

# PATENT ACT

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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 shall 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, upon request or *ex officio*, extend the period for demanding a trial under Article 132<sup>ter</sup> for once and for up to 30 days. However, , the number and period of extension may be further extended for a person residing in an area that is difficult to access.

(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<sup>ter</sup> 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.

## **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;
- (v) under Article 20(vi), a new representative or each joint initiator involve; or
- (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 shall 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 documents with regard to the delay of mail, loss of mail or interruption of the mail service are prescribed by ordinance of the Ministry of Knowledge Economy.

## **Article 28bis Entry of Identification Number**

(1) A person who initiates a patent-related procedure prescribed by ordinance of the Ministry of Knowledge Economy (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 Knowledge Economy; 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 Knowledge Economy.

#### **Article 28<sup>ter</sup> 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 Knowledge Economy, 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 Knowledge Economy.

#### **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 Knowledge Economy.

#### **Article 28<sup>quinqies</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 Knowledge Economy.

## **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 within or outside of 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 falls under one of the following subparagraphs, “laid open” of paragraph 3 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, in case the application was filed in Korean, “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 case the application was filed in a foreign language, “an invention or device described in the description, claim(s) or drawing(s) of both the international application as of the international filing date and its translated version”:

- (i) the other patent application is an international application (including an international application that is deemed a patent application according to Article 214(4)) that is deemed a patent application according to Article 199(1); and
- (ii) the utility model application is an international application that is deemed a utility model application according to Article 34(1) of the Utility Model Act (including an international application that is deemed a utility model application according to Article 40(4) of the Utility Model Act).

### **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 shall 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 shall 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 shall 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 shall 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 shall 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 Knowledge Economy 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 Knowledge Economy.

#### **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, after an applicant received a notification of the reasons for refusal under Article 63(1) (hereinafter “a notice of the reasons for refusal”), the applicant may only amend the description or drawing(s) within the periods designated in the following subparagraphs:

- (i) where the applicant receives the first notice of the reasons for refusal (except notifications of refusal occurring from an amendment according to a notice of the reasons for refusal) or receives a notice of reasons for refusal other than that of paragraph (ii), the period designated for submitting arguments against the notice of the reasons for refusal:
- (ii) where the 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 the applicant requests a retrial under Article 67*bis*.

(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) can only be made in cases falling under one of the following subparagraphs:

(i) to limit or delete a claim, or narrow the scope of a claim by adding an element to the claim;

(ii) to correct a clerical error; or

(iii) to clarify an ambiguous description.

(iv) to revert to the scope of a claim before the amendment where the amendment is beyond the scope of paragraph (2) or to amend the scope of a claim

#### **Article 48 Deleted**

#### **Article 49 Deleted**

#### **Article 50 Deleted**

#### **Article 51 Rejection of an Amendment**

(1) Where an amendment under Article 47(1)(ii) or (iii) violates paragraphs (2) or (3) of Article 47 or an examiner considers that the amendment has caused a new ground for rejection (except an amendment to delete a claim among amendments under 47(3)(i) or (iv)), the examiner must reject the amendment by decision. However, where there is a request for reexamination under Article 67*bis*, this paragraph shall not apply when the amendment is made before the request.

(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 a final rejection of patent under Article 132*ter*, when the final rejection is the issue of the appeal (except, when a request for retrial under Article 67*bis* is made, a final rejection made before the request).

## **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 one of the periods provided below: (i) the amendment period prescribed under Article 47(1);

(ii) the period for requesting a trial under Article 132<sup>ter</sup> after the applicant received a copy of the final rejection of patent.

(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 Knowledge Economy:

(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 based on the invention 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 applicant has the right to obtain a patent or utility model registration for the invention, except:

(i) where the patent application 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

(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) A patent application that contains a priority claim under paragraph (1) is considered to have been filed when the earlier application was filed when Articles 29(1) or (2), and (3) (main sentence), 30(1), 36(1) to (3), 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, Article 7(3) to (4) and 25 of the Utility Model Act or Articles 45 and 52(3) are applied to an invention that is same to an invention 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. .

(4) For an invention described in the description or drawing(s) originally attached to a patent application containing a priority claim under paragraph (1) that is same as an invention disclosed in the description or drawing(s) originally attached to an earlier application that is the basis for claiming a priority right is considered to have been laid open for public inspection with regard to the earlier application at the time when the application is laid open for public inspection or the patent right registration is laid open for public inspection and the main sentence of Article 29(3) of this Act and the main sentence of Article 4(3) of the Utility Model Act shall apply.

(5) Paragraphs (3) and (4) of this Article shall not apply to an invention, among inventions described in a description or drawing(s) originally attached to an earlier application, described in a description or drawing(s) and disclosed at the filing of a patent application that forms the basis of priority claim with regard to an earlier application, where:

(i) the earlier application contains a priority claims under paragraph (1); or

(ii) the earlier application contains a priority claim under Article 4D(1) of the Paris Convention for the Protection of Industrial Property.

(6) In applying paragraph (4), “an invention or device described in the description, claim(s) or drawing(s) of both the international application as of the international filing date and its translated version” in Article 29(4) reads "an invention or device described in the description, claim(s) or drawing(s) of the international application as of the international filing date,” where:

(i) the earlier application is an international application that is considered a patent application in accordance with Article 199(1) (including an international application that becomes a patent application in accordance with Article 214(4)); or

(ii) the earlier application is an international application that is considered a utility model application in accordance with Article 34(10) of the Utility Model Act (including an international application that becomes a utility model application in accordance with Article 40(4) of the Utility Model Act).

(7) A person who claims the right of priority who complies with the requirements under paragraph (1) 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, or 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 examination of a patent application(including an international search or international preliminary examination), 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 Knowledge Economy.

#### **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;
- (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**

(1) 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 shall not apply if the examiner intends to make a decision of rejection under Article 51(1) (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 the claim.

### **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 shall 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 Knowledge Economy, 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 shall 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 66bis Amendment *Ex Officio***

(1) When making a decision on granting a patent, an examiner may amend *ex officio* a matter in the description, drawing(s) or abstract attached to an application that is clearly erroneous. ("amendment *ex officio*").

(2) When the examiner intends to make an amendment *ex officio* according to paragraph (1), the examiner shall deliver and notify the applicant of the matter to be amended *ex officio* along with the decision to grant a patent under Article 67(2).

(3) If the applicant cannot accept a part or whole of the matter amended *ex officio*, the applicant shall submit a written opinion on the amendment *ex officio* to the Commissioner of the Korean Intellectual Property Office by the time for paying patent fees under Article 79(1).

(4) If the applicant submits a written opinion under paragraph (3), the relevant part or whole of the matter amended *ex officio* shall be deemed not to have been amended.

(5) When an amendment *ex officio* has been made to a matter that is not clearly erroneous, the amendment *ex officio* is deemed not to have been made.

## **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 67bis Request for Reexamination**

- (1) Within 30 days (or where the period under Article 132<sup>ter</sup> is extended according to Article 15(1), within the period) from the date of receiving a copy of the decision of rejecting a patent application, the applicant may amend the description or drawing(s) attached to the application and request for reexamination of the application. However, this paragraph shall not apply when a decision to reject is made after reexamination or there is a request for a trial under Article 132<sup>ter</sup>.
- (2) When there is a request for reexamination according to paragraph (2), a decision to reject the application made prior to the request shall be deemed to have been revoked.
- (3) A request for reexamination under paragraph (1) may not be withdrawn.

## **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 person who seeking to register a patent right under Article 87(1) shall pay a patent fee for a period of three years from the date sought for registration (hereinafter “registration date”), and a patentee shall pay an annual patent fee from the next year of the three year period on the registration date of the patent.
- (2) Notwithstanding paragraph (1), a patentee may pay the patent fee for multiple years in the order of or the entire patent term.
- (3) The patent fees, method of payment, period for payment and other necessary matters under paragraph (1) and (2) are prescribed by ordinance of the Ministry of Knowledge Economy.

#### **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(3)(~~2~~) to pay the late patent fees.

(2) Where the patentee or person seeking to register a patent right pays patent fees ~~are paid~~ late under paragraph (1), the patentee or person must pay an amount prescribed by ordinance of the Ministry of Knowledge Economy, but not more than twice the patent fees.

(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 next day of the expiry date of the period for the patent fees paid under Article 79(1) or (2).

#### **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(3)(~~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 prescribed by ordinance of the Ministry of Knowledge Economy, but not more than twice the patent fees 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(3)(~~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*ter* 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*bis*(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 continuously existed(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*bis*(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 Knowledge Economy.

### **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 Knowledge Economy 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 Knowledge Economy 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 Knowledge Economy 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 reissue 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 Knowledge Economy (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. However, after receiving a notification of the reason for rejection that Article 93 applies *mutatis mutandis*, the applicant may only make amendment during the period for submitting a response to the notice of rejection.

#### **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 Invalidity 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 invalidity 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 invalidity trial of an invalidated patent right or utility model right, has been granted an exclusive license, 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) 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 shall 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 nonexclusive 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 licensee, 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 132<sup>bis</sup> 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 132<sup>ter</sup> 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 136(1) 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 petitioner 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) shall 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) where:

- (i) the patentee wants to narrow the scope of a claim;
- (ii) the patentee wants to correct an erroneously stated matter;
- (iii) the patentee wants to

~~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 subparagraph (1)(i) ~~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) Corrections under subparagraph (1)(i) ~~Article 47(3)(i) and~~ or (ii) can only be made when the matters in the claims of the patent after the intended correction are patentable at the time of filing.

(5) Where a trial examiner considers that a request for a trial for correction under paragraph (1) does not fall under any subparagraph of paragraph (1) ~~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 136(1) ~~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 136(1) 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 shall not apply in any of the following circumstances;

(i) where a correction (including addition of a matter) is made to correct the matters under subparagraph (1)(i) of the patentee among parties;

(ii) where the grounds for requesting a trial under paragraph (1)(iii) have changed; or

(iii) 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 140*bis* Formal Requirements of a Request for a Trial on a Decision to Refuse or Revoke a Patent**

(1) Notwithstanding Article 140(1), a person who requests a trial against a decision to refuse a patent under Article 132*ter* 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.

(2) Where a request for a trial is amended under paragraph (1), the intent or purpose of the request may not be amended. However, it may be amended where:

(i) an amendment (including addition of new matter) is made to correct a statement under subparagraph (1)(i) by the petitioner; or

(ii) the reason for the request under subparagraph (1)(vi) is 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<sup>ter</sup> 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) and (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) or (iii)" read "Article 47(1)(ii)", and "an amendment" reads "an amendment (except 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) 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**

Articles 147(1) and (2), 155 and 156 shall 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.

#### **Articles 173 to 175**

Deleted (amended 2009. 1. 30.)

#### **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) shall 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 nonexclusive 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 Knowledge Economy.

## **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 Knowledge Economy.

(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 Knowledge Economy.

## **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 shall 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 Knowledge Economy. If the instructed applicant under paragraph (3) does not furnish the drawing(s) within the period prescribed by ordinance of the Ministry of Knowledge Economy, 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 Knowledge Economy.

#### **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 Knowledge Economy, 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 Knowledge Economy.

(2) If part of a fee has not been paid within the period prescribed by ordinance of the Ministry of Knowledge Economy, 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 Knowledge Economy.

(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 Knowledge Economy.

#### **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 Knowledge Economy.

## **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 shall 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 Knowledge Economy.

### **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) shall 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) shall 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) Where an earlier application is an international patent application or international utility model application under Article 34(2) of the Utility Model Act, the following provisions shall apply when Article 55(1), (3), (4) or (5) or Article 56(1) are applied:

(i) "Description or drawing(s) originally attached to the application" in the main paragraph of Article 55(1), (3) and (5) reads "description, claim(s) or drawing(s) of an international application submitted on the international filing date."

(ii) "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 submitted on the international filing date of the earlier application", and "laying open of the earlier application" reads "international publication of the earlier application under Article 21 of the PCT."



(4) Where the earlier application under Article 55(1) is an international 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, the following subparagraphs apply when Article 55(1), (3), (4), or (5) or Article 56(1) are applied:

(i) “Description or drawing(s) originally attached to the application” in Article 55(1), (3) and (5) reads “description, claim(s) or drawing(s) of an international application as of the date that could have been regarded as an international filing date under Article 214(4) of this Act or Article 40(4) of the Utility Model Act.”

(ii) “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 of the earlier application as of the date that could have been regarded as an international filing date under Article 214(4) of this Act or Article 40(4) of the Utility Model Act.”

(iii) “When more than one year and three months have elapsed after the filing date” in Article 56(1) reads “when more than one year and three months have elapsed from the date that could have been 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 a decision is made under Article 214(4) of this Act or Article 40(4) of the Utility Model Act, whichever is later.”

### **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 same applies to below of this Article and Article 205.) the applicant must submit to the Commissioner of the Korean Intellectual Property Office one of the following:

- (i) in case of an international patent application filed in a foreign language, a Korean translation of the amendment; or
- (ii) in case of an international patent application filed in Korean, a copy of the amendment.

(2) Where a translation or copy of the amendment is submitted under paragraph (1), the scope of claim(s) under Article 47(1) is deemed to have been amended according to the translation or copy of the amendment. However, when an amendment is delivered to the Korean Intellectual Property Office until the relevant date according to Article 30 of the Patent Cooperation Treaty, the scope of claim(s) is deemed to have been amended according to the amendment.

(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, the applicant shall submit to the Commissioner of the Korean Intellectual Property Office one of the following document until the relevant date:

- (i) in case of an international patent application filed in a foreign language, a Korean translation of the statement; or
- (ii) in case of an international patent application filed in Korean, a copy of the statement.

(4) Where an applicant of an international patent application does not complete the procedure under paragraphs (1) or (3) before the relevant date, an amendment or statement under Article 19(1) of the Patent Cooperation Treaty is deemed to not have been submitted. However, in case of an international patent application filed in Korean, the same shall not apply where an amendment or statement is delivered to the Korean Intellectual Property Office until the relevant date according to Article 20 of the Patent Cooperation Treaty.

#### **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 to the Commissioner of the Korean Intellectual Property Office until the relevant date one of the following:

- (i) in case of an international patent application filed in a foreign language, a Korean translation of the amendment; or
- (ii) in case of an international patent application filed in Korean, a copy of the amendment.

(2) Where a translation or copy of an amendment is submitted under paragraph (1), the description and drawing(s) under Article 47(1) are deemed to have been amended according to the translation or copy. However, when an amendment (only where the application is an international application filed in Korean) is delivered to the Korean Intellectual Property Office by the relevant date according to Article 36(3)(a) of the Patent Cooperation Treaty, the description and drawing(s) are deemed to be amended according to the amendment.

(3) Where an applicant of an international patent application has not completed the procedure under paragraph (1) by the relevant date, the amendment under Article 34(2)(b) of the Patent Cooperation Treaty is deemed not to have been submitted. However, the amendment is deemed to have been submitted when the amendment (only where the application is an international application filed in Korean) is delivered to the Korean Intellectual Property Office by the relevant date according to Article 36(3)(a) of the Patent Cooperation Treaty.

#### **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 Knowledge Economy.

(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, "more than one year and six months after the date prescribed in any of the following subparagraphs" in Article 64(1) is deemed "when the domestic period for submitting documents has elapsed (where the applicant made a request for examination within the domestic period for submitting documents and where the international application has been domestically laid open according to Article 21 of the Patent Cooperation Treaty, the time shall be more than one year and six months after the priority date or the date of request for examination, whichever is later)."

(2) Notwithstanding paragraph (1), with regard to an international application filed in the Korean language, when the international application is laid open according to Article 21 of the Patent Cooperation Treaty before the international application is laid open according to paragraph (1), the international application is deemed to have been laid open at the time of the laying open according to Article 21 of the Patent Cooperation Treaty.

(3) 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 may be made unless all of the following subparagraphs are satisfied:

- (i) the fees prescribed under Article 82(1) have been paid;
- (ii) a translation of the application (except for an international patent application made in the Korean language) under Article 201(1) has been submitted; and

(iii) 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) An applicant of an international application may request the Commissioner of the Korean Intellectual Property Office as provided by ordinance of the Ministry of Knowledge Economy to make the decision referred to in Article 25(2)(a) of the Treaty within the period prescribed by the ordinance, if the international application (pertaining exclusively to a patent application) in which the Republic of Korea is a designated State referred to in Article 4(1)(ii) of the Patent Cooperation Treaty applies to any of the following:

- (i) 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;
- (ii) where the receiving office referred to in Article 2(xv) of the Patent Cooperation Treaty has made a declaration referred to in Article 25(1)(a) or (b) of the Treaty; or
- (iii) the International Bureau has made a finding referred to in Article 25(1)(a) of the Treaty on an international patent application.

(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 Knowledge Economy.

(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 considered 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 Knowledge Economy.

## **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 registered 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 Knowledge Economy 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 Knowledge Economy 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 Knowledge Economy.

(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 Knowledge Economy 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 Knowledge Economy.

(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 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 (including an invention disclosed in an international application) to which they had access during the course of their duties are liable to imprisonment with labor not exceeding five years or to a fine not exceeding 50 million won.

### **Article 226bis Officers and Employees of Special Searching Agency as Public Officials and Irrefutable Presumption**

When applying Article 226, 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 227 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 228 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 229 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 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), 228 or 229 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 228 or 229, a fine not exceeding 60 million won.

However, this provision shall not apply where the legal or natural person exercised reasonable care and supervision with regard to the business to prevent the acts of violation.

#### **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 Knowledge Economy".

<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 shall 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 shall 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 shall 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<sup>ter</sup>, 140<sup>bis</sup>, 164(1), 170, 171(2), 172, 176(1) and (2), 224<sup>bis</sup> 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 Knowledge Economy.

(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* 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, 7*bis*, 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, 58*bis*, 59*ter*, 62, 63*bis*, 64, 87(2), 88(4) and 102(4), which are related to the Utility Model Act; the amendments to Articles 104(1), 133(1), 133*bis*(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 229*bis*; 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, 78*bis*, 84(1), 132*ter*, 136(1), 136(6), 137(1), 140*bis*, 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), 217*bis*(1) and 217*bis*(2), which are related to an opposition to a patent; the amendments to Article 224*bis*(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.