a pledge, the pledgee may not work the registered design except as otherwise provided by contract.

#### **Article 57 Subrogation for the Right of a Pledge**

A pledge may be exercised against the remuneration allowed under this Act or against remuneration or goods to be received for working a design right; however, an attachment order must be obtained before the payment or delivery of the remuneration or goods.

#### **Article 58 Nonexclusive License when Transferring the Design Right by Exercising the Pledge Right**

Where the owner of a design right has worked a registered design or similar design that is the subject of a pledge before the establishment of the pledge, and the design right is subsequently sold at an auction and so on, the owner is entitled to have a non-exclusive license on the registered design right; however, the owner of the design right shall pay reasonable remuneration to the pledgee.

#### **Article 59 Extinguishment of a Design Right in the Absence of a Successor**

A design right is extinguished if no successor exists at the time of succession.

**Article 60 Deleted.**

**Article 61 *Mutatis Mutandis* Application of the Patent Act**

Articles 101, 106, 118 and 125*bis* of the Patent Act apply *mutatis mutandis* to design rights.

**CHAPTER VI  
PROTECTION OF OWNER OF DESIGN RIGHT**

**Article 62 Injunction against an Infringement etc.**

(1) The owner or exclusive licensee of a design right may request a person who is infringing or likely to infringe the design right to discontinue or refrain from the infringement.

(2) Any owner or exclusive licensee of a design right who has requested that the design be kept secret under Article 13(1) of this Act may not make a request under paragraph (1) of this Article otherwise he gives a warning with a document which the Commissioner of the Korean Intellectual Property Office has verified the following on the design;

- (i) the name and address of the owner or exclusive licensee of the design right (if the exclusive licensee makes a request); (and, if a legal entity, the name and address of the main office);
- (ii) the application number for the design registration and the date of application;
- (iii) the registration number and the date of registration; or
- (iv) the contents of any drawing, photo or sample attached to the application for design registration.

(3) An owner of a design right or an exclusive licensee who is acting under paragraph (1) may demand the destruction of the articles that resulted from the act of infringement, the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

**Article 63 Acts Considered to be Infringing**

Acts of commercially or industrially manufacturing, assigning, leasing, importing or offering for assignment or lease (including displaying for assignment or lease) articles used exclusively for manufacturing articles to which a registered design or similar design has been applied for are shall be considered to infringe the design right or exclusive license.

**Article 64 Presumption etc. of the Amount of Damages**

(1) Where the owner of a design right or exclusive licensee claims compensation from a person who has intentionally or negligently infringed a design right or exclusive license for damages caused by the infringer's transfer of articles, the amount of damages suffered by the owner of the trademark right or exclusive licensee may be calculated as the number of transferred articles multiplied by the profit per unit of the articles that the owner of the trademark right or exclusive licensee might have sold in the absence of the infringement. However, the compensation may not exceed an amount calculated as follows: the estimated profit per unit multiplied by the number of articles that the owner of the trademark right or licensee could have produced subtracted by the number of units actually sold. If the owner of the trademark right or exclusive licensee is unable to sell part or all of the articles for reasons other than the infringement, a sum calculated according to the number of articles subject to the reasons must be deducted.

(2) Where the owner of a design right or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a design right or exclusive license, the profits gained by the infringer as a result of the infringement are presumed to be the amount of damage suffered by the owner of the design right or exclusive licensee.

(3) The owner of a design right or exclusive licensee may claim, as damages for an infringement, the amount of money that the owner or exclusive licensee would normally be entitled to receive for working the registered design from the person who has intentionally or negligently infringed the design right or exclusive license.

(4) Notwithstanding paragraph (3) of this Article, where the amount of damage exceeds the amount referred to in paragraph (3) of this Article, the excess amount may also be claimed as compensation for damages. When awarding damages, the court may consider whether the person who infringed the design right or the exclusive license was willful or grossly negligent.

(5) In litigation related to the infringement of a design right or an exclusive license, where the court recognizes that the nature of the facts of the case make it difficult to provide evidence proving the amount of damage that has occurred, notwithstanding paragraphs (1) to (4) of this Article, the court may determine a reasonable amount based on an examination of the evidence and a review of all the arguments.

**Article 65 Presumption of Negligence**

(1) A person who has infringed a design right or exclusive license of another person is presumed to have been negligent regarding the act of infringement. However, this

provision does not apply to the infringement of a design right or exclusive license related to a design registered as a secret design under Article 13(1) of this Act.

(2) Paragraph (1) of this Article applies *mutatis mutandis* if the owner of the design right or exclusive or nonexclusive licensee of registration design of unexamined design infringes another person's design right or exclusive license.

**Article 66 Measures for Recovering the Reputation of the Owner of a Design Right etc.**

Upon the request of the owner of a design right or exclusive licensee, the court may, in lieu of damages or in addition to damages, order the person who has injured the business reputation of the owner of a design right or exclusive licensee by intentionally or negligently infringing the design right or exclusive license, to take necessary measures to restore the business reputation of the owner or exclusive licensee.

**Article 67 *Mutatis Mutandis* Application of the Patent Act**

Article 132 of the Patent Act applies *mutatis mutandis* to the protection of the owner of a design right.

**CHAPTER VII  
TRIAL**

**Article 67bis Trial against a Decision to Reject an Amendment**

Where a person who receives a decision to reject an amendment under Article 18bis(1) of this Act is dissatisfied with the decision, the person may request a trial within thirty days of receiving a certified copy of the decision.

**Article 67ter Trial against a Decision to Refuse or Revoke Design Registration**

A person who has received a decision to refuse or revoke design registration may request a trial within thirty days of receiving a certified copy of the ruling.

**Article 68 Trial to Invalidate a Design Registration**

(1) In any of the following cases, an interested person or an examiner may request a

trial to invalidate a design registration; a request may be made for each design for which an application for the registration of multiple designs is made under Article 11*bis*:

- (i) the registration violates Articles 5, 6, 7(1), 10, 16(1) and (2) of this Act or Article 25 of the Patent Act as applied under Article 4 of this Act;
- (ii) where the registration is filed by a person not entitled to a patent or it is unpatentable under the proviso of Article 3(1) of this Act;
- (iii) the registration violates a treaty; or
- (iv) after registration, the owner of the design right is no longer capable of enjoying the design right under Article 25 of the Patent Act as applied under Article 4 of this Act, or the registration no longer complies with a treaty.

(2) A trial under paragraph (1) of this Article may be requested even after the extinguishment of a design right.

(3) Where a trial decision invalidating a design registration has become final (except for the design registration of a similar design), the design right is deemed never to have existed; however, where the design registration falls under paragraph (1)(iv) of this Article and a trial decision invalidating the design registration has become final, the design right is deemed not to have existed from the time the design registration first fell under paragraph (1)(iv) of this Article.

(4) Where a trial decision invalidating the design registration of a principal design has become final, the design registration of a similar design also becomes invalid.

(5) Where a trial decision invalidating a design registration of a similar design has become final or where the design registration of a similar design becomes invalid under paragraph (4) of this Article, the design right of the similar design is deemed not to have existed from the beginning. However, where a trial decision invalidating the design registration of a similar design under paragraph (1)(iv) of this Article has become final, the design right of the similar design is deemed not to have existed from the time the design registration of the similar design first fell under paragraph (1)(iv) of this Article.

(6) Where a trial for invalidation under paragraph (1) of this Article has been requested, the presiding trial examiner shall notify the exclusive licensee of the design right and any other persons who have registered rights related to the design registration.

### **Article 69 Trial to Confirm the Scope of a Design Right**

The owner of a design right, an exclusive licensee or an interested person may request a trial to confirm the scope of a design right protected by the design registration.



**Article 70 Trial for Granting a Nonexclusive License**

(1) Where the owner of a design right or exclusive or nonexclusive licensee seeks permission to exercise the right under Article 45(1) or (2) of this Act and the other party refuses permission without justifiable reasons or permission is impossible to obtain, the owner or exclusive or nonexclusive licensee may request a trial for the grant of a nonexclusive license to the extent necessary to work the registered design.

(2) Where a person who has granted a nonexclusive license under paragraph (1) of this Article seeks to work the registered design of the person who has been granted the non-exclusive license and the latter refuses permission or permission is impossible to obtain, the former may request a trial for the grant of a nonexclusive license for the registered design or within the scope of a design similar to the registered design.

(3) A nonexclusive licensee granted a nonexclusive license under paragraphs (1) or (2) of this Article shall remunerate the patentee, the owner of the utility model right, the owner of the design right or the exclusive licensee; if payment is not possible for unavoidable reasons, the remuneration must be deposited.

(4) A nonexclusive licensee under paragraph (3) of this Article may not work a patented invention, registered utility model or design right or similar design without paying or depositing the remuneration.

**Article 71 *Mutatis Mutandis* Application of the Provisions of Examination to Trial against the Decision to Refuse Design Registration**

(1) The main stipulation of Articles 18(1) to (3), the main part of 18(4), 18*bis*, 27 and 28 of this Act applies *mutatis mutandis* to a trial against the decision to refuse design registration. In such cases, "Where an applicant for design registration has not been notified of either the decision to grant design registration under Article 28 of this Act or the decision to refuse design registration under Article 26 of this Act (referred to as "a decision to grant or refuse design registration")" in the main part of Article 18(5) reads "within the period of submitting a written statement of opinion by virtue of notification of the reason for refusal", "Where an applicant has requested a trial under Article 67*bis* of this Act" in Article 18*bis*(3) reads "where an action has been brought under Article 186(1) of the Patent Act applying *mutatis mutandis* under Article 75 of this Act", and "until the trial decision has become final" reads "until the ruling has become final".

(2) Articles 18*bis*(1) and (4), and 27*l*, which apply *mutatis mutandis* under paragraph (1) of this Article, apply only where the reasons for refusal differ from the grounds of the examiner's original decision to refuse design registration.

**Article 72 *Mutatis Mutandis* Application of the Patent Act**

Articles 139 to 166 and 171 to 176 of the Patent Act apply *mutatis mutandis* to trials concerning designs. In such cases, in Article 140*bis*(1) of the Patent Act, excluding the subparagraphs, "a trial against a decision to refuse a patent under Article 132*ter*" reads "a decision to reject an amendment or a decision to refuse or revoke design registration under Articles 67*bis* or 67*ter*" and "shall submit a written request to the President of the Intellectual Property Tribunal" reads "shall submit a written request to the President of the Intellectual Property Tribunal, who, upon receiving a request for a trial regarding a decision to revoke design registration under Article 67*ter* of the Industrial Design Protection Act, shall notify the person who filed the opposition to the unexamined design registration"; furthermore, in Article 140*bis*(1)(ii) of the Patent Act "the filing date and file number of the application" reads "the filing date and file number of the application (and, whenever a decision to revoke design registration is challenged, the registration date and the design registration number)", in Article 140*bis*(1)(iv) of the Patent Act, "the date of the decision" reads "date of the decision to refuse design registration, the date of the decision to revoke design registration, or the date of the decision to reject an amendment", in Article 148(i) to (iii) and (v) of the Patent Act, "party or intervener" reads "party, intervener or a person filing an opposition to an unexamined design registration" in Article 148(iv) of the Patent Act, "decision to grant a patent" reads "decision to register a design or not and a decision on an opposition to an unexamined design registration", and "another trial" in Article 164(1) of the Patent Act reads "decision on opposition to an unexamined design registration or another trial", in Article 165(3) of the Patent Act, "the petitioner shall bear the costs of trials under Articles 132*ter* and 136 or 138" reads "the petitioner or the person who has filed the opposition to the unexamined design registration shall bear the costs of trials under Articles 67*bis*, 67*ter* or 70 of the Industrial Design Protection Act", in Article 165(4) of the Patent Act, "petitioner" reads "petitioner or the person who has filed the opposition to the unexamined design registration", in Article 171(2) of the Patent Act, "a trial against a ruling of refusal to grant a patent or a ruling of refusal to extend the term of a registered patent by an examiner" reads "a trial under Article 67*bis* or 67*ter* of the Industrial Design Protection Act", in the title of Article 172 of the Patent Act, "examination" reads "examination or opposition procedures for an unexamined design registration" and, in Article 172 of the Patent Act, "proceedings previously undertaken during the course of an examination remain effective in a trial against a ruling of refusal to grant a patent or a ruling of refusal to extend the term of a registered patent" reads "design-related procedures previously undertaken during the course of an examination or opposition to an unexamined design registration remain effective in a trial against a ruling of refusal to grant design registration or a decision to revoke design registration", in the first part of Article 174(1) of the Patent Act, "Article 51" reads "Article 18*bis*", furthermore, in Article 174(2) of

the Patent Act, "Article 47(1)(i) and (ii)" reads "Article 18(1) to (3), the main part of Article 18(4)", in the title of Article 176 of the Patent Act, "a ruling of refusal" reads "a ruling of refusal to grant a design registration", in Article 176(1) of the Patent Act, "Article 132<sup>ter</sup>" reads "Article 67<sup>bis</sup> or 67<sup>ter</sup>" and "ruling of refusal to grant a patent or refusal to extend the term of a registered patent" reads "ruling to reject an amendment and ruling to refuse or revoke a design registration", in Article 176(2) of the Patent Act, "a ruling of refusal or refusal to extend the term of a registered patent" reads "a ruling to reject an amendment and a ruling to refuse or revoke a design registration".

## **CHAPTER VIII RETRIAL AND LITIGATION**

### **Article 73 Request for a Retrial**

- (1) Any party may request a retrial against a trial decision that has become final.
- (2) Articles 451 and 453 of the Civil Procedure Act apply *mutatis mutandis* to a request for a retrial under paragraph (1).

### **Article 74 Restriction on Effects of Design Rights Restored by a Retrial**

- (1) The effects of a design right related to an invalidated design registration that has been restored through a retrial do not extend to any product that was, in good faith, imported into or manufactured or acquired in the Republic of Korea after the trial decision became final but before a request for a retrial has been registered if the design right falls under any of the following subparagraphs:
  - (i) where a design right (including a design right that has been finally revoked in a trial against a decision to revoke design registration) has been invalidated but restored by a retrial;
  - (ii) where a trial decision ruling that a product is outside the scope of a design right became final but a decision to the contrary at a retrial has become final; or
  - (iii) where the establishment of a design right for an application for design registration previously rejected by a trial decision has been registered through a retrial.
- (2) Where a design right falls under paragraph (1) of this Article, the effects of the design right do not extend to the following acts:
  - (i) working a design in good faith after a trial decision becomes final but before the registration of a request for a retrial;

(ii) manufacturing, assigning, leasing, importing, or offering for assignment or lease products for which an application for design registration has been made, after a trial decision becomes final but before the registration of a request for a retrial.

#### **Article 75 *Mutatis Mutandis* Application of the Patent Act**

Articles 179, 180 and 182 to 185 of the Patent Act apply *mutatis mutandis* to a retrial for a design, and Articles 186 to 191 and Article 191*bis* of the Patent Act apply *mutatis mutandis* to litigation for a design. In such cases, "action against a trial decision" in Article 186(1) of the Patent Act reads "action against a trial decision and a decision to reject an amendment under Article 18*bis*(1) as applied under Article 71(1) of this Act (including Article 184 of the Patent Act as applied under Article 75 of this Act)", and "action under Article 186(1)" in Article 188(1) of the Patent Act reads "action against a trial decision and a decision to reject an amendment under Article 18*bis*(1) as applied *mutatis mutandis* under Article 71(1) (including Article 184 of the Patent Act as applied *mutatis mutandis* under Article 75)".

### **CHAPTER IX SUPPLEMENTARY PROVISIONS**

#### **Article 76 Inspection of Documents**

(1) A person may request the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal for a certified copy of an application for design registration or a trial certificate, a certified copy or extract of documents, or to inspect or copy of the Design Register or other documents.

(2) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may not grant the request under paragraph (1) of this Article if the required document is related to an application that has not been published, that has not led to the registration of a design right or is liable to contravene public order or morality.

#### **Article 77 Prohibition of Opening or Removing a Design Register and Documents Related to an Application, Examination or Trial**

(1) Except in any of the following cases, removal of the Design Register or documents related to an application for design registration, examination, opposition to the registration of an unexamined design, trial or retrial is prohibited:

- (i) where documents related to an application or examination for design registration are removed for the purpose of prior art searches of designs in accordance with Articles 58(1) or 58(2) of the Patent Act as applied *mutatis mutandis* under Article 30(1) of this Act;
- (ii) where documents related to an application for design registration, examination, opposition to an unexamined design registration, trial or retrial, or the Design Register are removed for the purpose of commissioning computerization of design documents in accordance with Article 217bis(1) of the Patent Act as applied *mutatis mutandis* under Article 81 of this Act; or
- (iii) where documents related to an application for design registration, examination, opposition to an unexamined design registration, trial or retrial, or the Design Register are removed for the purpose of remote on-line performance of duties under Article 30 of the Electronic Government Act.

(2) A response may not be given to a request for an expert opinion, testimony or an inquiry regarding the contents of a pending application for design registration, examination, opposition to the registration of an unexamined design, trial or retrial or the contents of a decision or ruling.

#### **Article 78 Design Gazette**

(1) The Korean Intellectual Property Office shall publish the Design Gazette. However, a registered design that is required to be kept secret for national defense under Article 41 of the Patent Act as applied under Article 24 of this Act may not be published in the Design Gazette.

(2) The Design Gazette may be published in electronic media as prescribed by ordinance of the Ministry of the Commerce, Industry and Energy.

(3) When the Design Gazette is published in electronic media, the Commissioner of the Korean Intellectual Property Office shall publicize on a communication network matters regarding the Design Gazette's publication, main contents and service.

(4) Matters to be published in the Design Gazette under paragraph (1) are prescribed by Presidential Decree.

#### **Article 79 Design Registration Marking**

The owner of a design right or an exclusive or nonexclusive licensee may mark an identification of the registered design on a product for which a registered design has been applied for or on the product's container or package.

### **Article 80 Prohibition of False Marking**

All of the following acts are unlawful:

- (i) marking on a product for which design registration has not been granted or for which an application for design registration is not pending, or on the product's container or package, an indication that design registration has been granted or that an application for design registration has been filed or any sign likely to cause confusion over the registration;
- (ii) assigning, leasing or displaying a product that has been marked as referred to in subparagraph (i) of this Article;
- (iii) marking an indication that a product is subject to a registered design or an application for design registration, or any confusingly similar indication on advertisements, signboards or tags to cause others to manufacture, use or lease the product for which design registration has not been granted or a design application is not pending.

### **Article 81 *Mutatis Mutandis* Application of the Patent Act**

Articles 217*bis* to 220, 222 and 224*bis* of the Patent Act apply *mutatis mutandis* to designs. In such case, "examinations, trials" in Article 217*bis*(1) of the Patent Act reads "examinations, oppositions to an unexamined design registration, trials", and "a decision to grant a decision, a trial decision" in Article 224*bis*(1) of the Patent Act reads "a decision to grant design registration, a decision to revoke design registration, a trial decision".

## **CHAPTER X PENAL PROVISIONS**

### **Article 82 Offense of Infringement**

- (1) A person who infringes a design right or an exclusive license is liable to imprisonment with labor not exceeding seven years or to a fine not exceeding 100 million won.
- (2) Prosecution for offenses under paragraph (1) of this Article is initiated when an injured party files a complaint.

### **Article 83 Offense of Perjury**

- (1) Having taken an oath under the law, a witness, expert witness or interpreter who makes a false statement or gives a false expert opinion or interprets falsely before the

Intellectual Property Tribunal is liable to imprisonment with labor not exceeding five years or to a fine not exceeding 10 million won.

(2) Having committed an offense under paragraph (1) of this Article, a person who admits the offense before the examiner's decision or decision on opposition to registration of an unexamined design is made or before a trial decision on the case becomes final may be partially or completely exempted from the penalty.

#### **Article 84 Offense of False Marking**

A person who violates Article 80 of this Act is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

#### **Article 85 Offense of Fraud**

A person who fraudulently or unjustly obtains a design registration or a trial decision is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

#### **Article 86 Offense of Divulging Secrets**

Any present or former officials of the Korean Intellectual Property Office or the Intellectual Property Tribunal who have divulged or appropriated secrets related to a design contained in a design application, or a design requested to be kept secret under Article 13(1) of this Act, to which they had access during the course of their duties are liable to imprisonment with labor not exceeding two years or to a fine not exceeding 3 million won.

#### **Article 87 Dual Liability**

Where a representative of a legal entity or an agent, employee or any other servant of a legal entity or natural person has violates Articles 82(1), 84 or 85 of this Act with regard to the business of the legal entity or natural person, in addition to the offender, the legal entity is liable to a fine as prescribed in either of the following subparagraphs, and the natural person is liable to a fine as prescribed in the relevant Article:

- (i) under Article 82(1) of this Act, a fine not exceeding 300 million won; or
- (ii) under Articles 84 or 85 of this Act, a fine not exceeding 60 million won.

#### **Article 88 Administrative Fine**

(1) A person who commits any of the following acts is liable to an administrative fine not exceeding 500,000 won:

- (i) making a false statement before the Intellectual Property Tribunal after having taken an oath under Articles 299(2) and 367 of the Civil Procedure Act;
- (ii) failing to comply, without justifiable reasons, with an order of the Intellectual Property Tribunal to submit or show documents or other materials related to taking or preserving evidence;
- (iii) Deleted.
- (iv) failing to comply, without justifiable reasons, with a subpoena of the Intellectual Property Tribunal to appear as a witness, expert witness or interpreter, or refusing to take an oath, make a statement, testify, give an expert opinion or interpret.

(2) The Commissioner of the Korean Intellectual Property Office shall impose and collect the administrative fine referred to in paragraph (1) of this Article as prescribed by Presidential Decree.

(3) A person who objects to the imposition of an administrative fine under paragraph (2) of this Article may protest to the Commissioner of the Korean Intellectual Property Office within thirty days of being notified of the imposition.

(4) Upon receipt of a protest under paragraph (3) of this Article, the Commissioner of the Korean Intellectual Property Office shall immediately notify the competent court, which shall adjudicate the case of the administrative fine according to the Noncontentious Case Litigation Procedure Act.

(5) Where no opposition has been raised within the period prescribed in paragraph (3) of this Article and where the fine has not been paid, the Commissioner of the Korean Intellectual Property Office shall collect the fine in accordance with the rules of collecting national taxes in arrears through the head of the competent tax office.

#### **Article 89 *Mutatis Mutandis* Application of the Patent Act**

Article 229*bis* and 231 of the Patent Act applies *mutatis mutandis* to penal provisions related to designs.

#### **ADDENDUM <No. 4208, January 13, 1990>**

##### **Article 1 Date of Entry into Force**

This Act enters into force on September 1, 1990.



**Article 2 General Transitional Measures**

Except as otherwise prescribed by Articles 3 to 7 of this addendum, this Act applies to matters that take place before this Act enters into force. However, this Act has no influence on any effect produced under the previous provisions.

**Article 3 Transitional Measures on Applications etc.**

An appeal against the examination of an application for design registration and a ruling of rejection made before this Act enters into force is subject to the previous provisions.

**Article 4 Transitional Measures on Trials Related to Registering the Establishment of a Design Right**

Any trial, appeal, retrial and lawsuit on a registered design whose right is established on the basis of an application for design registration filed before this Act enters into force is subject to the previous provisions.

**Article 5 Transitional Measures on the Dismissal of an Amendment**

An amendment made before this Act enters into force is subject to the previous provisions.

**Article 6 Transitional Measures on Expropriation of a Design Right etc.**

Any disposition or lawsuit pertaining to a restriction, expropriation, revocation or the working of a design right requested before this Act enters into force is subject to the previous provisions

**Article 7 Transitional Measures on the Procedure and Expenses of Trials and Compensation for Damages etc.**

The previous provisions govern the procedure, expenses, compensation for damages and so on for a trial, appeal, retrial and lawsuit requested against any act committed before this Act enters into force.

**ADDENDUM** (Government Organization Act) <No. 4541, March 6, 1993>

**Article 1 Date of Entry into Force**

This Act enters into force on the date of its promulgation. (Proviso deleted.)

**Articles 2 and 3 Deleted**

**Article 4 Amendment of Other Acts Following the New Establishment of the Ministry of Commerce, Industry and Energy**

(1) and <47> Deleted

<48> The following provisions of the Industrial Design Act are amended as follows: In Articles 9-(5) and (6), 11-(2), 12-(2), 31-(2), 34-(2), and 35-(2) and (3), " ordinance of the Ministry of Commerce and Industry" reads "ordinance of the Ministry of Commerce, Industry and Energy".

<49> or <100> Deleted,

**Article 5 Deleted**

**ADDENDUM** <No. 4595, December 10, 1993>

**Article 1 Date of Entry into Force**

This Act enters into force on January 1, 1994.

**Article 2 Transitional Measures on the Term of a Design Right**

Notwithstanding amended Article 40(1) of this Act, the previous provisions govern the term of a design right that has been established or for which establishment has been sought by an application for design registration before this Act enters into force.

**Article 3 Transitional Measures on the Period for Refunding Design Registration Fees etc.**

The previous provisions govern the refund of design registration fees and other fees mistakenly paid before this Act enters into force.

**Article 4 Application Examples on Returning Design Registration Fees**

Amended Article 36(1)(ii) of this Act, which concerns the return of design registration fees due to the final decision of a trial on the invalidation of a design registration, applies to final decisions of invalidation made after this Act enters into force.

**ADDENDUM** <No. 4894, January 5, 1995>

**Article 1 Date of Entry into Force**

This Act enters into force on March 1, 1998.

**Article 2 Transitional Measures on Pending Cases**

(1) Any case in which a request has been made before this Act enters into force for a trial or an appeal against a ruling of refusal or against a decision to dismiss a correction is deemed to be continued with the Intellectual Property Tribunal under this Act and to be pending at the Intellectual Property Tribunal.

(2) Any case in which a request has been made before this Act enters into force for an appeal against the decision of a trial or for immediate appeal against a decision to dismiss the request is deemed to be continued with the Patent Court under this Act and to be pending at the Patent Court.

**Article 3 Transitional Measures on Cases that May Be Appealed**

(1) A court action may be brought against a case on which a decision on a trial, a decision to dismiss a request for a trial, a ruling of rejection or a decision to dismiss an amendment by an examiner when this Act enters into force, and against which an appeal has not been brought to the Patent Tribunal under the previous provisions within 30 days of the enforcement date of this Act, and a court action referred to in Article 186(1) of the Patent Act applied *mutatis mutandis* under Article 75 of this Act may be brought against a decision on the trial and a decision to dismiss a request for a trial, and a trial referred to in Article 132<sup>ter</sup> or 132<sup>quater</sup> of the Patent Act applied *mutatis mutandis* under Article 72 of this Act may be requested against a ruling of rejection or a decision to dismiss an amendment by the examiner. However, this provision does not apply if any period for appeal has expired under the previous provisions when this Act enters into force.

(2) An appeal may be brought within 30 days of the enforcement date of this Act against a case on which a decision or appeal, a decision to dismiss a request for an appeal and a decision to dismiss an amendment by the appellate trial examiner has been served with the Supreme Court when this Act enters into force. However, this provision does not apply if any period for appeal has expired under the previous provisions when this Act enters into force.

(3) Any case against which an appeal has been brought to the Supreme Court and which is pending at the Supreme Court before this Act enters into force, and any case against

which an appeal has been brought under paragraph (2) of this Article, is deemed to be pending or to be brought against the Supreme Court by this Act.

**Article 4 Transitional Measures on Retrials**

Articles 2 and 3 of this addendum apply *mutatis mutandis* to a pending retrial.

**Article 5 Transfer etc. of Documents**

(1) The Commissioner of the Korean Intellectual Property Office shall immediately transfer the documents of a pending case referred to in Article 2(1) of this addendum (including those applied *mutatis mutandis* under Article 4 of this addendum) to the President of the Intellectual Property Tribunal.

(2) The Commissioner of the Korean Intellectual Property Office shall immediately transfer the documents of a pending case referred to in Article 2(2) of this addendum (including those applied *mutatis mutandis* under Article 4 of this addendum) to the chief of the Patent Court. In this case, matters necessary for the transfer and so on of documents are prescribed by Supreme Court regulations.

**ADDENDUM <No. 5082, December 29, 1995>**

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 1996.

**Article 2 Transitional Measures on the Procedures and Expenses for Trials and Compensation for Damages etc.**

The previous provisions govern the procedure, expenses, compensation for damages and so on for a trial, appeal, retrial and lawsuit requested against any act committed before this Act enters into force.

**ADDENDUM (Patent Act) <No. 5329, April 10, 1997>**

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 1997. (Proviso deleted.)

**Articles 2 to 4 Deleted**

**Article 5 Amendment of Other Acts**

(1) Deleted.

(2) The following provisions of the Industrial Design Act are amended as follows:  
In the Article 30, "Articles 77 and 78(1) in this Act" reads "Articles 68 and 78 of this Act", and the later part of the same Article is deleted.

Article 78(2) becomes paragraph (4), and paragraphs (2) and (3) in the same Article are newly created as follows:

(2) The Design Gazette may be published in electronic media as prescribed by ordinance of the Ministry of the Commerce, Industry and Energy.

(3) When publishing the Design Gazette in electronic media, the Commissioner of the Korean Intellectual Property Office shall publicize on a communication network matters regarding the Design Gazette's publication, main contents and service.

**ADDENDUM** <No. 5354, August 22, 1997>

**Article 1 Date of Entry into Force**

This Act enters into force on March 1, 1998.

**Article 2 Transitional Measures on Applications for Registration etc.**

The previous provisions govern an examination or ruling to reject an application for design registration made before this Act enters into force.

**Article 3 Transitional Measures on Trials Related to Registered Designs**

The previous provisions govern trials, retrials and court actions for registered designs on which rights are established in accordance with applications for design registration filed before this Act enters into force.

**Article 4 Transitional Measures on the Dismissal of Amendments**

The previous provisions do not apply to amendments before this Act enters into force.

**Article 5 Application Examples of Admission of Exceptions to  
Loss of Novelty**

Amended Article 8(1) and (2) of this Act is effective for an application for design registration initiated after this Act enters into force.

**Article 6 Application Examples on Extension of the Term of Design Rights**

Amended Article 40(1) of this Act is effective for a design right registered by an application for design registration initiated after this Act enters into force.

**Article 7 Application Examples Related to Another Person's  
Design Right etc.**

Amended Article 45(2) of this Act applies to the owner or exclusive licensee of a design right registered by an original application for design registration submitted after this Act enters into force.

**ADDENDUM (Patent Act) <No. 5576, September 23, 1998>**

**Article 1 Date of Entry into Force**

This Act enters into force on January 1, 1999. However, [deleted] amended Articles 21 and 22 of this Act enter into force on July 1, 1999.

**Articles 2 to 4 Deleted**

**Article 5 Amendment of Other Acts**

(1) The following provisions of the Industrial Design Act are amended as follows:  
In Article 4, "Articles 3 to 28 of the Patent Act" reads "Article 3 to 28<sup>quinqües</sup> of the Patent Act";  
Articles 21 and 22 are deleted;  
In Article 81, "Article 218 of the Patent Act" reads "Article 217<sup>bis</sup> of the Patent Act", and in Article 89, "Article 231 of the Patent Act" reads "Articles 229<sup>bis</sup> and 231 of the Patent Act".

(2) deleted.

**ADDENDUM (National Basic Livelihood Act) <No. 6024, September 7, 1999>**

**Article 1 Date of Entry into Force**

This Act enters into force on October 1, 2000; however, Article 5(1) enters into force on January 1, 2003.

**Article 2 Deleted**

**Article 3 Amendment of Other Acts**

(1) to (7) Deleted.

(8) The following provisions of the Industrial Design Act are amended as follows:  
In Article 35(2), "an entitled person under Article 3 of the National Basic Livelihood Security Law" reads "the recipient under Article 5 of the National Basic Livelihood Security Act".

(9) and (10) Deleted.

**Articles 4 to 13 Deleted**

**ADDENDUM <No. 6413, February 3, 2001>**

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2001. However, amended Article 36(2) and (3) of this Act enters into force on the date of its promulgation.

**Article 2 General Transitional Measures**

The previous provisions apply to the requirements for registration, division, conversion, examination, design registration, a design right, an opposition to an unexamined design registration, a trial, retrial or litigation related to an application for design registration submitted when this Act enters into force, except under any of the following circumstances:

- (i) amended Article 31*bis* of this Act applies if each design in an application for multiple design registration is abandoned;

(ii) amended Article 33*bis* of this Act applies if an application for design registration or design right is deemed to have existed retroactively by late payment of the registration fees; and  
(iii) Article 140*bis*(1) and (3) of the Patent Act as applied *mutatis mutandis* under amended Article 72 applies if a trial against a ruling to reject a design registration is requested.

**ADDENDUM** (Civil Procedure Act) <No. 6626, January 26, 2002>

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2002.

**Articles 2 to 5 Deleted**

**Article 6 Amendment of Other Acts**

(1) to (18) Deleted.

(19) The following provisions of the Industrial Design Act are amended as follows:  
In Article 73-(2), "Article 422 of the Civil Procedure Act and Article 424 of this Act" reads "Article 451 of the Civil Procedure Act and Article 453 of this Act".  
In Article 88(1)(i), "Article 271(2) of the Civil Procedure Act and Article 339 of this Act" reads "Article 299(2) of the Civil Procedure Act and Article 367 of this Act".

(20) to (29) Deleted.

**Article 7 Deleted**

**ADDENDUM** <No. 6767, December 11, 2002>

**Article 1 Date of Entry into Force**

This Act enters into force five months after its promulgation.

**Article 2 Application of the Treatment of Oppositions Against Unexamined Design Registration**

Amended Article 30(2) of this Act applies to an opposition against an unexamined design registration initiated after the enforcement of this Act.



**ADDENDUM** <No. 7289, December 31, 2004>

**Article 1 Date of Entry into Force**

This Act enters into force after six months from the promulgation.

**Article 2 Transitional Measures on Applications and Other Matters**

The previous provisions prescribe the requirements for registration, conversion of an application, examination, trial, retrial or litigation related to an application for design registration filed before this Act enters in to force.

**Article 3 Transitional Measures on Adjudication of Registered Design**

The previous provisions govern an opposition to an unexamined design registration, trial, retrial or litigation related to the registered design rights of an application for design registration filed before this Act enters into force.

**Article 4 Transitional Measures on Name Change Including Registered Design**

When this Act enters in to force, any design that is registered, or for which registration has been applied for under the previous provisions is deemed to be a registered design or application for registration under the amended Act.

**Article 5 Amendment of Other Acts**

(1) The following provisions of the Government Organization Act is amended as follows:  
In Article 37-(5), "design[uijiang]" reads "design[dizain]".

(2) The following provision of the current 22nd Summer Universiad Support Act is amended as follows:  
In the proviso of Article 25, " Industrial Design Act"[uijiang] "Industrial Design Protection Act"[dizain].

(3) The following provision of the Income Tax Act is amended as follows:  
In Article 119-(xi)(a), "design"[uijiang] reads "design"[dizain].

(4) The following provision of the Corporate Income Tax Act is amended as follows:  
In Article 93-(ix)(a), "design"[uijiang] reads "design"[dizain].

(5) The following provisions of the Technology Transfer Promotion Act are amended as follows:

In Article 2-(i), "design"[uijiang] reads "design"[dizain], and, in Article 15(2), "Industrial Design Act" [uijiang] reads "Industrial Design Protection Act"[dizain].

(6) The following provision of the Monopoly Regulation and Fair Trade Act is amended as follows:

In Article 59, the "Industrial Design Act"[uijiang] reads "Industrial Design Protection Act"[dizain].

(7) The following provisions of the Unfair Competition Prevention and Trade Secret Protection Act is amended as follows:

In Article 15(1), the "Industrial Design Act"[uijiang] reads "Industrial Design Protection Act"[dizain].

(8) The following provisions of the Patent Act are amended as follows:

In Article 55-(3), the "Industrial Design Act"[uijiang] reads "Industrial Design Protection Act"[dizain].

In Article 98, "registered design"[uijiang] reads "registered design"[dizain], "design"[uijiang] reads "design"[dizain], "design right"[uijiang] reads "design right"[dizain], and "owner of design right" [uijiang] reads "owner of design right"[dizain].

In Article 102-(4), "Industrial Design Act" [uijiang] reads "Industrial Design Protection Act"[dizain] and "design right"[uijiang] reads "design right"[dizain].

In the title of Article 105, "design right"[uijiang] reads "design right" [dizain]:and from paragraph (1) of the same Article, "design right" [uijiang] reads "design right"[dizain], "owner of original design right" [uijiang] reads "owner of original design right"[dizain], "original design right [uijiang] reads "original design right"[dizain]: and from paragraph (2) of the same Article, "design right"[uijiang] reads "design right"[dizain] and "Industrial Design Act"[uijiang] reads "Industrial Design Protection Act"[dizain].

In Article 132*bis*-(1), "design"[uijiang] reads "design"[dizain].

In Article 138-(4), "owner of the design right"[uijiang] reads "owner of the design right"[dizain], and, from paragraph(5) of the same Article, "registered design"[uijiang] reads "registered design"[dizain] and "design[uijiang] reads "design[dizain].

In Article 140-(4)-(ii) and (iii), "registered design"[uijiang] reads registered design"[dizain].

In Article 191-(iii), "owner of a design right"[uijiang] reads "owner of a design right"[dizain].

(9) The following provisions of the Utility Model Act are amended as follows:

In Article 18(4), the "Industrial Design Act"[uijiang] reads the "Industrial Design Protection Act"[dizain].

In Article 39, "registered design"[uijiang] reads registered design"[dizain], "design"[uijiang] reads "design"[dizain], "design right"[uijiang] reads "design right"[dizain] and "owner of a design right"[uijiang] reads "owner of design right"[dizain].

In the title of Article 41, "Design Right"[uijiang] reads "Design Right "[dizain], from paragraph (1) of the same Article, "design right"[uijiang] reads design right"[dizain], "owner of an original design right"[dizain] reads "owner of an original design right"[dizain], "original design right"[uijiang] reads "original design right"[dizain]; and, from paragraph(2) of the same Article, "design right"[uijiang] reads "design right"[dizain] and "Industrial Design Act"[uijiang] reads the "Industrial Design Protection Act"[dizain]. In the main part of Article 53-(4), "owner of a design right"[uijiang] reads "owner of a design right"[dizain], and, from paragraph(5) of the same Article, "registered design"[uijiang] reads "registered design" [dizain] and "design"[uijiang] reads "design "[dizain]. In Article 55(3)(ii) and (iii), "registered design"[uijiang] reads "registered design"[dizain].

(10) The following provisions of the Invention Promotion Act are amended as follows: In Article 2(i)-(ii)-(iv) and (v), "Industrial Design Act"[uijiang] reads "Industrial Design Protection Act"[dizain].

In Article 2(*vibis*), "Industrial Design Act"[uijiang] reads the "Industrial Design Protection Act"[dizain] and "design right" [uijiang] reads "design right"[dizain].

In Article 14, " Industrial Design Act"[uijiang] reads "Industrial Design Protection Act"[dizain].

In Article 33-(1)-(iv), "design"[uijiang] reads "design"[dizain].

(11) The following provisions of the Patent Service Act are amended as follows:

In Articles 2, 7*bis* and 8, "design"[uijiang] reads "design"[uijiang].

(12) The following provision of the Act on Special Measures for the Promotion of Venture Businesses is amended as follows:

In Article 6-(1), "design right"[uijiang] reads "design right"[dizain].

(13) The following provisions of the Trademark Act are amended as follows:

In the title of Article 53, "Design Right"[uijiang] reads "Design Right"[dizain], and, from the main part of the same Article, "design right"[uijiang] reads "design right"[dizain], and "owner of a design right"[uijiang] reads "owner of a design right"[dizain].

In Article 57*bis*(6), "design right"[uijiang] reads "design right"[dizain].

(14) The following provisions of the National Defense Science Research Institute Act is amended as follows:

In Article 18, "design right"[uijiang] reads "design right"[dizain].

(15) The following provision of the Military Court Act is amended as follows:  
In Article 469(vi), "design right"[uijiang] reads "design right"[dizain].

(16) The following provisions of the Court Organization Act are amended as follows:  
In Article 28*quater*(i) and 54*bis*(2), " Industrial Design Act"[uijiang] reads "Industrial Design Protection Act"[dizain].

**ADDENDUM** <No. 7556, May 31, 2005>

This Act enters into force on September 1, 2005.

**ADDENDUM (Invention Promotion Act)** <No. 7869, March 3, 2006>

**Article 1 Date of Entry into Force**

This Act enters into force six months after its promulgation. (Proviso deleted.)

**Articles 2 to 5 deleted**

**Article 6 Amendment of Other Laws**

(1) and (2) Deleted.

(3) The Industrial Design Protection Act is partly amended as follows:  
"Article 39(1) of the Patent Act as applied *mutatis mutandis* under Article 24" in Article 54(1) reads "Article 8(1) of the Invention Promotion Act".

**ADDENDUM** <No. 8187, January 3, 2007>

**Article 1 Date of Entry into Force**

This Act enters into force on the date of its promulgation; however, the amended provisions of the latter part of Article 4, Article 13(2), Article 16(3), Article 18(3) to 18(6), Article 23*sexies*, Article 26*bis*, Article 29*quinquies* to Article 29*nonies*, Article 30(2),

Articles 36(1)(iii), 36(2) and 36(3), Article 50bis, the latter part of Article 72 and the latter part of Article 81 enter into force on July 1, 2007.

### **Article 2 Application Examples on Secret Designs**

The application of amended Article 13(2) begins when the first application for design registration is filed on or after July 1, 2007.

### **Article 3 Application Examples on Prior Applications, etc.**

(1) The application of amended Article 16(3) begins when the first application for design registration filed on or after July 1, 2007, is abandoned or when a decision of refusal of the application for design registration or a trial decision of refusal becomes final.

(2) The application of amended Article 23*sexies* begins when a decision of refusal of the first application for design registration filed on or after July 1, 2007, or a trial decision of refusal becomes final.

### **Article 4 Application Examples on the Amendment of Applications**

The application of amended Article 18(3) begins when the first application for an amendment of a design registration is filed on or after July 1, 2007.

### **Article 5 Application Examples on the Decision to Refuse Design Registration**

The application of amended Article 26(2) begins when the first application for an unexamined design registration is filed on or after July 1, 2007.

### **Article 6 Application Examples on the Refund of Registration Fees, etc.**

The application of amended Article 36(1)(iii), 36(2) and 36(3), which pertain to the costs of an application for design registration, begins when the first application for design registration is filed on or after July 1, 2007.

### **Article 7 Application Examples on a Nonexclusive License Obtained by Virtue of a Prior Application**

The application of amended Article 50*bis* begins when the first application for design registration that is filed on or after July 1, 2007, meets the requirements stipulated in amended Article 50*bis*.

**Article 8 Application Examples on Remuneration for Patent Attorneys**

The application of amended Article 75 begins when a patent attorney represents a relevant party in a litigation after this Act enters into force.

**Article 9 Transitional Measures on the Refund of Registration Fees, etc.**

Notwithstanding amended Articles 36(2) and 36(3) of this Act, where a decision to revoke a design registration or a trial decision to invalidate a design registration becomes final before July 1, 2007, the previous provisions of Article 36(3) of this Act apply to a request for a refund of an amount corresponding to the registration fees under Article 36(1)(ii) of this Act.

**ADDENDUM (Invention Promotion Act) <No. 8357, April 11, 2006>**

**Article 1 Date of Entry into Force**

This Act enters into force on the date of its promulgation. (Proviso deleted.)

**Articles 2 to 5 Deleted**

**Article 6 Amendment of Other Laws**

(1) The Industrial Design Protection Act is partly amended as follows:  
"Article 8(1) of the Invention Promotion Act" in Article 54(1) reads "Article 10(1) of the Invention Promotion Act".

(2) to (4) Deleted.

**Article 7 Deleted**

# 05

## UNFAIR COMPETITION PREVENTION AND TRADE SECRET PROTECTION ACT

INDUSTRIAL PROPERTY LAWS OF THE REPUBLIC OF KOREA





**UNFAIR COMPETITION PREVENTION AND TRADE SECRET PROTECTION ACT**

Act No. 911, Promulgated on December 30, 1961  
As last amended by Act No. 7289, December 31, 2004

**TABLE OF CONTENTS**

**CHAPTER I : General Provisions**

Article 1 Purpose ..... 319  
Article 2 Definitions ..... 319

**CHAPTER II : Prohibition of Unfair Competitive Acts**

Article 3 Prohibited Use of National Flags and National Emblems etc. .... 321  
Article 4 Injunction against Acts of Unfair Competition ..... 321  
Article 5 Liability for Compensation of Damages from Acts of Unfair  
Competition ..... 322  
Article 6 Restoration of Reputation Harmed by Acts of Unfair Competition ... 322  
Article 7 Investigation of Unfair Competitive Acts etc. .... 322  
Article 8 Corrective Recommendation to Violations ..... 322  
Article 9 Hearings ..... 323

**CHAPTER III : Protection of Trade Secrets**

Article 10 Injunction against Infringement of Trade Secrets etc. .... 323  
Article 11 Liability for Damages for Infringement of Trade Secrets ..... 323  
Article 12 Restoration of Reputation of the Person Possessing Trade Secrets ... 323  
Article 13 Exception for Bona Fide Persons ..... 323  
Article 14 Statute of Limitations ..... 324

**CHAPTER IV : Supplementary Provisions**

Article 14*bis* Presumption etc. on the Amount of Damages ..... 324  
Article 14*ter* Submission of Materials ..... 325

Unfair Competition Prevention And Trade Secret Protection Act

---

Article 15 Relationship with Other Acts .....	325
Article 16 Deleted .....	325
Article 17 Delegation of Authority .....	325
Article 18 Penal Provision .....	326
Article 18 <i>bis</i> Attempted Crime .....	326
Article 18 <i>ter</i> Criminal Intent and Conspiracy .....	327
Article 19 Dual Liability .....	327
Article 20 Administrative Fine .....	327
<b>ADDENDA</b> .....	328

**CHAPTER I**  
**GENERAL PROVISIONS**

**Article 1 Purpose**

The purpose of this Act is to maintain orderly trade by preventing acts of unfair competition such as improper use of domestically well-known trademarks and trade names, and by preventing infringement of trade secrets.

**Article 2 Definitions**

The definitions of terms used in this Act are as follows:

(1) "Acts of unfair competition" means any of the following acts.

- (i) an act of causing confusion with another person's goods by using signs identical or similar to another person's name, trade name, trademark, container or package of goods or any other sign widely known in the Republic of Korea as an indication of goods, or by selling, distributing, importing or exporting goods with such signs;
- (ii) an act of causing confusion with another person's commercial facilities or activities by using signs identical or similar to another person's name, trade name, emblem or any other sign widely known in the Republic of Korea as an indication of commerce;
- (iii) in addition to the act of causing confusion provided in subparagraph (a) or (b) of this Article, an act of doing damage to distinctiveness or reputation attached to another person's sign by using the sign identical or similar to another person's name, trade name, trademark, container or package of goods, or any other sign widely known in the Republic of Korea as an indication of goods or commerce, or by selling, distributing, importing or exporting goods with such signs, without due cause as prescribed by Presidential Decree for instance noncommercial use;
- (iv) an act of causing confusion about the source of origin by falsely marking the source of origin on goods or in an advertisement, on the trade documents communicated to the public or in communications, or by selling, distributing, importing or exporting goods falsely marked with the source of origin;
- (v) an act of making a mark on goods, advertisements, trade documents communicated to the public or in communications, or selling, distributing, importing or exporting goods marked with a mark that would mislead the public into believing that the place of production, manufacture or processing is different from the actual place of production, manufacture or processing;
- (vi) an act of falsely assuming another person's goods, or an act of making a mark or advertising in at information useful for business activities that are not publicly known, has independent economic value, and has been maintained and managed as secrets through considerable efforts; or

(vii) an act of using a trademark that is identical or similar to a trademark registered in any contracting state to the Paris Convention for the Protection of Industrial Property (referred to as "the Paris Convention") or contracting state to the Trademark Law Treaty by a person who is or was an agent or a representative of the owner of the trademark, within the one-year period before the date on which the act was carried out, and including acts of selling, distributing, importing or exporting goods with such marks without due cause.

(viii) an act of registering, possessing, transferring or using a domain name by an unlawful holder for any of the following purposes where the domain name is identical or similar to another person's name, trade name, trademark or other mark widely recognized in the Republic of Korea:

(a) selling or assigning a mark, such as a trademark, to an lawful holder or a third party;

(b) preventing a lawful holder from registering or using a domain name;

(c) obtaining any commercial interests;

(ix) an act of transferring, assigning, exhibiting, importing or exporting goods whose shape (referred to as the form, image, color, gloss or any combination of these, including the shape of any test product or product introduction) has been copied from the goods produced by another person. However, this provision does not apply to either of the following acts :

(a) an act of transferring, assigning, exhibiting, importing or exporting goods whose shape has been copied from other goods more than three years after the date on which the shape of the other goods was completed, such as when the prototype was produced;

(b) an act of transferring, assigning, exhibiting, importing or exporting goods whose shape has been copied from other goods that are identical to the goods ordinarily produced by another person (or from other goods whose function or utility is identical or similar to the goods ordinarily produced by another person);

(2) "Trade secret" means information, including a production method, sale method, useful technical or business information for business activity, that is not known publicly, is the subject of considerable effort to maintain its secrecy and has independent economic value.

(3) "Infringement of trade secrets" means any of the following:

(i) acquiring trade secrets by theft, deception, coercion or other improper means (referred to as "an act of improper acquisition"), or subsequently using or disclosing the improperly acquired trade secrets (including informing any specific person of the trade secret while under a duty to maintain secrecy);

(ii) acquiring trade secrets or using or disclosing them with the knowledge that an act of improper acquisition of the trade secrets has occurred or when the lack of such knowledge was caused by gross negligence;

(iii) after trade secrets have been acquired, using or disclosing the them with knowledge that an act of improper acquisition of the trade secrets has occurred or when the lack of such knowledge was caused by gross negligence;

(iv) using or disclosing trade secrets to obtain improper benefits or to damage the owner of the trade secrets while under a contractual or other duty to maintain secrecy of the trade secrets;

(v) acquiring trade secrets, or using or disclosing them with the knowledge that the trade secrets have been disclosed in the manner provided in subparagraph (iv) of this Article or when gross negligence was the cause of the disclosure or the lack of such knowledge;

(vi) after acquiring trade secrets, using or disclosing them with the knowledge that they had been disclosed in a manner provided in subparagraph (iv) of this Article, or when gross negligence was the cause of the disclosure or the lack of such knowledge.

(4) "Domain name" means a number, a letter, or a sign, or any combination of these, that falls under an Internet address composed of numbers.

## **CHAPTER II PROHIBITION OF UNFAIR COMPETITIVE ACTS**

### **Article 3 Prohibited Use of National Flags and National Emblems etc.**

(1) A person may not use as a trademark a symbol that is identical or similar to the national flag, emblem or other insignia of any contracting state to the Paris Convention, a member of the World Trade Organization, or contracting state to the Trademark Law Treaty, a mark of an international organization unless authorized by the State or international organization concerned.

(2) A person may not use as a trademark a symbol that is identical or similar to any indication of inspection or certification of the government of any contracting state to the Paris Convention, a member of the World Trade Organization or contracting state to the Trademark Law Treaty unless authorized by the government of the state concerned.

### **Article 4 Injunction against Acts of Unfair Competition**

(1) A person whose business interest is injured or threatened by an act of unfair competition may seek a court injunction or preventive order against a person who engages in the act of unfair competition.

(2) When a person seeks legal action under paragraph (1) of this Article, the person may request the destruction of the goods that promote the act of unfair competition, the removal of the facilities used during the act, the cancellation of the domain name registration and any other measures necessary.

#### **Article 5 Liability for Compensation of Damages from Acts of Unfair Competition**

A person who intentionally or negligently causes damage to another person's business interest is liable for compensation of damages. However, Article 2(i)(c) of this Act only applies to intentional acts of unfair competition

#### **Article 6 Restoration of Reputation Harmed by Acts of Unfair Competition**

The court may order a person who intentionally or negligently damages the business reputation of a person by an act of unfair competition to take the necessary measures to restore the business reputation of the owner in lieu of or in addition to compensation for damages under Article 5. However, under Article 2(i) of this Act, this provision applies only to an intentional act of unfair competition.

#### **Article 7 Investigation of Unfair Competitive Acts etc.**

(1) Where the Commissioner of the Korean Intellectual Property Office considers that confirming an act of unfair competition under Article 2(i)(a) to (g) of this Act or a violation of Article 3 of this Act is necessary, the Commissioner may order public officials to enter a business or manufacturing facilities to examine related documents, books, products and so on, or to collect the least amount of products necessary for testing and inspecting them.

(2) Public officials who conduct an examination under paragraph (1) of this Article shall present a certificate indicating their competence to relevant persons.

#### **Article 8 Corrective Recommendation to Violations**

Where the Commissioner of the Korean Intellectual Property Office considers that an act of unfair competition as defined under Article 2(i)(a) to (g) of this Act or an act that violates Article 3 of this Act has been committed by a person, the Commissioner may issue a corrective recommendation to the person to cease the act or to remove or destroy the mark used in the act within a specific period not exceeding thirty days.

### **Article 9 Hearings**

Where the Commissioner of the Korean Intellectual Property Office considers that issuing a corrective recommendation provided under Article 8 of this Act is necessary, the Commissioner shall hear the position of the party concerned, interested persons or witnesses in accordance with the procedure prescribed by Presidential Decree.

## **CHAPTER III PROTECTION OF TRADE SECRETS**

### **Article 10 Injunction against Infringement of Trade Secrets etc.**

(1) A person who possesses trade secrets may seek a court prohibition or preventive order against a person who infringes or is likely to infringe trade secrets, if the business interest of the person who possesses the trade secrets is damaged or is likely to be damaged by the infringement.

(2) If a person who possesses trade secrets files a claim under paragraph (1) of this Article, the person may request the destruction of goods used in the infringement, the removal of facilities used in the infringement or any other measures necessary to prohibit or prevent the infringement.

### **Article 11 Liability for Damages for Infringement of Trade Secrets**

A person who damages a person who possesses trade secrets through an intentional or negligent infringement of trade secrets is liable for compensation for the damages.

### **Article 12 Restoration of Reputation of the Person Possessing Trade Secrets**

For a person who damages the business reputation of a person possessing trade secrets through an intentional or negligent infringement of trade secrets, the person possessing the trade secrets may request the court for necessary measures to restore the business reputation in lieu of or in addition to compensation for damages under Article 11 of this Act.

### **Article 13 Exception for Bona Fide Persons**

(1) Articles 10 and 12 of this Act do not apply to an act by a person who has properly acquired trade secrets through a transaction or uses or discloses the trade secrets within the scope of the rights the person has properly acquired through the transaction.

(2) The phrase "a person who has properly acquired trade secrets" in paragraph (1) of this Article means a person who has acquired trade secrets without the knowledge and without gross negligence that the trade secrets were improperly disclosed or that an act of improper acquisition or of improper disclosure of the trade secrets occurred when acquired under Article 2(iii)(c) or (f) of this Act.

#### **Article 14 Statute of Limitations**

When an infringement of trade secrets continues, the right to request the prohibition or prevention of the infringement of trade secrets under Article 10(1) of this Act expires unless the right is exercised within three years of the date of actual knowledge that the business interest of the person possessing the trade secrets was damaged or threatened to be damaged by an infringing person and of the actual knowledge of the infringing person's identity. The same applies if ten years have elapsed after the date on which the act of infringement first occurred.

### **CHAPTER IV SUPPLEMENTARY PROVISIONS**

#### **Article 14*bis* Presumption etc. on the Amount of Damages**

(1) Where a person whose business interests have been infringed by an act of unfair competition or infringement of trade secrets claims compensation for damages under Article 5 or Article 11 of this Act, damages may be calculated as the transferred amount multiplied by the presumed profit per unit that the person whose business interests have been infringed might have obtained in the absence of infringement during the period in which the infringer transferred the infringing product. However, the compensation may not exceed an amount calculated as follows: the estimated profit per unit multiplied by the number of articles that the trademark right owner or licensee could have produced subtracted by the number of units actually sold. If a person whose business interests have been infringed was unable to sell the product for reasons other than unfair competition or trade secret infringement, a sum calculated according to the number of articles subject to the reasons must be deducted.

(2) Where a person whose business interests have been infringed by an act of unfair competition or infringement of trade secrets claims compensation for damages under Articles 5 or 11 of this Act, the profits gained by the infringer through the infringement are presumed to be the amount of damages suffered by the person whose business interests were infringed.



(3) Where a person whose business interests have been infringed by an act of unfair competition or infringement of trade secrets claims compensation for damages under Article 5 or Article 11 of this Act, the person may claim as damages the amount of money that the person would normally be entitled to receive for using a mark applied to goods if the mark was the object of an act of unfair competition, or for using trade secrets that were the object of an act of unfair competition, or for using trade secrets that were the object of the infringement.

(4) Where the amount of actual damages caused by an act of unfair competition or infringement of trade secrets exceeds the amount referred to in paragraph (3) of this Article, the excess amount may also be claimed as compensation for damages. When awarding damages, the court may consider whether the person who caused the infringement was willful or grossly negligent.

(5) Notwithstanding paragraphs (1) to (4) of this Article, in litigation related to an act of unfair competition or infringement of trade secrets where the court, owing to the nature of the case, recognizes the difficulty of proving the amount of damage that has occurred, the court may determine a reasonable amount after examining the evidence and reviewing all the arguments.

#### **Article 14<sup>ter</sup> Submission of Materials**

In litigation related to the infringement of business interests through an act of unfair competition or infringement of trade secrets, the court may, upon the request of either party, order the other party to submit materials necessary for the assessment of damages caused by the infringement, unless the person possessing the materials has a justifiable reason for refusing to submit them

#### **Article 15 Relationship with Other Acts**

(1) If any provision of Articles 2 to 6 and 18(3) of this Act is inconsistent with the Patent Act, the Utility Model Act, the Industrial Design Protection Act or the Trademark Act, this Act does not apply.

(2) If any provision of Articles 2(i)(d) to (f), 3 to 6 and 18(3) of this Act is inconsistent with the Monopoly Regulation and Fair Trade Act, the Fair Trade and Advertising Act or the Criminal Act related to national flags and national emblems, this Act does not apply.

#### **Article 16 Deleted**

#### **Article 17 Delegation of Authority**

The authority of the Commissioner of the Korean Intellectual Property Office provided

under this Act may be partly delegated to the mayor of the city of Seoul, mayors of the metropolitan cities or the governors of the provinces as prescribed by Presidential Decree.

#### **Article 18 Penal Provision**

(1) Any person who use the trade secret useful to a company in a foreign country or disclose the trade secret to a third party knowing it will be used in the foreign country for the purpose of obtaining improper benefits or damaging the company is liable to imprisonment with labor not exceeding seven years or to a fine exceeding twice of pecuniary profit to not exceeding ten times of it.

(2) Any person who acquire or use the trade secret useful to a company or disclose the trade secret to a third party for the purpose of obtaining improper benefits or damaging the company is liable to imprisonment with labor not exceeding five years or to a fine exceeding twice of pecuniary profit to not exceeding ten times of it.

(3) A person falling under either of the following subparagraphs is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 30 million won:

- (i) a person who engages in an act of unfair competition under Article 2(i) (excluding (h) and (i)) of this Act;
- (ii) a person who, in violation of Article 3 of this Act, uses as a trademark a symbol that is identical or similar to the insignia or indication of the following:
  - (a) the national flag, national emblem or other insignia of any contracting state to the Paris Convention or a member of the World Trade Organization.
  - (b) an indication of an International Organization;
  - (c) an indication of inspection or certification of any contracting state to the Paris Convention, a member of the World Trade Organization or an indication of inspection or certification to Trademark Law Treaty.

(4) The imprisonment and fine referred to in paragraphs (1) and (2) of this Article may be imposed concurrently.

(5) Deleted

#### **Article 18bis Attempted Crime**

Any person who attempts to commit a crime under Article 18(1) and (2) of this Act may be punished.

**Article 18<sup>ter</sup> Criminal Intent and Conspiracy**

(1) A person who intends or conspires to commit a crime under Article 18(1) is liable to imprisonment with labor not exceeding three years or a fine not exceeding 20 million won.

(2) A person who intends or conspires to commit a crime under Article 18(2) of this Act is liable to imprisonment with labor not exceeding two years or a fine not exceeding 10 million won

**Article 19 Dual Liability**

Where a representative of a legal person or an agent, employee or any other employees of a legal or natural person violates Article 18(1) to (3) of this Act concerning the business of the legal or natural person, the penalty for fines under the relevant subparagraphs of Article 18(3) of this Act must be imposed on the legal or natural person in addition to the violator.

**Article 20 Administrative Fine**

(1) A person who refuses, interferes with or evades investigation on the collection of products by a public official concerned under Article 7(1) of this Act is liable to an administrative fine not exceeding 20 million won.

(2) The Commissioner of the Korean Intellectual Property Office shall impose and collect the administrative fine referred to in paragraph (1) of this Article as prescribed by Presidential Decree.

(3) A person who objects to the imposition of an administrative fine under paragraph (2) of this Article may lodge a protest with the Commissioner of the Korean Intellectual Property Office within thirty days of being notified of the imposition.

(4) Upon receipt of a protest under paragraph (3) of this Article, the Commissioner of the Korean Intellectual Property Office shall immediately notify the competent court, which shall adjudicate the case of the administrative fine according to the Noncontentious Case Litigation Procedure Act.

(5) Where no objection has been raised within the period prescribed in paragraph (3) of this Article and where the fine has not been paid, the Commissioner of the Korean Intellectual Property Office shall collect the fine in accordance with the rules of collecting national taxes in arrears through the head of the competent tax office.

**ADDENDUM** <No. 3897, December 31, 1986>

This Act enters into force on January 1, 1987.

**ADDENDUM** <No. 4478, December 31, 1991>

**Article 1 Date of Entry into Force**

This Act enters into force within a year of its promulgation on a date determined by Presidential Decree. (Presidential Decree No. 13781, which was signed on December 14, 1992, enters into force on December 15, 1992.)

**Article 2 Transitional Measures on the Infringement of Trade  
Secrets before the**

Enforcement of this Act Amended Articles 10 to 12 and 18(1)(iii) of this Act do not apply to infringements of trade secrets before this Act enters into force. The same applies when a person who acquired or used a trade secret before this Act entered into force uses the trade secret after this Act enters into force.

**ADDENDUM (Amendment of the Architecture Act and Other Acts Following  
the Change of the Names of the Government Ministries)**

<No. 5454, December 13, 1997>

This Act enters into force on January 1, 1998. (Proviso deleted.)

**ADDENDUM** <No. 5621, December 31, 1998>

**Article 1 Date of Entry into Force**

This Act enters into force on January 1, 1999.

**Article 2 Transitional Measures on Penal Provisions**

The previous provisions govern the application of penal provisions to acts that infringe trade secrets before this Act enters into force.

**Article 3 Transitional Measures on Extinctive Prescription**

Notwithstanding amended Article 14 of this Act, the previous provisions apply to the extinctive prescription of the right to discontinue or refrain an act of trade secret infringement before this Act enters into force.

**ADDENDUM (Fair Labeling and Advertising Act) <No. 5814, February 5, 1999>**

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 1999.

**Articles 2 and 3 Deleted**

**Article 4 Amendment of Other Acts**

(1) Deleted.

(2) The following provision under the Unfair Competition Prevention and Trade Secret Protection Act is amended as follows:

In Article 15, "the Monopoly Regulation and Fair Trade Act" reads "the Monopoly Regulation and Fair Trade Act and Fair Labeling and Advertising Act".

**Article 5 Deleted**

**ADDENDUM <No. 6421, February 3, 2001>**

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2001.

**Article 2 Exception on Penal Provision**

Notwithstanding Article 18(3) of this Act, a person who engages in an act of unfair competition under Article 2(1)(iii) and (vii) of this Act is only liable to the punishment under Article 18(3) of this Act on or after December 31, 2001.

**ADDENDUM** <No. 7095, January 20, 2004>

**Article 1 Date of Entry into Force**

This Act enters into force six months after the date of promulgation.

**Article 2 Transitional Measures**

Any person who violates Article 18(1) and (2) of this Act before the revision of this Act enters into force is subject to the previous provisions.

**ADDENDUM (Design Protection Act)** <No. 7289, December 31, 2004>

**Article 1 Date of Entry into Force**

This Act enters into force six months after the date of promulgation.

**Articles 2 to 4 Deleted**

**Article 5 Amendment of Other Acts**

(1) to (7) Deleted.

(8) The following provisions of the Unfair Competition Prevention and Trade Secret Protection Act are amended as follows.

In Article 15(1), "the Design [uijiang] Act" reads "the Design [dizain] Protection Act".

(9) to (17) Deleted.







**SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT DESIGN ACT**

Act No. 04526, Promulgated on December 8, 1992  
As last amended by Act No. 8397, April 27, 2007

**TABLE OF CONTENTS**

**CHAPTER I : General Provisions**

Article 1 Purpose .....	337
Article 2 Definitions .....	337
Article 3 Foreigner's Layout Design .....	337
Article 4 Layout Design Administrators for Nonresidents .....	338
Article 5 Creator of a Layout Design in Service .....	338
Article 5bis <i>Mutatis Mutandis</i> Application of the Patent Act .....	338

**CHAPTER II : Layout Design Right**

Article 6 Creation of a Layout Design Right .....	339
Article 7 The Term of a Layout Design Right .....	339
Article 8 Effects of a Layout Design Right .....	339
Article 9 Scope to which a Layout Design Right Does Not Extend .....	339
Article 10 Assignment and Joint Ownership of a Layout Design Right .....	340
Article 11 Exclusive License .....	340
Article 12 Nonexclusive License .....	341
Article 13 Arbitration for Establishment of a Nonexclusive License .....	341
Article 14 Loss of Effect of an Arbitration .....	343
Article 15 Cancellation of an Arbitration .....	343
Article 16 Pledge .....	343
Article 17 Extinguishment of a Layout Design Right .....	343
Article 18 Restriction of Abandonment of a Layout Design Right etc. ....	343

**CHAPTER III : Registration of a Layout Design Right**

Article 19 Application for Registration of Establishment of a Layout Design Right .....	344
--	-----

Article 20 Dismissal of Application .....	344
Article 21 Registration of Establishment and Public Notice .....	345
Article 22 Marking of Registration .....	345
Article 23 Effects of Registration .....	345
Article 24 Cancellation of Registration of Establishment of a Layout Design Right .....	346

**CHAPTER IV : Layout Design Review and Mediation Committee**

Article 25 Layout Design Review and Mediation Committee .....	346
Article 26 Function of the Committee .....	347
Article 27 Procedures of Mediation .....	347
Article 28 Mediation Panel .....	347
Article 29 Accomplishment of Mediation .....	347
Article 30 Failure of Mediation .....	348
Article 31 Fee for Mediation .....	348
Article 32 Discontinuation of Extinguishment Prescription .....	348
Article 33 Organization of Committee .....	348
Article 34 Support for Expenditure .....	348

**CHAPTER V : Remedies for Infringement**

Article 35 Right to Demand Cease and Desist from Infringement .....	348
Article 36 Right to Demand Damages .....	349
Article 37 Compensation .....	349
Article 38 Right to Demand Royalties from a Bona Fide Person .....	350

**CHAPTER VI : Supplementary Provisions**

Article 39 Hearing .....	350
Article 40 Fees .....	351
Article 40 <i>bis</i> Reduction or Exemption of Establishment Registration Fees .....	351
Article 41 Address of Nonresidents .....	351
Article 42 Deleted .....	351
Article 43 Fostering Layout Design Technology .....	351
Article 44 Obligation to Preserve Confidentiality .....	352

**CHAPTER VII : Penal Provisions**

Article 45 Offense of Infringement etc ..... 352  
Article 46 Offense of False Marking ..... 352  
Article 47 Offense of Fraud ..... 352  
Article 48 Offense of Divulging Secrets ..... 352  
Article 49 Dual Liability ..... 353  
Article 50 Deleted ..... 353

**ADDENDA** ..... 353



**CHAPTER I**  
**GENERAL PROVISIONS**

**Article 1 Purpose**

The purpose of this Act is to contribute to the sound development of the national economy by protecting the right of a creator who creates a layout design for semiconductor integrated circuits and by establishing the fair use of layout designs to promote the semiconductor industry and technology.

**Article 2 Definitions**

The definitions of terms used in this Act are as follows:

- (i) "semiconductor integrated circuit" means an intermediate product or a final product manufactured to have the function of an electronic circuit, which is simultaneously formed in a state where circuit elements including more than one active element and the wires connecting the elements are inseparable from each other, on the surface of the semiconductor materials or insulating materials or inside the semiconductor materials;
- (ii) "layout design" means a plane or cubic design of the circuit elements and wires that connect the elements that could be used in manufacturing a semiconductor integrated circuit;
- (iii) "creation" means an activity of a person making a layout design that is not ordinarily the result of a person's intellectual efforts; furthermore, an activity that makes a layout design is considered to be creative when the layout design as a whole is creative even if the layout design is composed of a combination of ordinary elements;
- (iv) "use" means any of the following acts:
  - (a) reproduction of a layout design;
  - (b) manufacturing of a semiconductor integrated circuit based on a layout design; or
  - (c) transferring, leasing, displaying (limited to a display for making a transfer or a lease) or importing a layout design, a semiconductor integrated circuit manufactured based on the layout design or an article incorporating the semiconductor integrated circuit (referred to as "a semiconductor integrated circuit and so on");
- (v) "right to a layout design" means the right created by registering a layout design with the Commissioner of the Korean Intellectual Property Office under Article 21(1).

**Article 3 Foreigner's Layout Design**

(1) A layout design of a foreigner or a foreign corporation (referred to in this Article as "a foreigner") is protected under this Act and under treaties to which the Republic of Korea has acceded.

(2) Where a foreigner's layout design falls under paragraph (1), if the country of the foreigner does not bestow any protective benefits corresponding to this Act for a layout design of a Korean national, the Commissioner of the Korean Intellectual Property Office may limit the protection of this Act or treaties in the same manner.

#### **Article 4 Layout Design Administrators for Nonresidents**

(1) Except for a nonresident who is represented by an agent with a residential or business address in the Republic of Korea (referred to as "a layout design administrator"), a person without a residential or business address in the Republic of Korea (referred to as "a nonresident") may not initiate a procedure concerning layout designs or bring a court action against a decision made under this Act or under orders issued in accordance with this Act by administrative agencies unless the nonresident has filed for registration under paragraph (3) of this Article or unless allowed by Presidential Decree.

(2) A layout design administrator is entitled to act on behalf of the principal in all the procedures that are related to actions empowered and in court actions against dispositions made by administrative agencies under this Act or under orders issued in accordance with this Act.

(3) A nonresident who has registered a layout design under Article 21(1) or under Article 23 may not contest a third party's claim, unless the appointment or change of a layout design administrator, or the authority vested in a layout design administrator or the termination of authority of a layout design administrator has been registered.

(4) When seeking to register a layout design under Article 21(1) or during the term of the right to the layout design under Article 7, a nonresident shall appoint and register a layout design administrator under paragraph (1).

#### **Article 5 Creator of a Layout Design in Service**

For the layout design of a person employed by the Government, a corporation, an association or other employer (referred to as "the corporation and so on"), the corporation and so on is deemed to be the creator, unless otherwise provided in an agreement or an employment regulation and so on.

#### **Article 5bis *Mutatis Mutandis* Application of the Patent Act**

Articles 28bis to 28quinquies of the Patent Act apply *mutatis mutandis* to an application to register the establishment of a layout design right and other procedures. In such cases, "patent-related procedure" reads "application to register the establishment of a layout de-

sign right and other procedures", "Korean Intellectual Property Office or Intellectual Property Tribunal" reads "Korean Intellectual Property Office", "Commissioner of the Korean Intellectual Property Office or President of the Intellectual Property Tribunal" reads "Commissioner of the Korean Intellectual Property Office", "application for a patent" reads "application to register the establishment of a layout design right", and "Commissioner of the Korean Intellectual Property Office, President of the Intellectual Property Tribunal, presiding trial examiner, trial examiner, presiding examiner or examiner" reads "Commissioner of the Korean Intellectual Property Office".

## **CHAPTER II LAYOUT DESIGN RIGHT**

### **Article 6 Creation of a Layout Design Right**

A layout design right comes into existence by registration of the establishment of a creative layout design under Article 21(1).

### **Article 7 The Term of a Layout Design Right**

(1) The term of a layout design right is for ten years after the registration date of its establishment.

(2) The term of a layout design right under paragraph (1) may not exceed ten years after the date of the initial commercial use of the layout design or fifteen years after the date of its creation.

### **Article 8 Effects of a Layout Design Right**

A person who registers a layout design under Article 21(1) or the person's successor in title (referred to as "a holder of a layout design right") is entitled to have the right to exclusively use the layout design for business purposes. However, this does not apply when the exclusive licensee has the right to exclusively use the layout design under Article 11(1) and (2).

### **Article 9 Scope to which a Layout Design Right Does Not Extend**

(1) The effect of a layout design right under Article 8 does not extend to any of the following:

- (i) the reproduction of a layout design for education, research, analysis or evaluation, or for noncommercial use by an individual, or vicarious reproduction for these purposes;
- (ii) a creative layout design made as a result of research, analysis or evaluation as provided in subparagraph (i); or
- (iii) a layout design that is the same as a layout design independently created by another person.

(2) Where a person to whom a lawfully made semiconductor integrated circuit and so on has been transferred commits the acts stipulated in Article 2(iv)(c) for a commercial purpose in relation to the semiconductor integrated circuit and so on, the layout design right under Article 8 is not effective.

(3) Where a person to whom an unlawfully made semiconductor integrated circuit and so on that reproduces another person's registered layout design has been transferred in good faith and without negligence (referred to as "a bona fide person") commits an act stipulated under Article 2(iv)(c) for a commercial purpose in relation to the semiconductor integrated circuit and so on, the layout design under Article 8 is not effective.

#### **Article 10 Assignment and Joint Ownership of a Layout Design Right**

(1) A layout design right may be assigned.

(2) A layout design right created jointly by two or more persons is jointly owned by the persons who create it, and the share of each owner is considered to be equal unless the joint creators specifically agree otherwise.

(3) Where a layout design right is jointly owned, the owners may not assign or pledge their individual share without the consent of the other owners.

(4) Where a layout design right is jointly owned, and unless otherwise agreed in a contract of the owners, an owner may use the layout design without the consent of the other owners.

(5) Where a layout design right is jointly owned, an owner may not grant an exclusive license on the layout design under Article 11(1) or a nonexclusive license under Article 12(1) without the consent of the other owners.

#### **Article 11 Exclusive License**

(1) The holder of a layout design right may establish for another person a right to exclusive use of the layout design (referred to as "an exclusive license").



(2) A person for whom an exclusive license has been established under paragraph (1) (referred to as "an exclusive licensee") has the exclusive right to use the layout design for business purposes within the scope set forth by the establishment.

(3) An exclusive licensee may not transfer an exclusive license without the consent of the holder of the layout design right unless the exclusive license is transferred with the underlying business or through inheritance or other general succession.

(4) An exclusive licensee may not establish a pledge on the exclusive license or grant another person the right to use the layout design (referred to as "a nonexclusive license") without the consent of the holder of the layout design right.

(5) Where an exclusive license is jointly owned, an owner may not grant a nonexclusive license to a third party without the consent of the other owners.

(6) Article 10(3) and (4) applies *mutatis mutandis* to an exclusive license. In such cases, "layout design right" reads "exclusive license".

#### **Article 12 Nonexclusive License**

(1) The holder of a layout design right may grant a nonexclusive license to another person.

(2) The person to whom a nonexclusive license under paragraph (1) has been granted (referred to as "a nonexclusive licensee") is entitled to use the layout design for business purposes within the scope set forth by the license.

(3) A nonexclusive licensee may not transfer a nonexclusive license without the consent of the holder of the layout design right (or the holder of a layout design right or an exclusive licensee for a nonexclusive license related to an exclusive license, which is treated the same in this Article), unless the nonexclusive license is transferred with the underlying business or through inheritance or other general succession.

(4) A nonexclusive licensee may not establish a pledge on the nonexclusive license without the consent of the holder of the layout design right.

(5) Article 10(3) and (4) applies *mutatis mutandis* to a nonexclusive license. In such cases, "layout design" reads "nonexclusive license".

#### **Article 13 Arbitration for Establishment of a Nonexclusive License**

(1) A person seeking to use a registered layout design under Article 21(1) may request

the holder of the layout design right or the exclusive licensee to hold a consultation for granting a nonexclusive license if:

- (i) the layout design has not been used in Korea for more than two consecutive years in absence of natural disaster, or other force majeure or other justifiable reasons determined by Presidential Decree; or
- (ii) the layout design has not been used in Korea on a substantial business scale without justifiable reasons for more than two consecutive years or the holder has failed to satisfy the demand in Korea or abroad for the layout design on an appropriate level and condition without justifiable reasons for more than two consecutive years.

(2) A person who has requested a consultation under paragraph (1) may file an application with the Commissioner of the Korean Intellectual Property Office for an arbitration on the establishment of a nonexclusive license when it was not possible to hold the consultation within a reasonable period or when an agreement on establishing a nonexclusive license has not been made as a result of the consultation, notwithstanding that the reasonable terms that may arise in the ordinary course of business have been proposed.

(3) Notwithstanding paragraphs (1) and (2), a person seeking to use a registered layout design under Article 21(1) may file an application directly with the Commissioner of the Korean Intellectual Property Office for arbitration on the establishment of a nonexclusive license under a state of national emergency or other emergency situations.

(4) The Commissioner of the Korean Intellectual Property Office may arbitrate for the establishment of a nonexclusive license (referred to as "arbitration") for an applicant after a review by the Layout Design Review and Mediation Committee under Article 25 if an application for arbitration under paragraphs (2) or (3) falls under either of the following:

- (i) the use of the layout design is necessary for satisfying the national demand for the accomplishment of noncommercial public purposes; or
- (ii) the causes as provided by Presidential Decree for securing free competition or preventing a rights abuse by the holder of a layout design right or an exclusive licensee have occurred.

(5) The results of an arbitration under paragraph (4) must be in writing and must explain the following matters:

- (i) the scope of the nonexclusive license; and
- (ii) the amount of compensation, and the method and time for making the compensation.

(6) Matters necessary for the procedures of applying for arbitration under paragraphs (2) and (3) and others are prescribed by Presidential Decree.

#### **Article 14 Loss of Effect of an Arbitration**

An arbitration loses its effect if the person for whom an arbitration was granted fails to pay or deposit the compensation (or the first payment of the compensation when the compensation is to be paid periodically or in installments) by the due date for the payment as provided in Article 13(5)(ii).

#### **Article 15 Cancellation of an Arbitration**

(1) The Commissioner of the Korean Intellectual Property Office may, on application by an interested party or *ex officio*, cancel an arbitration when a person for whom an arbitration was granted fails to use the layout design or when the grounds for the arbitration under Article 13(4) have been terminated without possibility of recurrence.

(2) A nonexclusive license is extinguished on the date of cancellation when an arbitration is canceled under paragraph (1).

(3) Matters necessary for the procedures of cancellation of arbitration and others are prescribed by Presidential Decree.

#### **Article 16 Pledge**

(1) The pledgee of a layout design right, an exclusive license or a nonexclusive license may not use the layout design unless otherwise agreed.

(2) A pledge may be exercised against compensation made under this Act, or against payments or articles payable to the holder of the layout design right, the exclusive licensee or the nonexclusive licensee (including the nonexclusive licensee under Article 11(4) and Article 13(4)), in consideration for the use of the registered layout design. In this case, an attachment must be effected before the payment or delivery.

#### **Article 17 Extinguishment of a Layout Design Right**

A layout design right is extinguished in either of the following circumstances:

- (i) the layout design right reverts to the State under the Civil Act or other Acts because a corporation, association and so on that owns the layout design right is dissolved; or
- (ii) the layout design right reverts to the State under the Civil Act or other Acts because an individual who owns the layout design right dies without leaving heirs.

#### **Article 18 Restriction of Abandonment of a Layout Design Right etc.**

(1) The holder of a layout design right may not abandon the right without the consent

of the exclusive licensee, the nonexclusive licensee (other than a nonexclusive licensee under Article 13(4)) or the pledgee under Article 16(1) of this Act.

(2) An exclusive licensee may not abandon the exclusive license right without the consent of the nonexclusive licensee under Article 11(4) or the pledgee.

(3) A nonexclusive licensee may not abandon the nonexclusive license without the consent of the pledgee.

(4) Where a layout design right, an exclusive license or a nonexclusive license is abandoned, the right is extinguished on the date of the abandonment.

### **CHAPTER III REGISTRATION OF A LAYOUT DESIGN RIGHT**

#### **Article 19 Application for Registration of Establishment of a Layout Design Right**

(1) A person who creates a layout design or the person's successor in title (referred to as "a creator") may file an application to register the establishment of a layout design right with the Commissioner of the Korean Intellectual Property Office within two years of the date on which the layout design was first used commercially.

(2) A person who applies to register establishment under paragraph (1) shall file an application and other documents (referred to as "an application and so on") prescribed by Presidential Decree.

#### **Article 20 Dismissal of Application**

(1) The Commissioner of the Korean Intellectual Property Office shall dismiss an application to register the establishment of a layout design if it falls under any of the following:

- (i) when the applicant is not the creator;
- (ii) when the layout design right is jointly owned by two or more persons, and the application is not made in the name of the joint owners;
- (iii) when the period prescribed in Article 19(1) has elapsed; or
- (iv) when certain conditions prescribed by Presidential Decree are met.

(2) When the Commissioner of the Korean Intellectual Property Office dismisses a registration application under paragraph (1), the Commissioner shall immediately notify the applicant in writing of the reasons for the dismissal.

### **Article 21 Registration of Establishment and Public Notice**

(1) Where an application to register the establishment of a layout design right is filed under Article 19(1), the Commissioner of the Korean Intellectual Property Office shall register the layout design unless the application is dismissed under Article 20(1).

(2) The registration of establishment under paragraph (1) is made when the Commissioner of the Korean Intellectual Property Office records it in the layout design register.

(3) The Commissioner of the Korean Intellectual Property Office shall issue a layout design registration certificate to the holder of a layout design right upon registration of the establishment of the layout design under paragraph (1), and publicize the registration.

(4) Necessary matters concerning registration of the establishment of a layout design such as the items to be mentioned in an application or issuance of the registration certificate, public notice of registration, or the contents, public reading or copying of the register are prescribed by Presidential Decree.

### **Article 22 Marking of Registration**

The holder of a layout design registered under Article 21(1) or the exclusive licensee or nonexclusive licensee of a layout design may mark a semiconductor integrated circuit made using the layout design, or its packaging, or both, indicating the registration of the layout design as prescribed by the Commissioner of the Korean Intellectual Property Office.

### **Article 23 Effects of Registration**

(1) None of the following may be contested against a third party unless registered with the Commissioner of the Korean Intellectual Property Office:

- (i) the assignment of a layout design right (except through inheritance or general successions, which is treated the same in this Article), or restrictions on the disposition of the layout design right;
- (ii) the establishment, transfer, change, extinguishment or restriction of the disposition of an exclusive license;
- (iii) the transfer, change, extinguishment or restriction of the disposition of a non-exclusive license; or
- (iv) the establishment, transfer, change, extinguishment or restriction of the disposition of a pledge on a layout design right, an exclusive license or nonexclusive license.

(2) Where a nonexclusive license is registered before the Commissioner of the Korean Intellectual Property Office, the license may be asserted against the holder of the layout design right or the exclusive licensee who acquired the right after the registration of the nonexclusive license.

(3) Registration under paragraphs (1) or (2) is made when the Commissioner of the Korean Intellectual Property Office records it in the layout design register.

#### **Article 24 Cancellation of Registration of Establishment of a Layout Design Right**

Where a layout design is registered under any of the following circumstances, the Commissioner of the Korean Intellectual Property Office may revoke the registration as prescribed by Presidential Decree; however, the Commissioner shall revoke the registration if the registered layout design falls under subparagraphs (iii) or (v) of this Article:

- (i) the registration violates a treaty under Article 3(1)
- (ii) deleted;
- (iii) the registration of establishment under Article 21(1) was made fraudulently or by any other unlawful means;
- (iv) the registered layout design does not constitute a creative layout design as required in Article 6; or
- (v) the registered layout design falls under any of subparagraphs (i) to (iii) of Article 20(1).

### **CHAPTER IV LAYOUT DESIGN REVIEW AND MEDIATION COMMITTEE**

#### **Article 25 Layout Design Review and Mediation Committee**

(1) A review and mediation committee (referred to as "the committee") must be established to review matters concerning layout design rights, or an exclusive or nonexclusive license, and to mediate the disputes regarding the rights protected under this Act (referred to as "a dispute").

(2) The committee must be composed of ten to fifteen review and mediation members (referred to as "members"), including a chair and a vice-chair.

(3) The members of the committee are appointed by the Commissioner of the Korean Intellectual Property Office, and the chair and vice-chair are elected by the members.

(4) The members serve a three-year renewable term.

(5) Where a vacancy arises on the committee, a member is appointed to fill the vacancy in accordance with paragraph (3), and the term of the member is the remaining period of the predecessor. However, if the committee comprises more than ten members, the appointment is not required.

#### **Article 26 Function of the Committee**

In addition to mediating disputes, the committee shall review the following:

- (i) matters concerning arbitration under Article 13(4) and cancellations of arbitration under Article 15;
- (ii) matters concerning an appeal against cancellation of a registration of establishment under Article 24; and
- (iii) matters requested by the Commissioner of the Korean Intellectual Property Office or by more than three members.

#### **Article 27 Procedures of Mediation**

- (1) A person who seeks mediation of a dispute may request the committee to mediate the dispute by clarifying a request and the reason for the request.
- (2) The committee shall mediate a dispute within six months of the date of the request under paragraph (1).
- (3) The Act of Civil Mediation applies *mutatis mutandis* to mediation procedures that are not specifically provided in this Act.

#### **Article 28 Mediation Panel**

A mediation panel consisting of three members, one of whom must be qualified as an attorney-at-law or a patent attorney, must be established in the committee to effectively carry out the affairs of dispute mediation of the committee.

#### **Article 29 Accomplishment of Mediation**

- (1) Mediation must be accomplished by recording in a protocol the matters agreed to by the concerned parties.
- (2) The protocol under paragraph (1) has the same effect as a court settlement except for matters outside the scope of the authority of the concerned parties.

### **Article 30 Failure of Mediation**

Mediation is treated as a failure when either of the following occurs:

- (i) when the party requested to present or submit the related documents from the committee fails to respond without good cause more than twice; or
- (ii) when the term under Article 27(2) lapses.

### **Article 31 Fee for Mediation**

(1) A party requesting mediation shall bear the mediation expenses and pay the mediation fees in advance. However, where the mediation is accomplished, each of the concerned parties shall bear the expenses equally unless otherwise agreed.

(2) The committee shall determine the amount of the fees for mediation under paragraph (1).

### **Article 32 Discontinuation of Extinguishment Prescription**

(1) A request for mediation has the effect of suspending the bar of the statute of limitations.

(2) When a mediation fails, if a lawsuit is not commenced within one month of the failure of the mediation, the suspension of the bar of the statute of limitations does not take effect.

### **Article 33 Organization of Committee**

The organization and work of the committee and other necessary matters for the committee are prescribed by Presidential Decree.

### **Article 34 Support for Expenditure**

The Government may support the expenditures necessary for the operation of the committee within the limit of the budget.

## **CHAPTER V REMEDIES FOR INFRINGEMENT**

### **Article 35 Right to Demand Cease and Desist from Infringement**

(1) The holder of a layout design right or an exclusive licensee may demand that a



person who has infringed or is likely to infringe the layout design right either cease the infringement or take measures to prevent the infringement.

(2) In making a demand under paragraph (1), the holder of the layout design right or the exclusive licensee may demand that a semiconductor integrated circuit and so on made through the infringement be destroyed or that other measures be taken that are necessary for preventing the infringement.

### **Article 36 Right to Demand Damages**

(1) The holder of a layout design right or the exclusive licensee may demand the payment of damages against a person who has intentionally or negligently infringed their rights.

(2) Where the holder of a layout design right or the exclusive licensee makes a demand under paragraph (1) and if the infringer has profited by the infringement, the amount of profit earned by the infringer is presumed to be the amount of the loss by the holder of the layout design right or the exclusive licensee.

(3) The holder of a layout design right or an exclusive licensee who makes a demand under paragraph (1) may demand as damages an amount that is payable for using the layout design.

(4) Where the amount of loss suffered exceeds the amount presumed under paragraph (3), payment of the excess amount may be demanded.

(5) Deleted.

### **Article 37 Compensation**

(1) The creator of a layout design who has commercially used the layout design before the registration of establishment of the layout design is entitled to compensation equivalent to an amount that is payable for using the layout design from a person who has used a reproduced item from the layout design for business purposes from the date of the creator's use of the layout design to the registration date of the layout design knowing that the used layout design was made by reproducing the layout design. However, the creator may not demand compensation from a person who received in a transfer, in good faith and without negligence, the semiconductor integrated circuit and so on that were made using the reproduced layout design.

(2) The right to demand payment of compensation under paragraph (1) may not be exercised until the registration of establishment of a layout design right has been made.

(3) Where the registration of establishment of a layout design is canceled under Article 24 of this Act, the right to demand compensation under paragraph (1) of this Article is deemed not to have come into force *ab initio*.

(4) Articles 760(1) to (2) and 766 of the Civil Act apply *mutatis mutandis* to enforcement of the right to demand under paragraph (1) of this Article. In this regard, "the date on which the victim or his statutory agent has come to know the damages and/or the tortfeasor" under Article 766 of the Civil Act is "the date of the registration of establishment of the layout design right" if the owner of the right to demand the compensation knew that the layout design was reproduced and the identity of the person who used the reproduced layout design before the registration of establishment of the layout design.

### **Article 38 Right to Demand Royalties from a Bona Fide Person**

(1) Notwithstanding Article 9(3) of this Act, the holder of a layout design right or an exclusive licensee may demand payment of an ordinary amount of royalties (referred to as "royalties") when a bona fide person commits an act under Article 2(iv)(c) related to a semiconductor integrated circuit and so on for profit or retains or transports the semiconductor integrated circuit and so on after knowing that the semiconductor integrated circuit and so on is an unlawful reproduction of the registered layout design.

(2) The royalties under paragraph (1) must be a reasonable amount determined by consultation between the holder of the layout design right or the exclusive licensee and the bona fide person.

(3) Articles 760 (1) to (2) and 766 of the Civil Act apply *mutatis mutandis* to the exercise of the right to demand under paragraph (1).

## **CHAPTER VI SUPPLEMENTARY PROVISIONS**

### **Article 39 Hearing**

The Commissioner of the Korean Intellectual Property Office shall hold a hearing for disposition corresponding to either of the following:

- (i) cancellation of an arbitration under Article 15(1); or
- (ii) cancellation of a registration of establishment of a layout design right under Article 24.

#### **Article 40 Fees**

(1) A person seeking a registration of establishment under Article 21(1) or a registration under Article 23(1) and (2), or a person requesting the issuance of various types of certificates on a layout design right, shall pay the fees.

(2) The items and the amounts of fees under paragraph (1) are determined by ordinance of the Minister of Commerce, Industry and Energy.

#### **Article 40bis Reduction or Exemption of Establishment Registration Fees**

(1) Notwithstanding Article 40(1) of this Act, when a person, including a small and medium-sized enterprise, applies to register the establishment of a layout design right as prescribed by ordinance of the Ministry of Commerce, Industry and Energy, the Commissioner of the Korean Intellectual Property Office may grant a reduction or exemption of fees for the registration of establishment of a layout design right as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(2) Any person seeking a reduction or exemption of fees for the registration of establishment of a layout design right in accordance with the paragraph (1) of this Article shall submit to the Commissioner of the Korean Intellectual Property Office documents prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 41 Address of Nonresidents**

Where a layout design administrator has been appointed for a registered layout design right held by a nonresident, the residential or business address of the layout design administrator is deemed to be *the situs of the res* under Article 9 of the Civil Procedure Act; however, when a layout design administrator has not been appointed, the location of the Supreme Court is deemed to be *the situs of the res*.

#### **Article 42 Deleted**

#### **Article 43 Fostering Layout Design Technology**

(1) The Commissioner of the Korean Intellectual Property Office shall provide measures necessary for improving technology and promoting development of domestic layout designs and shall also establish supporting polices for taxation, finance and administration.

(2) The Commissioner of the Korean Intellectual Property Office may support and foster

research institutions or organizations for technology development and training of personnel concerning layout designs.

**Article 44 Obligation to Preserve Confidentiality**

An official engaged in the registration of a layout design, a person who was engaged in the registration of a layout design under Articles 19 to 24 and a committee member or a person who has worked on the committee to mediate under Article 25(2) may not divulge the secrets learned in the course of their duties.

**CHAPTER VII  
PENAL PROVISIONS**

**Article 45 Offense of Infringement etc.**

(1) A person who infringes a layout design right under Article 8 of this Act or an exclusive license under Article 11 of this Act is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 50 million won, or both.

(2) An offense under paragraph (1) of this Article is prosecuted only upon the filing of a complaint.

**Article 46 Offense of False Marking**

A person who makes a false marking of a registration under Article 22 on a semiconductor integrated circuit containing an unregistered layout design under Article 21(1) or on the packaging and so on, or a person who assigns or leases a semiconductor integrated circuit bearing a false marking of a registration, is liable to imprisonment with labor not exceeding one year or to a fine not exceeding 3 million won.

**Article 47 Offense of Fraud**

A person who fraudulently or unjustly obtains a registration of establishment of a layout design under Article 21(1) is liable to imprisonment with labor not exceeding one year or to a fine not exceeding 3 million won.

**Article 48 Offense of Divulging Secrets**

A person who violates Article 44 of this Act is liable to imprisonment with labor not exceeding two years or to a fine not exceeding 5 million won.

**Article 49 Dual Liability**

Where a representative of a corporation, an agent representing a corporation or an individual, an employer or an employee of a corporation violates Articles 45(1), 46 or 47 concerning the acts of the corporation or the individual, the corporation or the individual person is liable to the fine prescribed in each of the corresponding Articles of this Act, and the violator must also be punished.

**Article 50 Deleted**

**ADDENDUM** <No. 4526, December 8, 1992>

**Article 1 Date of Entry into Force**

This Act enters into force within a year of its promulgation on a date determined by Presidential Decree.

**Article 2 Application**

This Act does not apply to any arranged design created before this Act enters into force.

**ADDENDUM** <No. 4890, January 5, 1995>

This Act enters into force on July 1, 1995.

**ADDENDUM (Amendment of the Certified Public Account Act and Other Acts)**

<No. 5453, December 13, 1997>

**Article 1 Date of Entry into Force**

This Act enters into force on January 1, 1998. (Proviso deleted.)

**Article 2 Deleted**

**ADDENDUM (Amendment of the Architecture Act and Other Acts Following the Change of the Names of the Government Ministries) <No. 5454, December 13, 1997>**

This Act enters into force on January 1, 1998. (Proviso deleted.)

**ADDENDUM <No. 5599, December 28, 1998>**

This Act enters into force on January 1, 1999.

**ADDENDUM (Civil Litigation Act) <No. 6626, January 26, 2002>**

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2002.

**Articles 2 to 5, Deleted**

**Article 6 Amendment of Other Acts**

(1) to (9) Deleted.

(10) The following provisions of the Semiconductor Integrated Circuits Layout Design Act are amended as follows:

In Article 41, "Article 9 of the Civil Procedure Act" reads "Article 11 of the Civil Litigation Act".

(11) to (29) Deleted.

**Article 7 Deleted**

**ADDENDUM <No. 8397, April 27, 2007>**

**Article 1 Date of Entry into Force**

This Act enters into force six months after its promulgation.

**Article 2 Application Examples on Reduction or Exemption of Fees for the  
Registration of Establishment of Layout Design Rights**

The application of amended Article 40*bis* begins when the first application for the registration of establishment of a layout design right is filed after this Act enters into force.