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## UTILITY MODEL ACT

[Enforcement Date 01. Jan, 2015.] [Act No.12752, 11. Jun, 2014., Partial  
Amendment]

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## UTILITY MODEL ACT

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### CHAPTER I GENERAL PROVISIONS

#### Article 1 (Purpose)

The purpose of this Act is to contribute to the industrial development by protecting and encouraging the creation of practical devices and promoting the utilization thereof to promote the development of technology.

#### Article 2 (Definitions)

The terms used in this Act shall be defined as follows:

1. The term "device" means the creation of technical ideas applying the law of nature;
2. The term "registered utility model" means a device for which a utility model has been granted;
3. The term "working" means an act of manufacturing, using, assigning, leasing, importing, or offering for assigning or leasing (including displaying for the purpose of assignment or lease; hereinafter the same shall apply) an article to which a device has been applied.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

#### Article 3 (Application Mutatis Mutandis of the Patent Act)

@Articles 3 through 7, 7 - 2, 8 through 25, 28, and 28 - 2 through 28 - 5 of the Patent Act shall apply mutatis mutandis to utility models.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

### CHAPTER II REQUIREMENTS FOR UTILITY MODELS AND APPLICATIONS THEREFOR

**Article 4 (Requirements for Utility Model)** (1) A utility model may be granted for a device related to the shape or structure of an article, or a combination of articles

industrially practicable, unless the device falls under any of the following:

1. A device publicly known or worked inside or outside the Republic of Korea prior to the filing of utility model registration;
2. A device reported by a publication published and distributed inside or outside the Republic of Korea prior to the filing of utility model registration or made available to the public through one of telecommunication lines.

(2) Notwithstanding paragraph (1), no utility model shall be granted for a device, if the device could easily have been made, prior to the filing of utility model registration, by a person with ordinary skills in the art to which the device pertains, on the basis of a device set forth in any subparagraph of paragraph (1).

(3) Notwithstanding paragraph (1), no utility model shall be granted for a device, if the device for which utility model registration is filed is identical with a device described in the description or drawings initially accompanying another application for utility model registration that meets both of the following requirements: Provided, That this shall not apply where the person who has devised the subject matter of the application at issue is the very person who has devised the subject matter of another application or where the applicant at the time of utility model registration at issue is the very person who has filed another application for utility model registration:

1. The application for utility model registration was filed before the filing date of utility model registration at issue;
2. The application for utility model registration has been laid open under Article 64 of the Patent Act as applied mutatis mutandis pursuant to Article 15 of this Act or the utility model has been registered and published pursuant to Article 21 (3) of this Act after the filing of utility model registration at issue.

(4) Notwithstanding paragraph (1), no utility model shall be granted for a device, if the device for which utility model registration is filed is identical with an invention described in the description or drawings initially accompanying a patent application that meets both of the following requirements: Provided, That the same shall not apply where the person who has devised the subject matter of the application at issue is the very person who has invented the subject matter of the patent application, or where the applicant who has filed utility model registration at issue is the very person who has filed the patent application:

1. The patent application was filed before the filing date of utility model registration at issue;
2. The patent application has been laid open pursuant to Article 64 of the Patent Act, or the patent has been registered and published pursuant to Article 87 (3) of the same Act after the filing of utility model registration at issue.

(5) For the purposes of paragraph (3), where another application for utility model registration is an application for international utility model registration defined in Article 34 (2) (including an international application deemed an application for utility model registration under Article 40 (4)), "description or drawings initially accompanying an application" under the main sentence of paragraph (3) shall be construed as "descriptions of a device, the claims or drawings submitted by the international filing date," and "laid open" in subparagraph 2 of the aforesaid paragraph shall be construed as "laid open for public inspection or internationally published pursuant to Article 21 of the Patent Cooperation Treaty," respectively.

(6) For the purposes of paragraph (4), where a patent application is an international patent application under Article 199 (2) of the Patent Act (including an international application deemed a patent application under Article 214 (4) of the same Act), "description or drawings initially accompanying a patent application" under the main body of paragraph (4) shall be construed as "descriptions of an invention, the claims or drawings submitted by the international filing date"; and "laid open" and "the same Act" in subparagraph 2 of the aforesaid paragraph shall be construed as "laid open for public inspection or internationally published pursuant to Article 21 of the Patent Cooperation Treaty" and "the Patent Act," respectively.

(7) For the purposes of paragraph (3) or (4), where an application for international utility model registration deemed withdrawn pursuant to Article 35 (4) or an international patent application deemed withdrawn pursuant to Article 201 (4) of the Patent Act shall not be construed as another application for utility model registration or patent application.

[\[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014\]](#)

**Article 5 (Devices Deemed Unknown, etc.)** (1) If a device created by a person eligible for utility model registration therefor comes to fall under either of the following, and if the relevant application for utility model registration is filed within 12 months of

the applicable date, such device shall not be deemed to fall under any subparagraph of Article 4 (1) in applying Article 4 (1) or (2):

1. If a person eligible for utility model registration has caused his/her device to fall under any subparagraph of Article 4 (1): Provided, That the same shall not apply where the application is laid open or the registration of utility model is published under the relevant law or treaty inside or outside the Republic of Korea;
2. If the device falls under any subparagraph of Article 4 (1) against the will of the person eligible for utility model registration.

(2) A person who intends to claim his/her eligibility for utility model registration under paragraph (1) 1 shall submit to the Commissioner of the Korean Intellectual Property Office an application for utility model registration stating the grounds of his/her claim, attached with the documents supporting his/her assertion within 30 days from the filing date of utility model registration in the manner prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

#### **Article 6 (Unregistrable Devices)**

Notwithstanding Article 4 (1), none of the following devices shall be registerable for utility model:

1. A device identical or similar to a national flag or decoration;
2. A device that is likely to run counter to public order or good morals, or cause harm to public health.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 7 (First - to - File Rule)** (1) When two or more applications for utility model registration are filed for the same device on different dates, only the applicant who files his/her application on the earlier date shall be entitled to the utility model registration for the device.

(2) Where two or more applications for utility model registration are filed for the same device on the same date, only the person agreed upon by all the applicants after consultation shall be entitled to the utility model registration for the device: Provided, That where neither agreement is reached nor consultation is possible, none of those applicants shall be entitled to the utility model registration for the device.

(3) Where a utility model registration and a patent application are filed for the same subject matter, paragraph (1) shall apply mutatis mutandis if such utility model registration and patent application are filed on different dates respectively; paragraph (2) shall apply mutatis mutandis if they are filed on the same date.

(4) In either of the following cases, an application for utility model registration or a patent application shall be deemed never filed for the purposes of paragraphs (1) through (3): Provided, That this shall not apply where a decision or a trial decision to reject the earlier application is finally confirmed on the ground the application for a utility model registration or patent shall be governed by the proviso to paragraph (2) (including cases applied mutatis mutandis pursuant to paragraph (3)):

1. Where the application for utility model registration or patent application has been renounced, void, or withdrawn;
2. Where a decision or a trial decision to reject the application for utility model registration or patent application has become final and binding.

(5) For the purposes of paragraphs (1) through (3), it shall be deemed that an application for utility model registration or patent filed by any person other than a deviser, an inventor, or a successor eligible for utility model registration or patent has never been filed.

(6) As to cases set forth in paragraph (2), the Commissioner of the Korean Intellectual Property Office shall order the applicants to report the result of their consultation within a prescribed period, and it shall be deemed that they have failed to reach an agreement under paragraph (2) if they fail to report the result within such period.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 8 (Application for Utility Model Registration)** (1) Any person who intends to obtain utility model registration shall file an application for an utility model registration with the Commissioner of the Korean Intellectual Property Office stating the following matters: <Amended by Act No. 12752, Jun. 11, 2014>

1. The name and address of an applicant (if the applicant is a juristic person, its title and place of business);
2. The name, address, and place of business of an agent if an agent exists (if the agent is a patent corporation or a patent corporation (LLC), its title and place of

business, and the designated patent attorney's name);

3. The title of the device;

4. The name and address of the deviser.

(2) An application for utility model registration under paragraph (1) shall be accompanied by a description stating the descriptions of a device and the scope of claims, a drawing, and an abstract. <Amended by Act No. 12752, Jun. 11, 2014 >

(3) The descriptions of a device referred to in paragraph (2) shall meet both of the following requirements: <Amended by Act No. 12752, Jun. 11, 2014 >

1. The description shall be clearly and minutely made to allow persons with ordinary knowledge in the field of technology of such device to easily make such device;

2. The technology which is a basis for the device shall be described.

(4) The scope of claims referred to in paragraph (2) shall include at least one claim describing the subject matter for which protection is sought (hereinafter referred to as "claim"), and each claim shall meet both of the following requirements: <Amended by Act No. 12752, Jun. 11, 2014 >

1. Each claim shall be supported by a description of the device;

2. Each claim shall define the device clearly and concisely.

(5) Deleted. <by Act No. 12752, Jun. 11, 2014 >

(6) The form, structure, combination, etc. that is deemed necessary to specify the device shall be described in the scope of claims under paragraph (2) in order to make clear the subject matters for which protection is sought. <Amended by Act No. 12752, Jun. 11, 2014 >

(7) Deleted. <by Act No. 12752, Jun. 11, 2014 >

(8) Necessary matters concerning the methods to describe the scope of claims under paragraph (2) shall be prescribed by Presidential Decree. <Amended by Act No. 12752, Jun. 11, 2014 >

(9) Necessary matters concerning the methods of writing descriptions of the device, the drawing, the abstract, etc. under paragraph (2) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy. <Amended by Act No. 12752, Jun. 11, 2014 >

**Article 8 - 2 (Filing Date of Utility Model Registration, etc.)** (1) The date an application for utility model registration accompanied by a description and drawings is submitted to the Commissioner of the Korean Intellectual Property Office shall be deemed the

filing date of utility model registration. In such cases, the claims may not be stated in the description, but descriptions of a device must be stated therein.

(2) Where an applicant for utility model registration fails to state the claims in the description initially accompanying an application for utility model registration under the latter part of paragraph (1), he/she shall make an amendment to state the claims in the description by not later than one year and two months from the date specified in any subparagraph of Article 64 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 15, whichever is relevant: Provided, That upon receiving notice of a request for examination of the application under Article 60 (3) of the Patent Act as applied mutatis mutandis pursuant to Article 15, the applicant shall make an amendment by not later than three months after the receipt of such notice, or one year and two months from the date specified in any subparagraph of Article 64 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 15, whichever comes earlier.

(3) Where an applicant for utility model registration fails to make an amendment under paragraph (2), he/she shall be deemed to have voluntarily withdrawn the relevant application for utility model registration on the date following the date the deadline specified in paragraph (2) expires.

[This Article Newly Inserted by Act No. 12752, Jun. 11, 2014]

**Article 8 - 3 (Application for Utility Model Registration in Foreign Language, etc.) (1)**

Where an applicant for utility model registration states his/her intention, in the application for utility model registration, to write and prepare the description and drawings (limited to the textual matter of the drawings; hereafter the same shall apply in paragraphs (2) and (5)) in a language specified by Ordinance of the Ministry of Trade, Industry and Energy, other than the Korean language, he/she may use the language.

(2) Where the description and drawings initially accompanying an application for utility model registration are written and prepared in a language provided for in paragraph (1) (hereinafter referred to as "application for utility model registration in a foreign language"), the applicant for utility model registration shall submit the Korean translation of the description and drawings in the manner specified by Ordinance of the Ministry of Trade, Industry and Energy by not later than one year



and two months from the date specified in any subparagraph of Article 64 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 15, whichever is relevant: Provided, That upon receiving notice of a request for examination of the application under Article 60 (3) of the Patent Act as applied mutatis mutandis pursuant to Article 15, the applicant shall submit the Korean translation by not later than three months after receipt of such notice, or one year and two months from the date specified in any subparagraph of Article 64 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 15, whichever comes earlier.

(3) An applicant for utility model registration who has submitted the Korean translation pursuant to paragraph (2) may submit another Korean translation in replacement of the former Korean translation by not later than the expiration of the deadline specified in paragraph (2): Provided, That the foregoing shall not apply to either of the following cases:

1. Where the applicant for utility model registration has amended the description or a drawing (excluding an amendment deemed made pursuant to paragraph (5));
2. Where the applicant for utility model registration has filed a request for the examination of the application.

(4) Where an applicant for utility model registration fails to submit the Korean translation of the description under paragraph (2), he/she shall be deemed to have voluntarily withdrawn the relevant application for utility model registration on the date following the date the deadline specified in paragraph (2) expires.

(5) Where an applicant for utility model registration submits the Korean translation under paragraph (2) or another Korean translation under the main sentence of paragraph (3), the description and drawings initially accompanying the application for utility model registration in a foreign language shall be deemed amended according to the Korean translation: Provided, That if another Korean translation is submitted under the main sentence of paragraph (3), all the amendments that shall otherwise be deemed amended according to the Korean translation submitted prior to the latest Korean translation (hereafter referred to as "final Korean translation" in this Article) shall be deemed never made in the first place.

(6) An applicant for utility model registration may correct any error in the final Korean translation in the manner prescribed by Ordinance of the Ministry of Trade, Industry, and Energy during the period set for amendments under Article 47 (1) of

the Patent Act as applied mutatis mutandis pursuant to Article 11. In such cases, paragraph (5) shall not apply to the corrected Korean translation.

[This Article Newly Inserted by Act No. 12752, Jun. 11, 2014]

**Article 9 (Scope of Single Application for Utility Model Registration)** (1) Each application for utility model registration shall relate to only a single device: Provided, That a group of devices so linked as to form a comprehensive concept of a single device may be the subject matter of a single application for utility model registration.

(2) The requirements for a group of devices that can be the subject matter of a single application for utility model registration under the proviso to paragraph (1) shall be prescribed by Presidential Decree.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 10 (Converted Application)** (1) An applicant for patent may amend his/her application for patent to an application for utility model registration within the extent of the contents described in the description or drawings initially attached to the patent application: Provided, That the foregoing shall not apply to either of the following cases: <Amended by Act No. 12752, Jun. 11, 2014 >

1. Where 30 days have elapsed since a certified copy of the initial decision of rejection was served (referring to the extended period, if the period prescribed in Article 132 - 3 of the Patent Act has been extended pursuant to Article 15 (1) of the same Act) in connection with the patent application;
2. Where the application for patent has been filed in a foreign language under Article 42 - 3 (2) of the Patent Act, and the Korean translation under the aforesaid paragraph has not been submitted along with the application filed for conversion.

(2) It shall be deemed that a converted application to that for utility model registration under paragraph (1) (hereinafter referred to as "converted application") was filed for the purpose of utility model registration at the time when the initial patent application was filed: Provided, That this shall not apply if the converted application falls under any of the following cases: <Amended by Act No. 12752, Jun. 11, 2014 >

1. Where Article 4 (3) of this Act or Article 29 (4) of the Patent Act shall apply to the application because it falls under another utility model registration set forth in Article 4 (3) of this Act or a utility model registration set forth in Article 29 (4) of

the Patent Act;

2. Where Article 5 (2) shall apply to the application;

3. Where Article 54 (3) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act shall apply to the application;

4. Where Article 55 (2) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act shall apply to the application.

(3) Any person who intends to file for converted application in accordance with paragraph (1) shall, in his/her application for utility model registration, state his/her intention to do so and indicate the patent application, which is the basis of converted application, when he/she files for converted application. <Amended by Act No. 12752, Jun. 11, 2014>

(4) The initial patent application shall be deemed withdrawn by filing a converted application. <Amended by Act No. 12752, Jun. 11, 2014>

(5) Deleted. <by Act No. 12752, Jun. 11, 2014>

(6) A person who makes priority claims under Article 54 of the Patent Act in filing the converted application, may submit the documents prescribed in paragraph (4) of the same Article to the Commissioner of the Korean Intellectual Property Office within three months from the filing date of the converted application, even after the lapse of the period prescribed in paragraph (5) of the same Article. <Amended by Act No. 11653, Mar. 22, 2013>

(7) Where a converted application is filed in a foreign language, the applicant for utility model registration may submit the Korean translation under Article 8 - 3 (2) or another Korean translation under the main sentence of Article 8 - 3 (3) by not later than 30 days from the filing date of the converted application, even after the expiration of the deadline specified in paragraph (2) of the aforesaid Article: Provided, That another Korean translation shall not be submitted in cases specified in any subparagraph of Article 8 - 3 (3). <Newly Inserted by Act No. 12752, Jun. 11, 2014>

(8) Where a converted application has been filed regarding an application for utility model registration filed without stating the claims in the description initially accompanying the converted application, the applicant for utility model registration may supplement the description to contain the claims by not later than 30 days from the filing date of the converted application, even after the expiration of the deadline

specified in Article 8 - 2 (2). <Newly Inserted by Act No. 12752, Jun. 11, 2014>

**Article 11 (Mutatis Mutandis Application of the Patent Act)**

@Articles 33 through 35, 37, 38, 41, 43, 44, 46, 47, 51, 52, and 54 through 56 of the Patent Act shall apply mutatis mutandis to the requirements for utility model registration and applications therefor.

[This Article Wholly Amended by Act No. 9371, Jan. 30, 2009]

**CHAPTER III EXAMINATION**

**Article 12 (Request for Examination of Utility Model Registration) (1)** Utility model

registration shall be examined only upon receipt of a request for examination.

(2) Any person may file a request for examination of an application for utility model registration with the Commissioner of the Korean Intellectual Property Office within three years from the filing date of utility model registration: Provided, That no applicant for utility model registration shall file a request for examination of the application in either of the following cases:

1. Where the applicant for utility model registration fails to state the claims in the description;
2. Where the applicant for utility model registration fails to submit a Korean translation under Article 8 - 3 (2) (limited to applications for utility model registration in a foreign language).

(3) As regards to any of the following applications for utility model registration, a request for examination of the utility model may be filed within the period specified in each of the following even after the lapse of the period prescribed in paragraph (2):

1. Converted application: 30 days from the filing date of such converted application;
2. Application for utility model registration by a legitimate right holder under Articles 34 and 35 of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act: 30 days from the filing date of such utility model registration by a legitimate right holder;
3. Divisional application under Article 52 (2) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act: 30 days from the filing date of such

divisional application.

(4) A request for examination of the application may not be withdrawn.

(5) An application for utility model registration shall be deemed withdrawn if no request for examination of the application is filed during the period set for filing a request for examination of the application under paragraph (2) or (3).

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

### **Article 13 (Decision to Reject Utility Model Registration)**

Any examiner defined in Article 57 (1) of the Patent Act (hereinafter referred to as "examiner") as applied mutatis mutandis pursuant to Article 15 of this Act shall make a decision to reject utility model registration, if the application constitutes any of the following grounds for rejection (hereinafter referred to as "ground for rejection"):

1. If the utility model is not registerable under Article 4, 6, or 7 (1) through (3) of this Act, Article 25 of the Patent Act as applied mutatis mutandis pursuant to Article 3 of this Act, or Article 44 of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act;
2. If the applicant has no right to obtain utility model registration under the main sentence of Article 33 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act, or if the applicant is not eligible for utility model registration under the proviso to the same paragraph;
3. If the application violates any provisions of a relevant treaty;
4. If the application fails to meet the requirements set forth in Article 8 (3), (4) and (8) or 9;
5. If the converted application deviates from the extent prescribed by Article 10 (1);
6. If an amendment is made deviating from the extent prescribed by Article 47 (2) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act;
7. If the divisional application deviates from the extent prescribed by Article 52 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 14 (Notice of Grounds for Rejection)** (1) When an examiner intends to make a decision to reject utility model registration under Article 13, he/she shall notify the applicant for the utility model registration of the grounds for rejection, and provide the applicant an opportunity to submit his/her written opinion within a specified

period: Provided, That this shall not apply when he/she intends to make a decision of dismissal pursuant to Article 51 (1) of the Patent Act which is applied mutatis mutandis pursuant to Article 11.

(2) When an examiner gives notice of the grounds for rejecting any application for utility model registration pursuant to the main body of paragraph (1), which carries not less than two claims, he/she shall clearly indicate the rejected claims and the grounds therefor in detail in the notification.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

#### **Article 15 (Mutatis Mutandis Application of the Patent Act)**

@Articles 57, 58, 58 - 2, 60, 61, 63 - 2, 64 through 66, 66 - 2, 67, 67 - 2, 67 - 3, 68 and 78 of the Patent Act shall apply mutatis mutandis to an examination and decision with regard to a utility model registration which has been filed.<Amended by Act No. 11653, Mar. 22, 2013>

[This Article Wholly Amended by Act No. 9371, Jan. 30, 2009]

### **CHAPTER IV REGISTRATION FEE AND UTILITY MODEL REGISTRATION, ETC.**

**Article 16 (Registration Fees)** (1) Any person who intends to obtain the registration of establishment of a utility model right in accordance with Article 21 (1) shall pay registration fees for three years from the date when he/she intends to obtain the registration of establishment of the utility model right (hereinafter referred to as "registration date of establishment"), and the owner of a utility model right shall pay, on a yearly basis, a registration fee for one year from the following year based on the date falling under the registration date of establishment of the relevant right.

(2) Notwithstanding paragraph (1), the owner of a utility model right may pay registration fees for several or entire years according to the order of years of payment in a lump sum, starting from the following year.

(3) Registration fees, method and term of payment thereof under paragraphs (1) and (2), and other necessary matters shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 17 (Official Fees)** (1) A person who shall undergo the process for utility model registration shall pay an official fee.

(2) When the number of claims described in the scope of claims increases as a consequence of a correction made on the description accompanying the application by any person, other than the applicant of the utility model registration, after filing a request for examination of the application, the applicant for the utility model registration shall be liable to pay the fee for requesting an examination for the increased number of claims.

(3) Official fees under paragraph (1), the method and period of payment thereof, and other necessary matters shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 18 (Utility Model Register)** (1) The Commissioner of the Korean Intellectual Property Office shall prepare and keep the Utility Model Register at the Korean Intellectual Property Office and register the following matters therein:

1. The establishment, transfer, extinction, and restoration of a utility model right, or the restrictions on the disposition thereof;
2. The establishment, preservation, transfer, amendment, and extinction of an exclusive or non - exclusive license, or the restrictions on the disposition thereof;
3. The establishment, transfer, amendment, and extinction of a pledge right to the utility model right or exclusive or non - exclusive licence thereof or the restrictions on the disposition thereof.

(2) The Utility Model Register under paragraph (1) may be prepared and maintained, in whole or in part, by means of an electronic recording medium, etc.

(3) Except as otherwise expressly provided for in paragraphs (1) and (2), necessary matters concerning the matters to be registered and the registration procedure shall be provided for by Presidential Decree.

(4) The description and drawings for the registered utility model, and other documents prescribed by Presidential Decree shall be deemed to constitute part of the Utility Model Register.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

- Article 19 (Issuance of 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 certificate of utility model registration to the owner of the utility model right, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy.
- (2) When a certificate of utility model registration as issued fails to conform to the Utility Model Register or any other document, the Commissioner of the Korean Intellectual Property Office shall, upon an application or ex officio, call in such certificate to reissue it with proper correction or issue a new certificate as a replacement.
- (3) Where a trial decision made in a trial for correction under Article 136 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 33 of this Act, has become final and binding, the Commissioner of the Korean Intellectual Property Office shall issue a new certificate of utility model registration in accordance with the trial decision.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 20 (Mutatis Mutandis Application of the Patent Act)**

@Articles 80, 81, 81 - 2, 81 - 3, 83, and 84 of the Patent Act shall apply mutatis mutandis to registration fees and utility model registration.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

## CHAPTER V UTILITY MODEL RIGHT

**Article 21 (Registration of Establishment of Utility Model Right and Publication of Registration)** (1) A utility model right shall come 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 when any of the following cases occurs:

1. When a registration fee under Article 16 (1) is paid;
2. When an additional registration fee is paid in accordance with Article 81 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 20 of this Act;



3. When a registration fee is reserved in accordance with Article 81 - 2 (2) of the Patent Act as applied mutatis mutandis pursuant to Article 20 of this Act;
4. When a registration fee is paid or reserved in accordance with Article 81 - 3 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 20 of this Act;
5. When a registration fee is exempted in accordance with Article 83 (1) 1 and (2) of the Patent Act as applied mutatis mutandis pursuant to Article 20 of this Act.

(3) Where the registration under paragraph (2) is made, the Commissioner of the Korean Intellectual Property Office shall give public notice of the registration by publishing, in the Utility Model Gazette, the name and domicile of the owner of the utility model right, the utility model registration number, and other matters specified by Presidential Decree.

(4) Notwithstanding paragraph (3), the Commissioner of the Korean Intellectual Property Office shall withhold the publication of the registration of a utility model which needs to be kept confidential in accordance with Article 41 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act until the relevant device is declassified, and upon declassification thereof, he/she shall make the publication of registration without delay.

(5) The Commissioner of the Korean Intellectual Property Office shall make available to the public the application documents and materials attached thereto for inspection for three months from the publication date of the registration under paragraph (3).

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 22 (Term of Utility Model Right)** (1) The term of a utility model right shall commence on the registration date of the establishment of the utility model right under Article 21 (1), and shall expire on the tenth anniversary of the filing date of the application for the utility model registration.

(2) Where the utility model of a legitimate owner is registered under Articles 34 and 35 of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act, the term of such utility model right under paragraph (1) shall commence on the day immediately following the filing date of the utility model registration by an ineligible person.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 22 - 2 (Extensions of Term of Utility Model Rights due to Registration Delays) (1)**

If the establishment of a utility model right is registered late than the fourth anniversary of the filing date of utility model registration or the third anniversary of the filing date of examination of application, whichever comes later, the term of the utility model right may be extended by the delayed period, notwithstanding the provisions of Article 22 (1).

(2) For the purposes of paragraph (1), the period of delay attributable to an applicant shall not be included in extending the term of a utility model right as prescribed in paragraph (1): Provided, That if the period of delay attributable to an applicant overlaps, the period that shall not be included in extending the term of a utility model right shall not exceed the period actually delayed due to reasons attributable to the applicant.

(3) "The period of delay attributable to an applicant" referred to in paragraph (2) shall be prescribed by Presidential Decree.

(4) In counting the fourth anniversary of the filing date of utility model registration as prescribed in paragraph (1), each of the following shall be deemed the filing date of utility model registration, notwithstanding Articles 10 (2), 34 (1), 40 (4), and Articles 34, 35 and 52 (2) of the Patent Act as applied mutatis mutandis pursuant to Article 11:

1. In cases of an converted application pursuant to Article 10: the filing date of the converted application;
2. In cases of an application for utility model registration filed by a legitimate holder pursuant to Article 34 or 35 of the Patent Act as applied mutatis mutandis pursuant to Article 11: the filing date by the legitimate holder;
3. In cases of a divisional application pursuant to Article 52 of the Patent Act as applied mutatis mutandis pursuant to Article 11: the filing date of the divisional application;
4. In cases of an international application deemed an application for utility model registration pursuant to Article 34 (1): the date of submission of documents stating the details provided in each subparagraph of Article 203 (1) of the Patent Act as applied mutatis mutandispursuant to Article 41;

5. In cases of an international application deemed an application for utility model registration pursuant to Article 40: the date when an applicant for an international application makes a request for decision pursuant to Article 40 (1);
6. An application for utility model registration not falling under any of subparagraphs 1 through 5: the filing date of the relevant utility model registration.

[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]

**Article 22 - 3 (Applications for Extended Registration of Term of Utility Model Rights due to Registration Delays)** (1) Anyone who intends to apply for extended registration of the term of a utility model right pursuant to Article 22 - 2 (hereafter referred to as "applicant for extended registration" in this Article and Article 22 - 4) shall file with the Commissioner of the Korean Intellectual Property Office an application for extended registration of utility model right stating the following details: <Amended by Act No. 11690, Mar. 23, 2013; Act No. 11962, Jul. 30, 2013>

1. The name and address of an applicant for extended registration (if the applicant is a corporation, its title and place of business);
2. If an applicant for extended registration appoints his/her agent, the name, address, and place of business of the agent (if the agent is a patent corporation or a patent corporation (LLC), its title and place of business and the designated patent attorney ' s name);
3. A registration number of a utility model right to be extended;
4. The period applied for extension;
5. Reasons for extension specified by Ordinance of the Ministry of Trade, Industry and Energy (verifying documents shall be attached thereto).

(2) An application for extended registration of the term of a utility model right pursuant to paragraph (1) shall be filed within three months from the date the establishment of the utility model right is registered.

(3) If a utility model right is co - owned by more than two persons, all the co - owners shall jointly apply for extended registration of the term of the utility model right.

(4) An applicant for extended registration may correct the details referred to in paragraph (1) 4 and 5 among the entries in the application for extended registration, before an examiner makes a decision as to whether to approve the extended registration of the term of a utility model right: Provided, That he/she may make

corrections only during a period for submitting his/her statement of opinion once he/she is notified of the grounds for rejection applied mutatis mutandis pursuant to Article 22 - 6.

[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]

**Article 22 - 4 (Decisions to Reject Extended Registration of Term of Utility Model Rights due to Registration Delays)**

Where an application for extended registration of the term of a model utility right falls under any of the following cases, an examiner shall make a decision to reject extended registration with regard to the application:

1. Where the period applied for extension exceeds the period prescribed in Article 22 - 2;
2. Where an applicant for extended registration is not the owner of the relevant utility model right;
3. Where an application for extended registration is filed, in violation of Article 22 - 3 (3).

[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]

**Article 22 - 5 (Decisions, etc. to Approve Extended Registration of Term of Utility Model Rights due to Registration Delays)**

(1) Where an examiner finds that an application for extended registration of the term of a utility model right does not fall under any grounds provided in each subparagraph of Article 22 - 4, he/she shall make a decision to approve extended registration.

(2) Where any decision to approve extended registration is made pursuant to paragraph (1), the Commissioner of the Korean Intellectual Property Office shall enter the extension of the term of the relevant utility model right in the Utility Model Register.

(3) Where an extension of the term of a utility model rights is entered in the Utility Model Register pursuant to paragraph (2), the following details shall be published in the Utility Model Gazette:

1. The name and address of an owner of the utility model right (in cases of a corporation, its name and seat of place of business);
2. A registration number of the utility model right;

3. Date of extended registration;
4. Extended period.

[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]

#### **Article 22 - 6 (Provisions to be Applied Mutatis Mutandis)**

@Article 14 of this Act, Articles 57 (1), 67, subparagraphs 1 through 5 and 7 of Article 148 of the Patent Act shall apply mutatis mutandis to examinations of applications for extended registration of the term of utility model rights.

[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]

#### **Article 23 (Effects of Utility Model Rights)**

The owner of a utility model right shall have the exclusive right to work the registered utility model commercially and industrially: Provided, That where the exclusive license is granted under Article 100 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 28 of this Act, the same shall not apply to the extent that the exclusive licensee has the exclusive right to work the registered utility model under Article 100 (2) of the Patent Act.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

#### **Article 24 (Limitations on Effect of Utility Model Rights)**

The effects of the utility model right shall not extend to any of the following subparagraphs:

1. Working of the registered utility model for the purpose of research or experimentation;
2. Vessels, aircraft, or vehicles only passing through the territory of the Republic of Korea, or machinery, instruments, equipment, or any other accessories used therein;
3. Articles available in the Republic of Korea as at the time the utility model registration was filed.

#### **Article 25 (Relations to Third Party Registered Utility Model, etc.)**

No owner of a utility model right, or exclusive or non - exclusive licensee may work his/her registered utility model commercially or industrially without permission granted by the owner of the relevant utility model, patent, design, or trademark, where the registered utility model would utilize a third party registered utility model,

patented invention, registered design or any other design similar to such registered design for which an application for registration or patent was filed prior to the filing date of the application for utility model registration at issue, or where the utility model at issue conflicts with another's right to design or trademark for which an application for registration was filed prior to the filing date of the application for utility model registration at issue.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

- Article 26 (Non - exclusive License Granted to Work Device or Invention Prior to Registration of Complaint Seeking for Ruling of Invalidation)** (1) Where any of the following persons, without knowing the fact that there exists a ground for the invalidation of his/her own registered utility model or patent, has been engaging in business of working the device or invention, or has been preparing for engaging in such business in the Republic of Korea, before registration of a complaint filed to seek for the ruling of invalidation of his/her registered utility model or patent, the person shall have either the non - exclusive license for such utility model within the extent of such device or invention or the scope of the business which has been worked or for which the preparation for working has been made, or the non - exclusive license on the exclusive license of the utility model existing at the time such utility model registration or patent becomes invalidated:
1. The original owner of the invalidated utility model right, where one of at least two utility model registrations granted for the same device has been invalidated;
  2. The original patentee of the invalidated patent, where the patent has been invalidated because the patented invention was found identical with the registered utility model;
  3. The original owner of the invalidated utility model right, where his/her utility model registration has been invalidated and the utility model registration for the same device has been granted to the legitimate holder;
  4. The original patentee of the invalidated patent, where his/her patent has been invalidated and a utility model registration for the same device as the invention has been granted to the legitimate right holder;
  5. A person who has already acquired and registered an exclusive license, a non - exclusive license, or a non - exclusive license on the exclusive license at the time

of the registration of a complaint seeking for the ruling to invalidate the right to utility model or patent so invalidated, in cases set forth in subparagraphs 1 through 4: Provided, That a person who has acquired a non - exclusive license under Article 118 (2) of the Patent Act as applied mutatis mutandis pursuant to Article 28 of this Act does not need to be registered.

(2) A person who has been granted a non - exclusive license under paragraph (1) shall pay equitable remuneration to the owner of the utility model right or the exclusive licensee.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 27 (Non - exclusive License after Expiration of Term of Design Right)** (1) Where a design right filed and registered on or before the filing date of a utility model registration conflicts with the utility model right, and when the term of the design right has expired, the owner of the design right shall have a non - exclusive license on the utility model right or a non - exclusive license on the exclusive license for the utility model right that exists at the time the design right has expired, within the scope of the design right.

(2) Where a design right filed and registered on or before the filing date of a utility model registration conflicts with the utility model right, and when the term of the design right has expired, the holder of either of the following rights shall have a non - exclusive license on the utility model right or a non - exclusive license on the exclusive license for the utility model right that exists at the time the design right has expired, within the scope of the original right:

1. An exclusive license of the design right that exists at the time the term of the design right expired;
2. A non - exclusive license in effect over the design right or an exclusive license of the design right under Article 104 (1) of the Design Protection Act.

(3) A person who has been granted a non - exclusive license under paragraph (2) shall pay a reasonable price in consideration of the non - exclusive license to the owner of an utility model right or the exclusive licensee.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 28 (Application Mutatis Mutandis of the Patent Act)**

@Articles 97, 99 through 103, 106, 106 - 2, 107 through 111, 111 - 2, 112 through 115, 118 through 125, and 125 - 2 of the Patent Act shall apply mutatis mutandis to utility model rights.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

## CHAPTER VI PROTECTION OF OWNERS OF UTILITY MODEL RIGHTS

### Article 29 (Acts Constituting Infringement)

The commercial act of manufacturing, assigning, leasing or importing, or the act of offering for commercial or industrial assignment or lease, of goods which shall be used exclusively for manufacturing a product relating to a registered utility model shall be deemed to constitute infringement of a utility model right or exclusive license thereon.

### Article 30 (Mutatis Mutandis Application of the Patent Act)

@Articles 126, 128, and 130 through 132 of the Patent Act shall apply mutatis mutandis to the protection of the owners of utility model rights.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

## CHAPTER VII TRIALS, RETRIALS, AND LITIGATION

**Article 31 (Trial for Invalidation of Utility Model Registration)** (1) Any interested party or examiner may file a complaint to seek for the ruling to invalidate utility model registration, if the utility model registration falls under any of the following subparagraphs. In such cases, a complaint may be filed for each claim, if at least two claims exist: Provided, That anyone may file a complaint seeking a ruling of invalidation on any of the following grounds (excluding subparagraph 5) within three months from the publication date of registration after the establishment of the utility model right is registered:

1. Where the utility model has been registered, in violation of Article 4, 6, 7 (1) through (3), 8 (3) 1, or 8 (4) of this Act, or Article 25 of the Patent Act as applied mutatis mutandis pursuant to Article 3 of this Act;



2. Where the owner of the utility model right becomes ineligible for the enjoyment of the utility model right under Article 25 of the Patent Act as applied mutatis mutandis pursuant to Article 3 of this Act, or where the utility model registration violates a treaty after being registered;
3. Where the utility model is not registerable because of its violation of the treaty;
4. Where a converted application so filed deviates from the extent under Article 10 (1);
5. Where it is found that there exists no right to obtain utility model registration under the main sentence of Article 33 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act, or where there is a violation of Article 44 of the Patent Act;
6. Where the utility model is not registerable under the proviso to Article 33 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act;
7. Where the correction so made deviates from the extent under the former part of Article 47 (2) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act;
8. Where the divisional application so filed deviates from the extent under Article 52 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act.
  - (2) A complaint seeking for the ruling under paragraph (1) may be filed even after the utility model right is extinguished.
  - (3) When the trial decision to invalidate utility model registration has become final and binding, it shall be deemed that the utility model right has never existed: Provided, That it shall be deemed that the utility model right has never existed since the utility model registration falls under paragraph (1) 2, where the trial decision to invalidate utility model registration under the said subparagraph has become final and binding.
  - (4) Upon receipt of a complaint seeking for the ruling under paragraph (1), the presiding administrative patent judge shall notify an exclusive licensee of the utility model in dispute and other persons having any registered interest in the utility model of the purport thereof.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 31 - 2 (Trials Invalidating Extended Registration of Term of Utility Model Rights)**

(1) If the extended registration of the term of a utility model right pursuant to Article 22 - 5 falls under any of the following cases, any interested party or examiner may request for a trial to invalidate such extended registration:

1. Where the extended period based upon extended registration exceeds the period extended as provided in Article 22 - 2;
2. Where the extended registration is made based upon an application filed by a person other than the owner of the relevant utility model right;
3. Where the extended registration is granted for an application filed, in violation of Article 22 - 3 (3).

(2) Article 31 (2) and (4) shall apply mutatis mutandis to requests for trials prescribed in paragraph (1).

(3) When a ruling invalidating extended registration becomes final and conclusive, it shall be deemed that the term of a utility model right based upon the extended registration has never been extended: Provided, That if any extended registration becomes invalid as it falls under paragraph (1) 1, it shall be deemed that only the period in excess of the period extended as provided in Article 22 - 2 has never been extended.

[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]

**Article 32 (Trial for Granting Non - exclusive License)** (1) An owner of a utility model right or exclusive or non - exclusive licensee who intends to obtain permission to work a registered utility model because the registered utility model falls under Article 25 may file a complaint to seek for granting the non - exclusive license within the extent necessary for working his/her registered utility model, if the right holder refuses to grant such permission without justifiable grounds, or if it is impossible to obtain permission for working due to any extenuating circumstance.

(2) No non - exclusive license may be granted for a complaint filed pursuant to paragraph (1), unless it is found that the registered utility model at issue will bring forth significant technical advance with substantial economic value in comparison with another's registered utility model or patented invention, an application for which was filed earlier than the filing date of the utility model registration at issue.

(3) Where a person who granted a non - exclusive license in compliance with the ruling under paragraph (1) needs to work the registered utility model of the person to whom the non - exclusive license was granted, he/she may file a complaint to seek for granting such non - exclusive license within the extent necessary for working the registered utility model, if the non - exclusive licensee refuses to grant permission to work the registered utility model or it is impossible to obtain such permission.

(4) A non - exclusive licensee, to whom a non - exclusive license was granted under paragraphs (1) and (3), shall pay the consideration for the utility model, patent, or design to the owner or the exclusive licensee of such right: Provided, That the consideration shall be placed on deposit if it is impossible to pay the consideration due to any reason not attributable.

(5) No non - exclusive licensee under paragraph (4) may work the registered utility model, patented invention, registered design, or design similar thereto, unless he/she completes the payment of the consideration or places the consideration on deposit.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

### **Article 33 (Mutatis Mutandis Application of the Patent Act)**

@Articles 132 - 3, 133 - 2, 135 through 137, 139, 140, 140 - 2, 141 through 153, 153 - 2, 154 through 166, 170 through 172, 176, 178 through 188, 188 - 2, 189 through 191, and 191 - 2 of the Patent Act shall apply mutatis mutandis to trials, retrials and litigations with regard to utility models.

[This Article Wholly Amended by Act No. 9371, Jan. 30, 2009]

## **CHAPTER VIII INTERNATIONAL APPLICATIONS UNDER PATENT COOPERATION TREATY**

**Article 34 (Utility Model Registration Based on International Application)** (1) An international application of which an international filing date is recognized under the Patent Cooperation Treaty, and which designates the Republic of Korea as a designated state in order to obtain utility model registration, shall be deemed a utility model registration filed on its international filing date.

(2) Articles 8 - 2 and 8 - 3 of this Act and Article 54 of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act shall not apply to an international

application deemed a utility model registration under paragraph (1) (hereinafter referred to as "international utility model registration").

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 34 - 2 (Applications, etc. for International Utility Model Registration)** (1) An application filed by the international filing date of an application for international utility model registration shall be deemed an application for utility model registration filed pursuant to Article 8 (1).

(2) Descriptions of a device, the claims, and drawings submitted by the international filing date of an application for international utility model registration shall be deemed the description and drawings initially accompanying an application for international utility model registration filed pursuant to Article 8 (2).

(3) In either of the following cases, the abstract or Korean translation of an application for international utility model registration shall be deemed an abstract under Article 8 (2):

1. Where the abstract of an application for international utility model registration is written in Korean: The abstract of the application for international utility model registration;
2. Where the abstract of an application for international utility model registration is written in a foreign language: The Korean translation of the abstract of the application for international utility model registration submitted pursuant to Article 35 (1) (referring to the Korean translation of the abstract of the application for international utility model registration last submitted, if a new Korean translation has been submitted under the main sentence of Article 35 (3)).

[This Article Newly Inserted by Act No. 12752, Jun. 11, 2014]

**Article 35 (Korean Translation of International Utility Model Registration)** (1) An applicant who has filed for international utility model registration in any foreign language shall submit, to the Commissioner of the Korean Intellectual Property Office, a Korean translation of the following documents within two years and seven months (hereinafter referred to as "period for submitting domestic documents") from the priority date (hereinafter referred to as "priority date") defined in Article 2 (xi) of the Patent Cooperation Treaty: Provided, That if an applicant has submitted a document under Article 203 (1) of the Patent Act as applied mutatis mutandis

pursuant to Article 41 of this Act to request the extension of the period for submitting the Korean translation, during the period commencing one month before the expiration of the period for submitting domestic documents until the expiration of the period (excluding cases where a Korean translation has been submitted before submitting such document), the Korean translation may be submitted by not later than one month from the expiration of the period for submitting domestic documents:

1. A Korean translation of a description of the device, claims, and drawings (limited to the textual matter of the drawings) submitted by the international filing date;
2. A Korean translation of the abstract of the application for international utility model registration.

(2) Notwithstanding paragraph (1), if an applicant who has filed for international utility model registration in a foreign language has amended any of the claims pursuant to Article 19 (1) of the Patent Cooperation Treaty, the applicant may submit a Korean translation of the amended claims in lieu of the Korean translation of the claims filed by the international filing date.

(3) An applicant who has submitted the Korean translation under paragraph (1) may submit a new Korean translation to replace the previous translation during the period for submitting domestic documents (referring to the extended period for submitting the Korean translation, if the applicant has submitted a document to request an extension of such period under the proviso to the partial provisions other than each subparagraph of paragraph (1); hereafter the same shall apply in this Article): Provided, That the same shall not apply where the applicant has already filed a request for examination of the application.

(4) Where an applicant referred to in paragraph (1) fails to submit a Korean translation of a description of the device and the claims under paragraph (1) during the period for submitting domestic documents, the applicant shall be deemed to have withdrawn his/her application for utility model registration.

(5) Where an applicant for utility model registration submits a Korean translation (referring to the Korean translation last submitted, if a new Korean translation has been submitted under the main sentence of paragraph (3); hereafter referred to as "final Korean translation" in this Article) of a description of the device, claims, or drawings (limited to the textual matter of the drawings) under paragraph (1) by the last date of the period for submitting domestic documents (referring to the filing date

of a petition, if the applicant files a request for examination of the application within the period for submitting domestic documents; hereinafter referred to as "reference date"), the applicant shall be deemed to have corrected the description of the device, claims, or drawings (limited to the textual matter of the drawings), which were submitted by the international filing date, under Article 47 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act according to a final Korean translation on the international filing date.

(6) An applicant for utility model registration may correct any error in a final Korean translation in the manner prescribed by Ordinance of the Ministry of Trade, Industry and Energy during the period in which the applicant is permitted to make amendments under Article 47 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act or Article 208 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 41 of this Act. In such cases, paragraph (5) shall not apply to a corrected Korean translation.

(7) Article 204 (1) and (2) of the Patent Act as applied mutatis mutandis pursuant to Article 41 of this Act shall not apply where a Korean translation of the corrected claims is submitted pursuant to paragraph (2).

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

- Article 36 (Submission of Drawings)** (1) An applicant for international utility model registration shall submit drawings (including the brief text thereof) to the Commissioner of the Korean Intellectual Property Office by the reference date if the drawings are not included in the international application submitted on the international filing date.
- (2) The Commissioner of the Korean Intellectual Property Office may order the relevant applicant for international utility model registration to submit the drawings within the designated period if the drawings under paragraph (1) have not been submitted by the reference date. The same shall also apply where the Korean translation of the textual matter of the drawings under Article 35 (1) or (3) has not been submitted by the reference date.
- (3) The Commissioner of the Korean Intellectual Property Office may declare that an international utility model registration is void if the applicant who was ordered to submit the drawings under paragraph (2) fails to do so within the designated period.

(4) Where an applicant has submitted the drawings and Korean translation thereof under paragraph (1) or (2), he/she shall be deemed to have made correction under Article 47 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act according to the drawings and Korean translation thereof. In such cases, the period allowed for correction under Article 47 (1) of the Patent Act shall not apply to the submission of such drawings.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

#### **Article 37 (Restriction on Filing Timing of Converted Application)**

Notwithstanding Article 10 (1) of this Act, an applicant, who filed an international application regarded as a patent application filed on the filing date of the international application under Article 199 (1) of the Patent Act, may file a converted application to convert the patent application into the utility model registration, only after the applicant completes the payment for official fees in accordance with Article 82 (1) of the Patent Act and submits the Korean translation (excluding cases where the international application was prepared in the Korean language) in accordance with Article 201 (1) of the same Act (only after a decision is made under Article 214 (4) of the Patent Act, where the application for the amendment is based on an international application regarded as filed on the date recognizable as the filing date of the international application under the same paragraph).

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

#### **Article 38 (Restriction on Request Timing for Examination of Application)**

Notwithstanding Article 12 (2), a request for examination of an international utility model registration may be filed at either of the following times:

1. After a Korean translation is submitted under Article 35 (1) (excluding an application for international utility model registration filed in Korean) and official fees under Article 17 (1) are fully paid, if the request is made by an applicant of the international utility model registration;
2. After the lapse of the period for submitting domestic documents (referring to an extended period for submitting Korean translations, if a written request has been filed for an extension of such period under the proviso to the partial provisions other than each subparagraph of Article 35 (1)).

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[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 39 Deleted.** <by Act No. 12752, Jun. 11, 2014>

**Article 40 (International Application Recognizable as Utility Model Registration by**

**Decision)** (1) Where an international application (limited to utility model registration), which includes the Republic of Korea in the designated states referred to in Article 4 (1) (ii) of the Patent Cooperation Treaty falls under any of the following subparagraphs, the relevant applicant may request the Commissioner of the Korean Intellectual Property Office to make a decision pursuant to Article 25 (2) (a) of the same Treaty, by the deadline prescribed by Ordinance of the Ministry of Trade, Industry and Energy, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy:

1. Where a receiving office referred to in Article 2 (xv) of the Patent Cooperation Treaty has rejected such international application pursuant to Article 25 (1) (a) of the same Treaty;
2. Where a receiving office referred to in Article 2 (xv) of the Patent Cooperation Treaty has made a declaration on such international application pursuant to Article 25 (1) (a) or (b) of the same Treaty;
3. Where the International Bureau referred to in Article 2 (xix) of the Patent Cooperation Treaty has recognized such international application pursuant to Article 25 (1) (a) of the same Treaty.

(2) A person who intends to file a request under paragraph (1) shall submit to the Commissioner of the Korean Intellectual Property Office a written request accompanied by a Korean translation of descriptions of a device, claims or drawings (limited to the textual matter thereof) and other documents related to the international application prescribed by Ordinance of the Ministry of Trade, Industry and Energy as relevant to the international application.

(3) Upon receiving a request under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall make a decision on whether the rejection, declaration or recognition has been made illegitimately in connection with the request in accordance with the Patent Cooperation Treaty and the regulations thereunder.

(4) Where the Commissioner of the Korean Intellectual Property Office makes a decision under paragraph (3) to the effect that the rejection, declaration or



recognition has been made illegitimately under the Patent Cooperation Treaty and the regulations thereunder, the relevant international application shall be regarded as utility model registration filed on the date which would have been recognized as the international filing date if no such rejection, declaration, or recognition had been made with respect to the said international application.

(5) Where the Commissioner of the Korean Intellectual Property Office makes a decision on whether the application is justifiable pursuant to paragraph (3), he/she shall serve a certified copy of the decision on the person who has filed the international application.

(6) Articles 200, 202 (1) and (2), and 208 of the Patent Act as applied mutatis mutandis pursuant to Articles 34 (2), 34 - 2, 35 (5) through (7), 38, and 41 of this Act shall apply mutatis mutandis to international applications regarded as utility model registration under paragraph (4).

(7) As to the publication of an international application regarded as utility model registration under paragraph (4), "the date specified in any of the following" under Article 64 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 15 of this Act shall be construed as "priority date under Article 35 (1)."

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

#### **Article 41 (Mutatis Mutandis Application of the Patent Act)**

@Articles 192 through 198, 198 - 2, 200, 202 through 208, and 211 of the Patent Act shall apply mutatis mutandis to international utility model registration.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

### **CHAPTER IX SUPPLEMENTARY PROVISIONS**

**Article 42 (Utility Model Gazette)** (1) The Commissioner of the Korean Intellectual Property Office shall publish the Utility Model Gazette as prescribed by Presidential Decree.

(2) The Utility Model Gazette may be published in an electronic medium, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(3) If the Utility Model Gazette is published in an electronic medium, the Commissioner of the Korean Intellectual Property Office shall publicly announce the

issuance of the Utility Model Gazette, its main contents and service by public announcement through an information and communication network.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 43 (Legal Fiction of Executive Officers and Employees of Specialized Institutions, etc. as Public Officials)**

An executive officer or an employee who is currently working, or has ever worked, for a specialized organization as provided for in Article 58 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 15 or an agency for affairs of digitizing patent documents as provided for in Article 217 - 2 (3) of the Patent Act as applied mutatis mutandis pursuant to Article 44 shall be deemed an incumbent or former public official of the Korean Intellectual Property Office in applying Article 46 of this Act.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 44 (Application Mutatis Mutandis of the Patent Act)**

@Articles 215, 215 - 2, 216, 217, 217 - 2, 218 through 220, 222 through 224, and 224 - 2 through 224 - 5 of the Patent Act shall apply mutatis mutandis to utility models.

[This Article Wholly Amended by Act No. 11114, Dec. 2, 2011]

## CHAPTER X PENALTY PROVISIONS

**Article 45 (Offense of Infringement)** (1) Any person who infringes on a utility model right or exclusive license thereof shall be punished by imprisonment with labor for not more than seven years or by a fine not exceeding 100 million won.

(2) No public prosecution for an offense under paragraph (1) shall be initiated unless a complaint is filed by an injured party.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 46 (Offense of Divulging Confidential Information, etc.)**

An incumbent or former employee of the Korean Intellectual Property Office or the Intellectual Property Tribunal who discloses or misappropriates confidential information about a device (including a device for which an international application

is pending) disclosed in a pending utility model registration to which he/she had access in the course of performing his/her duties shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding 50 million won.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 47 (Offense of Perjury)** (1) A witness, expert witness or interpreter who makes a false statement, testimony, or interpretation before the Intellectual Property Tribunal under oath made in accordance with the provisions of the Civil Procedure Act as applied mutatis mutandis pursuant to Article 33 of this Act and Article 157 (2) of the Patent Act shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding ten million won.

(2) The punishment of a person who commits an offense under paragraph (1) may be mitigated or exempted if the offender voluntarily appears and admits his/her offense before the trial decision for the case becomes final and binding.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 48 (Offense of False Indication)**

A person who violates any of subparagraphs 1 through 3 of Article 224 of the Patent Act as applied mutatis mutandis pursuant to Article 44 of this Act shall be punished by imprisonment with labor for not more than three years or by a fine not exceeding 20 million won.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 49 (Offense of Fraud)**

A person who has a utility model registered or has received a trial decision by deceit or other fraudulent means shall be punished by imprisonment with labor for not more than three years or by a fine not exceeding 20 million won.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 49 - 2 (Offense of Breach of Confidentiality)** (1) Any person who breaches confidentiality provided in Article 224 - 3 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 44 in the Republic of Korea or any foreign country without any justifiable grounds shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding 50 million won.

(2) No public prosecution against an offense provided in paragraph (1) may be initiated unless a complaint is filed by a person who has made a confidentiality request.

[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]

#### **Article 50 (Joint Penalty Provisions)**

If the representative of a juristic person, or an agent, an employee or any other employee of a juristic person or individual has committed an offense falling under any of Articles 45 (1), 48 or 49 with respect to the duties of the juristic person or individual, not only shall the offender be punished, but also the juristic person shall be punished by a fine according to the following classifications, and the individual shall be punished by a fine referred to in the relevant provisions: Provided, That this shall not apply where the juristic person or individual has not neglected to exercise due attention and supervision for the relevant duties in order to prevent such offense:

1. In cases of Article 45 (1): A fine not exceeding 300 million won;
2. In cases of Article 48 or 49: A fine not exceeding 60 million won.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 51 (Confiscation, etc.)** (1) An article that has caused the infringement falling under Article 45 (1) or an article produced from such infringement may be confiscated or a judgment may be given to deliver such article to the injured party upon the injured party's request.

(2) An injured party may claim the compensation only for the amount of losses exceeding the value of an article under paragraph (1), if he/she has received such article.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]

**Article 52 (Administrative Fines)** (1) Any of the following persons shall be punished by an administrative fine not exceeding 500,000 won:

1. A person who makes a false statement before the Intellectual Property Tribunal under oath taken pursuant to Articles 299 (2) and 367 of the Civil Procedure Act;
2. A person who fails, without justifiable grounds, to comply with an order issued by the Intellectual Property Tribunal to submit documents or other articles for

investigation or preservation of evidence;

3. A person who fails, without justifiable grounds, to follow the summons to appear before the Intellectual Property Tribunal as a witness, expert witness, or interpreter, or refuses to take an oath, make a statement, testify, provide an expert opinion, or interpret.

(2) Administrative fines under paragraph (1) shall be imposed and collected by the Commissioner of the Korean Intellectual Property Office, as prescribed by Presidential Decree.

[This Article Wholly Amended by Act No. 12752, Jun. 11, 2014]