

Trademark Law

(Law No. 127 of April 13, 1959, as amended)*

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* By Law No. 140 of 1962, Law No. 161 of 1962, Law No. 148 of 1964, Law No. 81 of 1965, Law No. 91 of 1970, Law No. 46 of 1975, Law No. 27 of 1978, Law No. 89 of 1978, Law No. 45 of 1981, Law No. 23 of 1984, Law No. 24 of 1984, Law No. 41 of 1985, Law No. 27 of 1987, Law No. 30 of 1990, Law No. 65 of 1991, Law No. 26 of 1993, Law No. 89 of 1993, Law No. 116 of 1994, Law No. 68 of 1996, Law No. 51 of 1998, Law No. 41 of 1999, Law No. 43 of 1999, Law No. 160 of 1999, Law No. 220 of 1999, Law No. 24 of 2002 and Law No. 47 of 2003.

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Trademark Law

Chapter I — General Provisions

(Purpose)

1. — The purpose of this Law shall be to ensure the maintenance of the business reputation of persons using trademarks by protecting trademarks, and thereby to contribute to the development of industry and to protect the interests of consumers.

(Definitions, etc.)

2. — (1) “Trademark” in this Law means characters, figures, signs, three-dimensional shapes or any combination thereof, or any combination thereof and colors (hereinafter referred to as a “mark”):

(i) which are used in respect of goods by a person who produces, certifies or assigns such goods in the course of trade;

(ii) which are used in respect of services by a person who provides or certifies such services in the course of trade (other than as in (i) above).

(2) “Registered trademark” in this Law means a trademark for which a trademark registration has been effected.

(3) “Use” with respect to a mark in this Law means any of the following acts:

(i) acts of applying the mark on the goods or their packaging;

(ii) acts of assigning, delivering, displaying for the purpose of assignment or delivery, importing or providing through electric telecommunication lines, the goods on which or on the packaging of which a mark has been applied;

(iii) acts of applying a mark to articles for use by persons to whom the services are provided (including articles assigned or leased — hereinafter the same) when providing services;

(iv) acts of providing services by use of articles to which a mark has been applied for use by persons to whom the services are provided when providing services;

(v) acts of displaying, for the purpose of providing services, articles to which a mark has been applied and supplied for use in the provision of services (including articles for use by persons to whom the services are provided when providing services — hereinafter the same);

(vi) acts of applying a mark to articles related to the provision of such services belonging to persons to whom the services are provided when providing services;

(vii) acts of providing services through an image viewer by electromagnetic means (that is, electronic or magnetic method or other method which is not perceptible by human being — the same in the next paragraph.), on which a mark is indicated, when providing services through the image viewers;

(viii) acts of displaying or distributing advertisements, price lists or business papers relating to the goods or services or offering them with the information pertaining thereto on which the mark is indicated by electromagnetic means.

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(4) Acts of applying a mark to goods or other articles to which a mark is applied as prescribed in the preceding subsection shall include acts of having goods or their packaging, articles that are supplied for use in the provision of services and advertisements relating to goods or services shaped into a mark.

(5) In this law, it shall be premised that there may exist services in the scope of similarities of goods and there may exist goods in the scope of similarities of services.

Chapter II — Trademark Registration and Applications Therefor

(Registrability of trademarks)

3. — (1) Any person may obtain a trademark registration of a trademark to be used in respect of goods or services in connection with his business, except in the case of the following trademarks:

(i) trademarks which consist solely of a mark indicating, in a common way, the common name of the goods or services;

(ii) trademarks which are customarily used in respect of the goods or services;

(iii) trademarks which consist solely of a mark indicating in a common way, the origin, place of sale, quality, raw materials, efficacy, use, quantity, shape (including packaging shape) or price of the goods, or the method or time of manufacturing or using them; or the location of provision of the services, quality, articles for use in such provision, efficacy, use, quantity, modes, price or method or time of the provision of services;

(iv) trademarks which consist solely of a mark indicating, in a common way, a commonplace surname or name of a legal entity;

(v) trademarks which consist solely of a very simple and commonplace mark;

(vi) in addition to those mentioned in each of the preceding paragraphs, trademarks which do not enable consumers to recognize the goods or services as being connected with a certain person's business.

(2) In the case of a trademark falling under paragraphs (iii) to (v) of the preceding subsection, where, as a result of the use of such trademarks, the consumers are able to recognize the goods or services as being connected with a certain person's business, trademark registration may be obtained notwithstanding the preceding subsection.

(Unregistrable trademarks)

4. — (1) Notwithstanding Section 3, trademark registration shall not be effected in the case of the following trademarks:

(i) trademarks which are identical with, or similar to, the national flag, the imperial chrysanthemum crest, a decoration, a medal of merit, or a foreign national flag;

(ii) trademarks which are identical with or similar to, a State coat of arms or other emblem (other than a national flag) of a country party to the Paris Convention (meaning the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958 and at Stockholm on July 14, 1967 — hereinafter referred to as "the Paris Convention"), a Member of the World Trade Organization or a contracting party to the Trademark Law Treaty which have been designated by the Minister of Economy, Trade and Industry;

(iii) trademarks which are identical with, or similar to, a mark indicating the United Nations or any other international organization and designated by the Minister of Economy, Trade and Industry;

(iv) trademarks which are identical with, or similar to, the Red Cross ensign on a white ground or the title Red Cross or Geneva Cross;

(v) trademarks comprising a mark identical with, or similar to, an official seal or sign which indicates supervision or certification by the Government of Japan or by the Government of a country party to the Paris Convention or a Member of the World Trade Organization or a contracting party to the Trademark Law Treaty, or by a local public entity and which has been designated by the Minister of Economy, Trade and Industry, which are used on goods or services identical with, or similar to, the goods or services in respect of which such seal or sign is used;

(vi) trademarks which are identical with, or similar to, a famous mark indicating a State or a local public entity or an agency thereof or a non-profit organization or enterprise working in the public interest;

(vii) trademarks liable to contravene public order or morality;

(viii) trademarks containing the portrait of another person or the name, famous pseudonym, professional name or pen name of another person or the famous abbreviation thereof (except where the consent of the person concerned has been obtained);

(ix) trademarks comprising a mark which is identical with, or similar to, a prize awarded at an exhibition held by the Government or a local public entity (hereinafter referred to as the “Government, etc.”) or at one which is not held by the Government, etc. but has been designated by the Commissioner of the Patent Office or at an international exhibition held in a foreign country by its government, etc. or a person authorized thereby (except where the recipient of such a prize uses the mark as part of his trademark);

(x) trademarks which are well known among consumers as indicating the goods or services as being connected with another person’s business, and trademarks similar thereto, and which are used in respect of such goods or services or similar goods or services;

(xi) trademarks which are identical with, or similar to, another person’s registered trademark applied for prior to the filing date of the trademark application concerned and which are used on the designated goods or designated services [meaning the goods or services designated in accordance with Section 6(1) (including its application under Section 68(1)) — hereinafter referred to as “the designated goods or designated services”] covered by the trademark registration referred to or on similar goods or services;

(xii) trademarks which are identical with another person’s registered defensive mark (meaning a mark registered as a defensive mark — hereinafter referred to as a “registered defensive mark”), or with a trademark similar to such a trademark, and which are used on the designated goods or designated services covered by the defensive mark registration;

(xiii) trademarks which are identical with another person’s trademark (other than a trademark which had not been used by that person during a period of at least one year prior to the day on which the trademark right became extinguished) where one year has not elapsed since the date of extinguishment of the trademark right (or the date on which a ruling that a trademark registration is to be revoked or a trial decision that a trademark registration is to be invalidated becomes final and conclusive — hereinafter referred to as the “date of extinguishment of the trademark right”), or with a trademark similar to such a trademark, and which are used in respect of the designated goods or designated services covered by the trademark right or in respect of similar goods or services;

(xiv) trademarks which are identical with, or similar to, the name of a variety registered under Section 18(1) of the Agricultural Seed and Seedlings Law (Law No. 83 to 1998), and which are used on the seeds or seedlings of the variety concerned or in respect of similar goods or services;

(xv) trademarks which are liable to cause confusion with goods or services connected with another person's business (other than the trademarks mentioned in paragraphs (x) to (xiv));

(xvi) trademarks liable to be misleading as to the quality of the goods or services;

(xvii) trademarks comprising a mark indicating an origin of wines or spirits in Japan which has been designated by the Commissioner of the Patent Office or a mark indicating an origin of wines or spirits in a Member of the World Trade Organization prohibited to be used on wines or spirits not originating in the region in that member, which are used in respect to wines or spirits not originating in the region in Japan or that member;

(xviii) trademarks consisting solely of a three-dimensional shape of goods or their packaging with the shape being indispensable to secure the functions of the goods or their packaging;

(xix) trademarks which are well known among consumers in Japan or abroad as indicating the goods or services as being connected with another person's business, and trademarks identical with or similar thereto, and which are used by the applicant for unfair intention (intention to gain an unfair profit, intention to cause damage to such another person and other unfair intentions — hereinafter the same) (other than the trademarks mentioned in each of the preceding paragraphs) in respect of such goods or services.

(2) Where registration of a trademark falling under paragraph (vi) of the preceding subsection is applied for by the State, a local public entity or an agency thereof or a non-profit organization working in the public interest or a person carrying on a non-profit enterprise working in the public interest, the said paragraph shall not apply.

(3) In the case of a trademark falling under subsection (1)(viii), (x), (xv), (xvii) or (xix), the respective provisions shall not apply where the trademark does not fall under the respective paragraph at the time when the trademark application is filed.

(4) Where a trial decision that a trademark registration is to be canceled under Section 53^{bis}(53-2) has become final and conclusive and the demandant in the trial applies for registration of the trademark covered by the registration canceled by the trial decision, or a trademark similar thereto, subsection (1)(xiii) shall not apply.

(Applications for trademark registration)

5. — (1) Any person desiring a trademark registration shall submit a request to the Commissioner of the Patent Office together with any necessary document; the request shall state the following:

(i) the name and the domicile or residence of the applicant for trademark registration;

(ii) the trademark for which registration is sought;

(iii) the designated goods or designated services and the class of goods or services as prescribed by Cabinet Order referred to in Section 6(2).

(2) Where a person desires a trademark registration with respect of a trademark consisting of three-dimensional shapes (including their combination with characters, figures, signs or

colors or any combination thereof, hereinafter referred to as “three dimensional trademark”), the request shall contain a statement to that effect.

(3) Where a person desires a trademark registration with respect of a trademark consisting of characters designated by the Commissioner of the Patent Office (hereinafter referred to as “standard characters”), the request shall contain a statement to that effect.

(4) In the portion of the statement of the trademark for which the registration is sought, any part which is in the same color as a section for a trademark to be stated shall be deemed not to form part of the trademark. However, this provision shall not apply where an area to be colored is specified and it is stated on the sheets that the color to be applied is the same as that of the section.

(According of the filing date, etc.)

5^{bis}(5-2). — (1) The Commissioner of the Patent Office shall decide to accord as the date of a trademark application the date of submission of the request with respect to the trademark application unless the application falls under any of the following paragraphs:

- (i) the indication that a trademark registration is sought is not clear;
- (ii) the name of the applicant is not stated, or the statement is not considered sufficient to the extent to enable the identification of the applicant;
- (iii) a trademark for which the registration is sought is not stated; or
- (iv) designated goods or designated services are not stated.

(2) Where the trademark application falls under any of the paragraphs of the preceding subsection, the Commissioner of the Patent Office shall invite the applicant to make the required correction in writing, designating an adequate time limit.

(3) Correction to a trademark application shall be effected by filing a correction in writing with respect to the correction (hereinafter referred to as a “correction in writing”).

(4) The Commissioner of the Patent Office shall decide to accord as the date of the trademark application the date of submission of the correction in writing when the person whom he has invited to make the correction under subsection (2) has complied with the invitation within the time limit designated in accordance with that subsection.

(5) The Commissioner of the Patent Office may dismiss the trademark application when a person whom he has invited to make the correction in accordance with subsection (2) fails to do so within the time limit designated in accordance with that subsection.

(Unity in application)

6. — (1) An application for trademark registration shall relate to a single trademark and shall designate one or more items of goods or services in respect of which the trademark is to be used.

(2) A designation under the preceding paragraph shall be made according to the classes of the classification of goods and services, prescribed by Cabinet Order.

(3) The classes of goods and services referred to in the preceding subsection shall not be determinative of the scope of similarity of goods or services.

(Collective trademarks)

7. — (1) Aggregate corporation established under the provision of Section 34 of the Civil Code (Law No. 89 of 1896) or industrial business corporative association and other associations established under the special law (excluding those which are not legal entities), or foreign legal entities corresponding thereto shall be entitled to obtain a collective trademark registration with respect of a trademark for use by their members.

(2) For the purposes of the provision of Section 3(1), “his business” in that section shall read “their members’ or their own business”.

(3) Any person desiring the registration of a collective trademark under subsection (1) shall submit to the Commissioner of the Patent Office with respect to a trademark application under Section 5(1) a document proving that the applicant is a legal entity referred to subsection (1).

(First-to-file rule)

8. — (1) Where two or more trademark applications relating to identical or similar trademarks which are to be used on identical or similar goods or services are filed on different dates, only the earliest applicant may obtain a trademark registration for the trademark concerned.

(2) Where two or more trademark applications relating to identical or similar trademarks which are to be used on identical or similar goods or services are filed on the same date, only one applicant, agreed upon after mutual consultation among all the applicants, may obtain a trademark registration for the trademark.

(3) Where a trademark application is abandoned, withdrawn or dismissed or where an examiner’s decision or trial decision on a trademark application has become final and conclusive, such application shall, for the purposes of the preceding two subsections, be deemed never to have been made.

(4) The Commissioner of the Patent Office shall, in the case of subsection (2), order the applicants to hold consultations for an agreement under that subsection and to report the result thereof, within an adequate time limit.

(5) Where no agreement is reached in the consultations under subsection (2) or where the report under the preceding subsection is not made within the time limit designated in accordance with that subsection, registration of the trademark concerned may be obtained only by one applicant chosen by the drawing of lots conducted in a fair and just manner by the Commissioner of the Patent Office.

(Special provisions for time of filing of application)

9. — (1) In the case of a trademark used in respect of goods exhibited or services offered at an exhibition held by the Government, etc. — or at one which is not held by the Government,

etc. but has been designated by the Commissioner of the Patent Office, or at an international exhibition held by the Government, etc. or a person authorized thereby in the territory of a country party to the Paris Convention or a Member of the World Trade Organization or a contracting party to the Trademark Law Treaty, or at an international exhibition held by the Government, etc. or a person authorized thereby in the territory of a country which is neither a party to the Paris Convention nor a Member of the World Trade Organization or a country party to the Trademark Law Treaty, but which has been designated by the Commissioner of the Patent Office —, provided that the person who exhibited the said goods offered the said services has applied for trademark registration, designating those goods or services, within six months from the date when they were exhibited or offered, the trademark application shall be deemed to have been filed at the time when the goods were exhibited or the services were offered.

(2) Any person who desires the application of the preceding subsection with respect to a trademark in a trademark application shall submit a written statement to that effect to the Commissioner of the Patent Office simultaneously with the trademark application. Within 30 days from the filing of the trademark application, he shall also submit to the Commissioner of the Patent Office a document proving that the trademark and the goods or services in the trademark application are a trademark and goods or services falling under the said subsection.

(Priority claim declared as governed by the Paris Convention)

9^{bis}(9-2). — A priority claim based on an application for trademark registration (limited to a trademark equivalent to that defined in Section 2(1)(ii)) filed in or for a country party to the Paris Convention may be declared as governed by the provisions in Article 4 of the Paris Convention for a priority claim based on the application for trademark registration of the trademark equivalent to that defined in Section 2(1)(i).

9^{ter}(9-3). — A priority claim based on an application which a person specified in the left-hand column of the following table has filed in or for any country specified in the right-hand column of the following table may be declared as governed by the provision in Article 4 of the Paris Convention:

Japanese nationals or nationals of a country party to the Paris Convention (including nationals deemed to be the nationals of the country party in accordance with Article 3 of the Paris Convention).	Member of the World Trade Organization or a contracting party to the Trademark Law Treaty.
Nationals of a Member of the World Trade Organization (meaning nationals of Members provided for in paragraph 3 of Article 1 of the Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization) or nationals of a contracting party to the Trademark Law Treaty.	Country party to the Paris Convention, Member of the World Trade Organization or a contracting party to the Trademark Law Treaty.

(Amendment of designated goods, etc. or the trademark for which trademark registration is sought and change of gist)

9^{quater}(9.4). — Where, after registration of the establishment of the trademark right, it is found that an amendment of the designated goods or designated services stated in the request or the trademark for which registration is sought made, has changed the gist thereof, the trademark application shall be deemed to have been filed at the time when the amendment in writing was submitted.

(Division of trademark applications)

10. — (1) An applicant for trademark registration may divide a part of his application for trademark registration designating two or more items of goods or services as designated goods or designated services into one or more new trademark applications provided that the trademark application is pending in examination, trial examination or retrial examination or that a suit against a trial decision to refuse the trademark application is pending in court.

(2) Where a trademark application has been divided under the preceding subsection, the new trademark application shall be deemed to have been filed at the time of filing of the original application. However, this provision shall not apply for the purposes of Section 9(2) of this Law and Section 43(1) and (2) of the Patent Law (Law No. 121 of 1959) as applied under Section 13(1) of this Law (including its application under Section 43^{bis}(43-2)(3) of the Patent Law as applied under Section 13(1) of this Law).

(3) Where the new application for trademark registration under subsection (1) is filed, any statements or documents which have been submitted with respect to the original application for trademark registration and which shall be submitted with respect to the new application for trademark registration in accordance with Section 9(2) of this Law or Section 43(1) and (2) of the Patent Law as applied under Section 13(1) of this Law (including its application under Section 43^{bis}(43-2)(3) of the Patent Law as applied under Section 13(1) of this Law), shall be deemed to have been submitted to the Commissioner of the Patent Office simultaneously with the said new application for trademark registration.

(Conversion of applications)

11. — (1) An applicant may convert his application for registration of a collective trademark into an application for registration of an individual trademark (meaning a trademark application other than an application for registration of a collective trademark — hereinafter referred to as an “application for registration of an individual trademark”).

(2) An applicant may convert his application for registration of an individual trademark into an application for registration of a collective trademark.

(3) A trademark application may not be converted under the preceding two subsections after the examiner’s decision or the trial decision with respect to the application has become final and conclusive.

(4) Where the conversion of a trademark application under subsection (1) or (2) has been made, the original trademark application shall be deemed to have been withdrawn.

(5) Section 10(2) and (3) shall apply mutatis mutandis to the conversion of a trademark application under subsection (1) or (2).

12. — (1) An applicant may convert his application for registration of a defensive mark into an application for trademark registration.

(2) An application may not be converted under the preceding subsection after the examiner's decision or the trial decision with respect to the application for registration of a defensive mark has become final and conclusive.

(3) Sections 10(2) and (3) and 11(4) shall apply mutatis mutandis to the conversion of an application under subsection (1).

(Publication of applications)

12^{bis}(12-2). — (1) When a trademark application has been filed, the Commissioner of the Patent Office shall publish the application.

(2) The publication of the application for trademark registration shall be effected by publishing the following particulars in the Trademark Gazette (Shohyo Koho). However, this provision shall not apply to the particulars referred to in paragraphs (iii) and (iv) where the Commissioner of the Patent Office recognizes that the publication of those particulars in the Trademark Gazette is liable to contravene public order or morality:

- (i) the name and the domicile or residence of the applicant for trademark registration;
- (ii) the number and date of the application for trademark registration;
- (iii) the contents of the trademark stated in the request (represented in the standard characters as applicable under Sections 5(3), hereinafter referred to in Sections 18(3)(iii) and 27(1) as “the trademark stated in the request”);
- (iv) the designated goods or designated services;
- (v) other necessary particulars.

(Application mutatis mutandis of Patent Law)

13. — (1) Sections 43(1) to (4) and 43^{bis}(43-2)(2) and (3) of the Patent Law shall apply mutatis mutandis to trademark applications. In such a case, “within one year and four months from the earliest date among the dates given in each of the following paragraphs” in Section 43(2) of the Patent Law shall read “within three months from the filing date of the trademark application” and “or a Member of the World Trade Organization” in Section 43^{bis}(43-2)(2) of the Patent Law shall read “a Member of the World Trade Organization or a contracting party to the Trademark Law Treaty”, “the nation of a Member of the World Trade Organization” in the same paragraph shall read “the nation of a Member of the World Trade Organization or the nation of a contracting party to the Trademark Law Treaty” and “subsection (1) or (2)” in Section 43^{bis}(43-2)(3) of the Patent Law shall read “subsection (1)”.

(2) Sections 33 and 34(4) to (7) of the Patent Law shall apply mutatis mutandis to the rights deriving from a trademark application.

(Money claim, etc. prior to registration of establishment of trademark right)

13^{bis}(13-2). — (1) Where any applicant for trademark registration has, after filing of his application, give a warning by showing documents bearing the contents relating to the said application, he may claim, against person who has used the trademark in his application with respect to the designated goods or designated services in his application, the payment of money equivalent to his business loss caused by such use made after the warning and before the registration of the establishment of the trademark right concerning the designated goods or designated services relating to the said application.

(2) The right under the preceding subsection may not be exercised until after the establishment of the trademark right is registered.

(3) The exercise of the right under subsection (1) shall not preclude the exercise of the trademark right.

(4) Where a trademark application has been abandoned, withdrawn or dismissed, or where the examiner's decision or a trial decision that the trademark application is to be refused has become final and conclusive, or where the ruling to revoke the trademark registration under Section 43^{ter}(43-3)(2) has become final and conclusive, or where, with exception of the cases coming within the proviso to Section 46^{bis}(46-2)(1), a trial decision that the trademark registration is to be invalidated has become final and conclusive, the right under subsection(1) shall be deemed never to have arisen.

(5) Sections 27 and 37 of this Law and Sections 105, 105^{bis}(105-2) and 106 of the Patent Law as applied under Section 39 of this Law, and Sections 719 and 724(tort) of the Civil Code shall apply mutatis mutandis to the exercise of the right under subsection (1). In such a case, where a person having the right to claim has become aware, before the registration of the establishment of the trademark right, of the fact of the use of the trademark relating to the said trademark application and of the person using the trademark, "the time when the injured party or his legal representative became aware of such damage and of the person causing it" in Section 724 of the said Code shall read "the date of the registration of the establishment of the patent right".

Chapter III — The Examination

(Examination by examiner)

14. — The Commissioner of the Patent Office shall have an application for trademark registration examined by an examiner.

(Examiner's decision of refusal)

15. — The examiner shall make a decision that a trademark application is to be refused where it falls under any of the following paragraphs:

(i) the trademark in the trademark application is not registrable in accordance with Section 3, 4(1), 8(2) or (5), 51(2) (including its application under Section 52^{bis}(52-2)(2)) or 53(2) of this Law of Section 25 of the Patent Law as applied under Section 77(3) of this Law;

(ii) the trademark in the trademark application is not registrable in accordance with a treaty;

(iii) the trademark application does not comply with Section 6(1) or (2).

(Notification of reasons for refusal)

15^{bis}(15-2). — When the examiner intends to render a decision that an application is to be refused, he shall notify the applicant for the trademark registration of the reasons for refusal and give him an opportunity to submit a statement of his arguments, designating an adequate time limit.

15^{ter}(15-3). — (1) Where a trademark for which the registration is sought in a trademark application is a trademark which are identical with, or similar to, another person's trademark applied for prior to the filing date of the trademark application concerned and which are used on the designated goods or designated services covered by the trademark referred to or on similar goods or services, the examiner may notify the applicant that his trademark application may fall under Section 15(i) if the other party's trademark is registered, and give him an opportunity to submit a statement of his arguments, designating an adequate time limit.

(2) Where a notification referred to in the preceding subsection has been served and the other applicant's trademark is registered, the examiner shall not be required to serve a notification referred to in Section 15^{bis}(15-2).

(Examiner's decision that a trademark is to be registered)

16. — Where the examiner finds no reason for refusing a trademark application within the time limit prescribed by Cabinet Order, he shall render a decision that a trademark is to be registered.

(Declining of amendments)

16^{bis}(16-2). — (1) Where an amendment to the designated goods or designated services stated in the request or the trademark for which registration is sought would change the gist thereof, the examiner shall decline the amendment by a ruling.

(2) The ruling to decline an amendment under the preceding subsection shall be in writing and state the reasons therefor.

(3) Where a ruling to decline an amendment under subsection (1) has been rendered, the examiner's decision with respect to the trademark application shall not be rendered before the expiration of 30 days from the transmittal of that ruling.

(4) Where an applicant has demanded a trial under Section 45(1) against a ruling to decline an amendment under subsection (1), the examiner shall suspend the examination of the trademark application until the trial decision has become final and conclusive.

(Application mutatis mutandis of Patent Law)

17. — Sections 47(2), 48, 52 and 54 of the Patent Law shall apply mutatis mutandis to the examination of trademark applications. In such a case, "the trial decision" in Section 54(1) of the Patent Law shall read "the ruling on the opposition to the registration or the trial decision".

(Application mutatis mutandis of Design Law)

17^{bis}(17-2). — (1) Section 17^{ter}(17-3) of the Design Law (Law No. 125 of 1959) shall apply mutatis mutandis to the case where an amendment is declined by a ruling under Section 16^{bis}(16-2)(1).

(2) Section 17^{quater}(17-4) of the Design Law shall apply mutatis mutandis to the extension of the time limit prescribed in Section 17^{ter}(17-3)(1) as applied under subsection (1) or Section 55^{bis}(55-2)(3) (including its application under Section 60^{bis}(60-2)(2)).

Chapter IV — The Trademark Right

1. *The Trademark Right*

(Registration of establishment of trademark right)

18. — (1) A trademark right shall come into force upon registration of its establishment.

(2) The establishment of a trademark right shall be registered when the registration fee under Section 40(1) or the registration fee due to be paid within 30 days from the date of the transmittal of the examiner's decision or the trial decision that the trademark is to be registered under Section 41^{bis}(41-2)(1) has been paid.

(3) Upon registration under the preceding subsection, the following particulars shall be published in the Trademark Gazette:

- (i) the name and the domicile or residence of the owner of the trademark right;
- (ii) the number and date of the trademark application;
- (iii) the contents of the trademark stated in the request;
- (iv) the designated goods or designated services;
- (v) the registration number and date of the registration of the establishment;
- (vi) other necessary particulars.

(4) During two months after the date of the publication of the Trademark Gazette which states the matter referred to in each paragraph of the preceding subsection (hereinafter referred to as "the Gazette containing the trademark"), the Commissioner of the Patent Office shall make the application files and their attachments available for public inspection in the Patent Office. However, this provision shall not apply to documents or articles liable to injure the reputation or peaceful existence of an individual or documents and articles liable to contravene public order or morality, which the Commissioner of the Patent Office considers it necessary to keep secret.

(5) Where the Commissioner of the Patent Office is to lay open for public inspection documents or articles other than those liable to injure the reputation or peaceful existence of an individual or documents or articles liable to contravene public order or morality, which the Commissioner of the Patent Office considers it necessary to keep secret, the Commissioner shall notify a person who has submitted the documents or articles to that effect with a reason therefor.

(Term of trademark right)

19. — (1) The term of a trademark right shall be ten years from the date of registration of its establishment.

(2) The term of a trademark right may be renewed by a request for registration of renewal.

(3) When renewal of the term of the trademark right has been registered, the term shall be deemed to have been renewed upon expiration of the term.

(Request for registration of renewal of term)

20. — (1) Any person desiring the registration of a renewal of the term of a trademark right shall submit a request for renewal to the Commissioner of the Patent Office stating the following:

- (i) the name and the domicile or residence of the requester;
- (ii) the registration number of the trademark registration;
- (iii) other matters fixed by an ordinance of the Ministry of Economy, Trade and Industry.

(2) A request for registration of renewal shall be made within six months prior to the date of expiration of the term.

(3) Where the owner of a trademark right is unable to make a request for registration of renewal within the time limit prescribed in the preceding subsection, he may make such request belatedly within six months from the expiration of that time limit.

(4) Where a request for registration of renewal is not made within the time limit allowing its owner to make such request under the preceding subsection, the trademark right shall be deemed to have been extinguished retroactively from the time of the expiration of the term.

(Restoration of trademark right)

21. — (1) Where the trademark right is one which was deemed to have been extinguished under Section 20(4) and the owner of the extinguished trademark right is unable to make a request for registration of the renewal within the time limit allowing him to make such request under Section 20(3) due to reasons outside his control, he may make such request within 14 days (where he is a resident abroad, two months) from the date on which the reasons ceased to be applicable but not later than six months following the expiration of the said time limit.

(2) When a request for registration of renewal is made under the preceding subsection, the term shall be deemed to have been renewed retroactively from the time of the expiration of the term.

(Restriction on effects of trademark right restored)

22. — The effects of the trademark right restored under Section 21(2) shall not extend to the following acts after the expiration of the time limit referred to in Section 20(3) for the request for registration of renewal of the term of the trademark right but before the registration is made to the effect that the term has been renewed by the request made under Section 21(1):

- (i) the use of the registered trademark with respect to the designated goods or designated services; and
- (ii) the acts mentioned in each paragraph of Section 37.

(Registration of renewal of term)

23. — (1) When the registration fee under Section 40(2) or the registration fee due to be paid at the time of a request for registration of renewal under Section 41^{bis}(41-2)(2) has been paid, the renewal of the term of the trademark right shall be registered.

(2) Notwithstanding the provision of the preceding subsection, where a request is made for registration of renewal under Section 20(3) or Section 21(1), the registration to the effect that the term of the trademark right has been renewed shall be made when the payment has been made for the registration fee under Section 40(2) and the registration fee with a surcharge under Section 43(1) or the registration fee due to be paid at the time of the request for registration of renewal under Section 41^{bis}(41-2)(2) and the registration fee with a surcharge under Section 43(2).

(3) Upon registration under the preceding two subsections, the following particulars shall be published in the Trademark Gazette:

- (i) the name and the domicile or residence of the owner of a trademark right;
- (ii) the registration number and date of the registration of renewal; and
- (iii) other necessary particulars.

(Division of trademark right)

24. — (1) Where there are two or more items of the designated goods or designated services, a trademark right may be divided into each such item.

(2) The division of a trademark right under the preceding subsection may be, in the case where a trial is demanded with respect to it under Section 46(2), applied for even after the extinguishment of the trademark right only during the pendency of the case in the trial or retrial examination or a litigation.

(Transfer of trademark right)

24^{bis}(24-2). — (1) Where there are two or more items of the designated goods or designated services, a trademark right may be transferred separately for each such item.

(2) A trademark right under a trademark application filed by the State or a local public entity, or an agency thereof, or a non-profit organization working in the public interest, referred to in Section 4(2), may not be assigned.

(3) A trademark right under a trademark application filed by a person carrying on a non-profit enterprise working in the public interest, referred to in Section 4(2), may be transferred only together with the enterprise itself.

(Transfer of collective trademark right)

24^{ter}(24-3). — (1) When a collective trademark right is transferred, the collective trademark shall be deemed to have been converted to an individual trademark right, except as provided in the following subsection.

(2) When the owner of a collective trademark desires to transfer his collective trademark right, he shall submit a statement to that effect and a document under Section 7(3) to the Commissioner of the Patent Office at the time of an application for registration of the transfer.

(Demand for indication to prevent confusion resulting from transfer of trademark right)

24^{quater}(24-4). — Where, as a result of the transfer of a trademark right, the trademark right to a similar registered trademark that is used for identical goods or services or the identical or a similar registered trademark that is used for similar goods or services comes to belong to a different person, and where the use of such registered trademark by the owner of a trademark right or owner of a right of exclusive use or of non-exclusive use relating to one registered trademark for its designated goods or designated services is likely to cause damage to business interests of the owner of a trademark right or owner of a right of exclusive use relating to the other registered trademark (limited to the business interests concerning the designated goods or designated services for which the other registered trademark is used), the owner of a trademark right or owner of a right of exclusive use relating to the other registered trademark may request the owner of the trademark right or owner of the right of exclusive use or owner of non-exclusive use relating to the one registered trademark to mark a suitable indication in the use thereof so as to prevent any confusion between the goods or services connected with the other's business and those connected with the own business.

(Effects of trademark right)

25. — The owner of a trademark right shall have an exclusive right to use the registered trademark with respect to the designated goods or designated services. However, where the trademark right is subject to a right of exclusive use, this provision shall not apply to the extent that the owner of that right has an exclusive right to use the registered trademark.

(Limits of trademark right)

26. — (1) The effects of the trademark right shall not extend to the following trademarks (including those which constitute part of other trademarks):

(i) trademarks indicating, in a common way, one's own portrait, name, famous pseudonym, professional name or pen name or a famous abbreviation thereof;

(ii) trademarks indicating, in a common way, the common name, origin, place of sale, quality, raw materials, efficacy, use, quantity, shape (including packaging shape hereinafter referred to in the following paragraph as "shape") or price or the method or time of manufacturing or using the designated goods concerned or goods similar thereto or the common name of services similar to the designated goods, location of provision of the services, quality, articles for use in such provision, efficacy, use, quantity, modes, price, or methods or time of such provision;

(iii) trademarks indicating, in a common way, the common name of designated services or services similar thereto, location of provision of the services, quality, articles supplied for use in such provision, efficacy, use, quantity, modes, price, or method or time of such provision or the common name, origin, place of sale, quality, raw materials, efficacy, use, quantity, shape or price, or method or time of manufacturing or using the goods similar to the designated services;

(iv) trademarks customarily used on the designated goods or designated services, or goods or services similar thereto;

(v) trademarks consisting solely of a three-dimensional shape of goods or their packaging with the shape indispensable to secure the functions of the goods or their packaging.

(2) Paragraph (i) of the preceding subsection shall not apply where, after registration of the establishment of the trademark right, one's own portrait, name, famous pseudonym, professional name or pen name or a famous abbreviation thereof has been used with the intention of violating the rules of fair competition.

(Scope of registered trademark, etc.)

27. — (1) The scope of a registered trademark shall be decided on the basis of the trademark stated in the request.

(2) The scope of the designated goods or designated services shall be decided on the basis of the statement in the request.

28. — (1) A request for interpretation may be made to the Patent Office with respect to the effects of a trademark right.

(2) Where such a request is made, the Commissioner of the Patent Office shall designate three trial examiners to give the requested interpretation.

(3) Section 71(3) and (4) of the Patent Law shall apply *mutatis mutandis* to the interpretation under subsection (1).

28^{bis}(28-2). — (1) Where the Commissioner of the Patent Office is commissioned by a court to give an expert opinion with respect to the effects of the trademark right, he shall appoint three trial examiners to give the opinion.

(2) Section 71^{bis}(71-2)(2) shall apply *mutatis mutandis* to the commission therefor under the preceding subsection.

(Relationship with another's patent right, etc.)

29. — Where the use in a given manner of a registered trademark in respect of the designated goods or designated services conflicts with another person's patent, utility model or design right under its application filed prior to the filing date of the trademark application concerned or with another person's copyright taking effect prior to that date, the owner of the trademark right or of the right of exclusive or non-exclusive or non-exclusive use shall not use the registered trademark in such a manner on the part of the designated goods or designated services giving rise to the conflict.

(Rights of exclusive use)

30. — (1) The owner of a trademark right may grant a right of exclusive use with respect to his trademark right. However, this provision shall not apply to a trademark right under an application referred to in Section 4(2).

(2) The owner of a right of exclusive use shall have an exclusive right to use the registered trademark in respect of the designated goods or designated services to the extent laid down in the contract granting such right.

(3) A right of exclusive use may be transferred only with the consent of the owner of the trademark right or in the case of inheritance or other general succession.

(4) Sections 77(4) and (5), 97(2) and 98(1)(ii) and (2) of the Patent Law shall apply *mutatis mutandis* to rights of exclusive use.

(Rights of non-exclusive use)

31. — (1) The owner of a trademark right may grant a right of non-exclusive use with respect to his trademark right. However, this provision shall not apply to a trademark right under an application referred to in Section 4(2).

(2) The owner of a right of non-exclusive use shall have the right to use the registered trademark in respect of the designated goods or designated services to the extent laid down in the contract granting such right.

(3) A right of non-exclusive use may be transferred only with the consent of the owner of the trademark right (or only with the consent of such person and of the owner of the right of exclusive use, in the case of a right of non-exclusive use with respect to the right of exclusive use) or in the case of inheritances or other general succession.

(4) Sections 73(1), 94(2), 97(3) and 99(1) and (3) of the Patent Law shall apply *mutatis mutandis* to rights of non-exclusive use.

(Right of corporation or association members)

31^{bis}(31-2). — (1) Members of a corporation or an association entitled to a collective trademark right under Section 7(1) (hereinafter referred to as “corporation or association members”) shall have the right to use the collective trademark with its designated goods or designated services in accordance with regulations set forth by the corporation or association. However, where the trademark right is subject to a right of exclusive use, this provision shall not apply to the extent that the owner of that right has an exclusive right to use the registered trademark.

(2) The right provided for in the principal sentence of the preceding subsection shall not be transferred.

(3) For the purpose of Sections 24^{quarter}(24-4), 29, 50, 52^{bis}(52-2), 53 and 73, corporation or association members shall be deemed as an owner of the right of non-exclusive use.

(4) For the purpose of Section 33(1)(iii) to collective trademark registrations, “a person who ... has a right of exclusive use with respect to the trademark right under the trademark registration that has been invalidated or a right of non-exclusive use which is effective, under Section 99(1) of the Patent Law as applied under Section 31(4) of this Law, against the trademark right or the right of exclusive use ...” in the Section 33(1)(iii) shall read “a person who ... has a right of exclusive use with respect to the trademark right under the trademark registration

that has been invalidated or a right of non-exclusive use which is effective, under Section 99(1) of the Patent Law as applied under Section 31(4) of this Law, against the trademark right or the right of exclusive use or the corporation or association members who have the right to use the collective trademark”.

(Right to use trademark by virtue of prior use)

32. — (1) Where, from a time prior to the filing by another person of a trademark application and without any intention of violating the rules of fair competition, a person has been using in Japan the trademark in the application or a similar trademark in respect of the designated goods or designated services in the application, or in respect of similar goods or services, and, as a result, the trademark has become well known among consumers as indicating the goods or services as being connected with his business at the time of filing of the trademark application (or at the time of filing of the original trademark application or of submission of an amendment when the trademark application is deemed to have been filed at the time of submission of the amendment in accordance with Section 9^{quater}(9-4) of this Law or in accordance with Section 17^{ter}(17-3)(1) of the Design Law as applied under Section 17^{bis}(17-2)(1) of this Law or 55^{bis}(55-2)(3) (including its application under Section 60^{bis}(60-2)(2) of this Law)), such person shall have a right to use the trademark in respect of the said goods or services provided that he does so continuously. The same shall apply in the case of a person who has succeeded to the business concerned.

(2) The owner of the trademark right or of a right of exclusive use may request the person having a right to use the trademark under the preceding subsection to mark his goods or services with a suitable indication so as to prevent any confusion between the goods or services connected with the owner’s business and those connected with the other person’s business.

(Right to use trademark due to use prior to registration of demand for invalidation trial)

33. — (1) When a person coming within any of the paragraphs set out below has been using in Japan a registered trademark or a similar trademark in respect of the designated goods or designated services or similar goods or services, prior to the registration of a demand for a trial under Section 46(1), without knowing that a trademark registration falls under any of the paragraphs of the subsection referred to, and the trademark has become well known among consumers as indicating the goods or services as being connected with his business, such person shall have a right to use the trademark in respect of the goods or services provided that he does so continuously. The same shall apply in the case of a person who has succeeded to the business concerned:

(i) the original owner of the trademark right, where one of two or more trademark registrations granted for identical or similar trademarks to be used in respect of identical or similar designated goods or designated services has been invalidated;

(ii) the original owner of the trademark right where his trademark registration has been invalidated and a trademark registration has been granted to the person entitled for identical or similar trademarks to be used on identical or similar designated goods or designated services;

(iii) in the cases referred to in the preceding two paragraphs, a person who, at the time of registration of the demand for a trial under Section 46(1), has a right of exclusive use with respect to the trademark right under the trademark registration that has been invalidated or a right of non-exclusive use which is effective, under Section 99(1) of the Patent Law as applied under Section 31(4) of this Law, against the trademark right or the right of exclusive use.

(2) The owner of the trademark right or of the right of exclusive use shall have a right to a reasonable remuneration as consideration for the right of non-exclusive use under the preceding subsection.

(3) Section 32(2) shall apply mutatis mutandis to subsection (1).

(Right to use trademark after expiration of term of patent right, etc.)

33^{bis}(33-2). — (1) Where a patent right under a patent application filed prior to or on the date of an application for registration of a trademark conflicts with the trademark right under that trademark application and the term of the patent right has expired, the patentee shall have the right to use to the extent of the original patent right, the registered trademark or other trademark similar thereto with respect to the designated goods or designated services covered by the trademark application or goods or services similar thereto. However, this provision shall apply only where the registered trademark is used without the intention of violating the rules of fair competitions.

(2) Section 32(2) shall apply mutatis mutandis to the preceding subsection.

(3) The preceding two subsections shall apply mutatis mutandis where a utility model or design right under an application filed prior to or on the filing date of the trademark application conflicts with the trademark right under the trademark application and the term of the utility model or design right expired.

33^{ter}(33-3). — (1) Where a patent right under a patent application filed prior to or on the filing date of the trademark application conflicts with a trademark right under that trademark application and the term of the patent right has expired, any person who has the exclusive license on the patent right or a non-exclusive license with respect to the patent right or its exclusive license with effects as provided under Section 99(1) of the Patent Law at the time of its expiration shall have the right to use, within the scope of the original patent right, the registered trademark or other trademark similar thereto with respect to the designated goods or designated services falling under the trademark application or goods or services similar thereto. However, this provision shall apply only where the registered trademark is used without the intention of violating the rules of fair competition.

(2) Sections 32(2) and 33(2) shall apply mutatis mutandis to the preceding subsection.

(3) The preceding two subsections shall apply mutatis mutandis where a utility model or design right under an application filed prior to or on the filing date of the trademark application conflicts with a trademark right under that trademark application and the term of the utility model or design right has expired.

(Pledges)

34. — (1) Where a trademark right or a right of exclusive or non-exclusive use is the subject of a pledge, the pledgee may not use the registered trademark in respect of the designated goods or designated services except as otherwise provided by contract.

(2) Section 96 of the Patent Law shall apply mutatis mutandis to pledges on a trademark right or a right of exclusive or non-exclusive use.

(3) Section 98(1)(iii) and (2) of the Patent Law shall apply mutatis mutandis to pledges on a trademark right or a right of exclusive use.

(4) Section 99(3) of the Patent Law shall apply mutatis mutandis to pledges on a right of non-exclusive use.

(Application mutatis mutandis of Patent Law)

35. — Sections 73, 76, 97(1) and 98(1)(i) and (2) of the Patent Law shall apply mutatis mutandis to trademark rights. In such a case, “transfer otherwise than by inheritance or other general succession ...” in Section 98(1)(i) of the Patent Law shall read “division or transfer otherwise than by inheritance or other general succession ...”.

2. Infringement

(Injunctions)

36. — (1) The owner of a trademark right or of a right of exclusive use may require a person who is infringing or is likely to infringe the trademark right or right of exclusive use to discontinue or refrain from such infringement.

(2) The owner of a trademark right or of a right of exclusive use who is acting under the preceding subsection may demand the destruction of the articles by which the act of infringement was committed, the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

(Acts deemed to be infringement)

37. — The following acts shall be deemed to be an infringement of a trademark right or of a right of exclusive use:

(i) use of a trademark similar to the registered trademark in respect of the designated goods or designated services, or use of the registered trademark or of trademark similar thereto in respect of goods or services similar to the designated goods or designated services;

(ii) acts of holding, for the purpose of assignment or delivery, designated goods, or goods which are similar to the designated goods or designated services and to which or on the packaging of which the registered trademark or a trademark similar thereto has been applied;

(iii) acts of holding or importing articles which are for use by persons to whom the services are provided and to which the registered trademark or a trademark similar thereto has

been applied, in the provision of the designated services, or of services similar to the designated services or designated goods, for the purpose of using such articles in the provision of such services;

(iv) acts of assigning or delivering articles which are for use by persons to whom the services are provided and to which the registered trademark or a trademark similar thereto has been applied, in the provision of the designated services, or services similar to the designated services or designated goods, for the purpose of causing such articles to be used in the provision of such services, or acts of holding or importing such articles for the purpose of assigning or delivering them;

(v) acts of holding articles bearing a reproduction of the registered trademark or a trademark similar thereto for the purpose of using such trademark in respect of the designated goods or designated services or of goods or services similar thereto;

(vi) acts of assigning or delivering, or of holding, for the purpose of assignment or delivery, articles bearing a reproduction of the registered trademark or a trademark similar thereto, for the purpose of causing such trademark to be used in respect of the designated goods or designated services or of goods or services similar thereto;

(vii) acts of manufacturing or importing articles bearing a reproduction of the registered trademark or a trademark similar thereto for the purpose of using such trademark, or causing it to be used, in respect of the designated goods or designated services or of goods or services similar thereto;

(viii) acts of manufacturing, assigning, delivering or importing, in the course of trade, articles to be used exclusively for manufacturing goods bearing a reproduction of the registered trademark or a similar trademark.

(Presumption, etc. of amount of damage)

38. — (1) Where the owner of a trademark right or exclusive licensee claims, from a person who has intentionally or negligently infringed the trademark right or exclusive license, compensation for damage caused to him by the infringement, and the person's act is the assignment of articles by which the act of the infringement was committed, the sum of money with the unit price of such articles multiplied by the number of articles (hereinafter referred to in this paragraph as the "number of assigned articles") which the owner of the trademark right or exclusive licensee could have sold in the absence of the infringement may be estimated as the amount of damage suffered by the owner of the trademark right or exclusive licensee within a limit not exceeding an amount attainable depending on the working capacity of the owner of the trademark right or exclusive licensee. Where there is any circumstance that prevents the owner of the trademark right or exclusive licensee from selling part or the whole of the number of assigned articles, a sum equivalent to the number of assigned articles subject to that condition shall be deducted.

(2) Where the owner of a trademark right or of a right of exclusive use claims, from a person who has intentionally or negligently infringed the trademark right or right of exclusive use, compensation for damage caused to him by the infringement, the profits gained by the infringer through the infringement shall be presumed to be the amount of damage suffered by the owner.

(3) The owner of a trademark right or of a right of exclusive use may claim, from a person who has intentionally or negligently infringed the trademark right or the right of exclusive use, an amount of money which he would be entitled to receive for the use of the registered trademark, as the amount of damage suffered by him.

(4) The preceding subsection shall not preclude a claim to damages exceeding the amount referred to therein. In such a case, where there has been neither willfulness nor gross negligence on the part of the person who has infringed the trademark right or the right of exclusive use, the court may take this into consideration when awarding damages.

(Application mutatis mutandis of Patent Law)

39. — Sections 103 and 104^{bis}(104-2) to 106 of the Patent Law shall apply mutatis mutandis to the infringement of a trademark right or a right of exclusive use.

3. The Registration Fee

(Registration fee)

40. — (1) A person who obtains registration of a trademark shall pay, as a registration fee, the amount of 66,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services (classes of the classification of goods and services which are prescribed by Cabinet Order referred to in Section 6(2) and to which the designated goods or designated services belong; hereinafter the same).

(2) A person who applies for registration of renewal of the term of a trademark right shall pay the amount of 151,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services covered as a registration fee.

(3) The preceding two subsections shall not apply to trademark right belonging to the State.

(4) Where the State and the person(s) other than the State jointly own a trademark right and there is an agreement with respect to their shares of the right, the registration fee under subsection (1) or (2) shall be the sum with the prescribed registration fee under these subsections multiplied by the ratios of the shares of the person(s) other than the State, and the person(s) other than the State shall pay such sum, notwithstanding the provision of subsection (1) or (2).

(5) Where the amount of the registration fee calculated in accordance with the preceding subsection has a fractional figure less than 10 yen, that fractional figure shall be discarded.

(6) The payment of the fee under subsection (1) or (2) shall be made by patent revenue stamps as prescribed by an ordinance of the Ministry of Economy, Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of Economy, Trade and Industry, such payment may be made in cash.

(Time limit for payment of registration fee)

41. — (1) The registration fee under Section 40(1) shall be paid within 30 days from the date of the transmittal of the examiner's decision or trial decision that the trademark registration is to be effected.

(2) Upon the request of a person liable to pay a registration fee, the Commissioner of the Patent Office may extend the period prescribed in the preceding subsection by a period not exceeding 30 days.

(3) A registration fee as prescribed in Section 40(2) shall be paid at the time of a request for registration of renewal.

(Payment of registration fee in installments)

41^{bis}(41-2). — (1) Notwithstanding Section 40(1), a person who obtains registration of a trademark right may pay the prescribed registration fee in installments. In this case, the amount of 44,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services shall be paid for each case within 30 days from the date of the transmittal of the examiner's decision or trial decision that the trademark is to be registered and also the amount of 44,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services for each case by the end of five years before the expiration of the term of the trademark right.

(2) Notwithstanding Section 40(2), a person who makes a request for registration of renewal may pay the prescribed fee in installments. In this case, the amount of 101,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services shall be paid for each case at the time of a request for registration of renewal and also the amount of 101,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services by the end of five years before the expiration of the term of the trademark right.

(3) Where the owner of a trademark right is unable to pay the registration fee due to be paid by the end of five years before the expiration of the trademark right under subsection (1) or (2), he may pay the registration fee belatedly within six months after the expiration of that time limit.

(4) When the owner of a trademark right fails to pay, within a period during which he may make a delayed payment of the prescribed registration fee under the preceding subsection, a registration fee due to be paid under subsection (1) or (2) by the end of five years before the expiration of a trademark right and a surcharge under Section 43(3), the trademark right shall be deemed to have been extinguished retroactive to the date of the end of five years before its expiration.

(5) Section 40(3) to (5) shall apply mutatis mutandis to subsections (1) and (2).

(6) Section 41(2) shall apply mutatis mutandis to the payment of a registration fee due to be paid within 30 days from the transmittal of the examiner's decision or the trial decision to a trademark is to be registered under subsection (1).

(Payment of registration fee by an interested person)

41^{ter}(41-3). — (1) Any interested person may pay a registration fee (excluding a registration fee due to be paid at the time of a request for registration of renewal) even against a will of the person liable to pay the registration fee.

(2) An interested person who has paid a registration fee under the preceding subsection may demand reimbursement of the expenditure to the extent that the person liable to pay is actually making a profit.

(Refund of registration fee)

42. — (1) A registration fee paid shall be refunded on the request of the person making the payment where it falls under any of the following paragraphs:

(i) registration fee paid by mistake or in excess;
(ii) registration fee due to be paid by the end of five years before the expiration of a trademark right under Section 41^{bis}(41-2)(1) or (2) (only in case where a ruling to revoke under Section 43^{ter}(43-3)(2) or a trial decision or a retrial decision that the trademark registration is to be invalidated has become final and conclusive by the end of five years before the expiration of the trademark right).

(2) No refund of a registration fee under the preceding subsection may be requested after one year from the date of payment in the case of a registration fee prescribed under paragraph (i) above, or after six months from the date on which a ruling to revoke under Section 43^{ter}(43-3)(2) or a trial decision or a retrial decision became final and conclusive in the case of a registration fee under paragraph (ii) above.

(Surcharge registration fee)

43. — (1) A person who makes a request for registration of renewal of a trademark right under Section 20(3) or Section 21(1) shall pay, in addition to a registration fee due to be paid under Section 40(2), a surcharge equivalent in amount to the registration fee.

(2) In the case where Section 41^{bis}(41-2)(2) is applicable, a person as prescribed in the preceding subsection shall pay, in addition to a registration fee due to be paid at the time of an application for registration of renewal of a trademark right under Section 41^{bis}(41-2)(2), a surcharge equivalent in amount to the registration fee.

(3) In the case where Section 41^{bis}(41-2)(3) is applicable, the owner of a trademark right shall pay, in addition to a registration fee due to be paid by the end of five years before the expiration of the trademark right under Section 41^{bis}(41-2)(1) or (2), a surcharge equivalent in amount to the registration fee.

(4) The payment of the surcharge under the preceding three subsections shall be made by revenue stamps as prescribed by an ordinance of the Ministry of Economy, Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of Economy, Trade and Industry, such payment may be made in cash.

Chapter IV^{bis} — Opposition to Registration

(Opposition to registration)

43^{bis}(43-2). — Only within two months from the publication of the Gazette containing the trademark, any person may file with the Commissioner of the Patent Office an opposition to a registration on the grounds that the trademark registration falls under any of the undermentioned paragraphs. In such an event, if two or more items of designated goods or designated services are covered by the trademark registration, the opposition may be filed with respect to each of such designated goods or designated services. That is:

(i) where the trademark registration has been effected contrary to Section 3, 4(1), 8(1), (2) or (5), 51(2) (including its application under Section 52^{bis}(52-2)(2)) or 53(2) of this Law or to Section 25 of the Patent Law as applied under Section 77(3) of this Law;

(ii) where the trademark registration has been effected contrary to the provisions of a treaty.

(Ruling)

43^{ter}(43-3). — (1) An examination concerning an opposition and a ruling thereon shall be conducted by a collegial body of three or five trial examiners.

(2) Where it is found that the trademark registration concerned in the opposition falls under any of the paragraphs of Section 43^{bis}(43-2), the trial examiners shall render a ruling that the trademark registration is to be revoked (hereinafter referred to as the “ruling to revoke”).

(3) Where a ruling to revoke has become final and conclusive, the trademark right shall be deemed never to have existed.

(4) Where it is not found that the trademark registration in the opposition falls under any of the paragraphs of Section 43^{bis}(43-2), the trial examiners shall render a ruling that the trademark registration is to be maintained.

(5) No appeal shall lie from a ruling under the preceding subsection.

(Formal requirements of a written opposition, etc.)

43^{quater}(43-4). — (1) A person filing an opposition to a registration shall submit a written opposition to the Commissioner of the Patent Office stating the following:

(i) the name and the domicile or residence of the opponent and his representative;

(ii) an identification of the trademark registration concerned in the opposition;

(iii) the grounds of the opposition and an indication of the supporting evidence.

(2) An amendment of the written opposition submitted under the preceding subsection shall not change the gist thereof. However, this shall not apply to an amendment made to the matter prescribed in paragraph (iii) of the preceding subsection before a lapse of 30 days after the expiration of the time limit prescribed in Section 43^{bis}(43-2).

(3) The Commissioner of the Patent Office may, for the benefit of a person residing in a place that is remote or difficult of access, extend upon request or ex officio the period pre-

scribed in the preceding subsection.

(4) The trial examiner-in-chief shall transmit a copy of the written opposition to the owner of the trademark right.

(5) Section 46(3) shall apply mutatis mutandis where the opposition has been filed.

(Designation of trial examiners, etc.)

43quinquies(43-5). — Sections 136(2) and 137 to 144 of the Patent Law as applied under Section 56(1) of this Law shall apply mutatis mutandis to the collegial body under Section 43ter(43-3)(1) and trial examiners constituting thereof.

(Trial clerk)

43quinquies-bis(43-5-2). — (1) The Commissioner of the Patent Office shall designate a trial clerk for each case of opposition to a registration.

(2) Section 144bis(144-2)(3) to (5) of the Patent Law as applied under Section 56(1) of this Law shall apply to the trial clerk in the preceding subsection.

(Conduct of examination, etc.)

43sexties(43-6). — (1) The examination of the opposition to the registration shall be conducted by documentary examination. However, the trial examiner-in-chief may decide to conduct the trial by oral trial on a motion by the owner of the trademark right, an opponent or an intervenor, or ex officio.

(2) Sections 145(3) to (5), 146 and 147 of the Patent Law as applied under Section 56(1) of this Law shall apply mutatis mutandis to the oral examination in accordance with the proviso to the preceding subsection.

(3) Where there is a ground for interruption or suspension of the proceedings of an opposition and ruling thereon on the part of one of the joint owners of a trademark right, the interruption or suspension shall have effect on all of them.

(Intervention)

43septies(43-7). — (1) Any person who has a right with respect to the trademark right or any other person who has an interest in the trademark right may intervene in the examination, in order to assist the owner of the trademark right, until the ruling on the opposition.

(2) Sections 148(4) and (5) and 149 of the Patent Law as applied under Section 56(1) of this Law shall apply mutatis mutandis to the intervenor under the preceding subsection.

(Taking of evidence and preservation thereof)

43octies(43-8). — Sections 150 and 151 of the Patent Law as applied under Section 56(1) of this Law shall apply mutatis mutandis to the examination and preservation of evidence in an

examination of opposition to the registration.

(Examination ex officio)

43^{novies}(43-9). — (1) In an examination of an opposition to the registration, even the grounds that have not been pleaded by the owner of a trademark right, an opponent or intervenor may be examined.

(2) In an examination of an opposition to the registration, only the designated goods or designated services challenged by the opponent may be considered in the examination.

(Combination or separation of examination)

43^{decies}(43-10). — (1) Examinations of two or more oppositions concerning the same trademark right shall be combined, unless special circumstances exist.

(2) Examinations that have been combined under the preceding subsection may later be conducted separately.

(Withdrawal of oppositions)

43^{undecies}(43-11). — (1) An opposition to the registration may not be withdrawn after the notification under Section 43^{duodecies}(43-12).

(2) Section 155(3) of the Patent Law as applied under Section 56(2) of this Law shall apply mutatis mutandis to the withdrawal of the opposition to the registration.

(Notification of reasons for revocation)

43^{duodecies}(43-12). — When the trial examiner-in-chief intends to render a ruling to revoke, he shall notify the owner of the trademark right and intervenor of the reasons for revocation of the trademark registration and give them an opportunity to submit a statement of their arguments, designating an adequate time limit.

(Formal requirements of ruling)

43^{terdecies}(43-13). — (1) The ruling on the opposition to the registration shall be in writing and shall state particulars mentioned below, and the trial examiners who have rendered the ruling shall have their names and seals affixed thereto:

- (i) the number of the opposition case;
- (ii) the name and the domicile or residence of the owner of the trademark right, opponent and intervenor as well as of their representatives;
- (iii) the identification of the registered trademark relating to the ruling;
- (iv) the conclusions of the ruling and the reasons therefor;
- (v) the date of the ruling.

(2) Once the ruling has been rendered, the Commissioner of the Patent Office shall transmit it to the owner of the trademark right, an opponent, intervenor and persons whose application for intervention in the examination of the opposition has been refused.

(Application mutatis mutandis of provisions on trial)

~~43^{quater} decies~~(43-14). — (1) Sections 133, 133^{bis}(133-2), 134(4), 135, 152, 168, 169(3) to (6) and 170 of the Patent Law as applied under Section 56(1) of this Law shall apply mutatis mutandis to the examination of the opposition to the registration and the ruling thereon.

(2) Section 43^{ter}(43-3)(5) of this Law shall apply mutatis mutandis to the ruling under Section 135 of the Patent Law as applied under the preceding subsection.

Chapter V — Trial

(Trial against examiner's decision of refusal)

44. — (1) A person who has received the examiner's decision that his application is to be refused and is dissatisfied may demand a trial thereon within 30 days from the transmittal of the examiner's decision.

(2) Where, due to reasons outside his control, a person is unable to demand a trial under the preceding subsection within the time limit prescribed therein, he may, notwithstanding that subsection, make the demand within 14 days (where he is a resident abroad, within two months) from the date when the reason ceased to be applicable but not later than six months following the expiration of the said time limit.

(Trial against ruling to decline amendment)

45. — (1) A person who has received a ruling to decline an amendment under Section 16bis(16-2)(1) and is dissatisfied may demand a trial thereon within 30 days from the transmittal of the ruling. However, this provision shall not apply when a new application for trademark registration has been filed under Section 17^{ter}(17-3)(1) of the Design Law as applied under Section 17^{bis}(17-2)(1) of this Law.

(2) Section 44(2) shall apply mutatis mutandis to the demand for a trial under the preceding subsection.

(Trial for invalidation of trademark registration)

46. — (1) Where a trademark registration falls under the requirements of any of the following paragraphs, a trial for invalidation of trademark registration may be demanded for the invalidation of the trademark registration. In such a case, if two or more items of designated goods or designated services are covered by the trademark registration, the trial may be demanded with respect to each of such designated goods or designated services:

(i) where the registration has been effected contrary to Section 3, 4(1), 8(1), (2) or (5), 51(2) (including its application under Section 52^{bis}(52-2)(2)) or 53(2) of this Law or to Section 25 of the Patent Law as applied under Section 77(3) of this Law;

(ii) where the registration has been effected contrary to the provisions of a treaty;

(iii) where the registration has been effected in respect of a trademark application filed by a person who has not succeeded to the right deriving from the trademark application;

(iv) where, after the registration, the owner of the trademark right has become a person who can no longer enjoy such right under Section 25 of the Patent Law as applied under Section 77(3) of this Law or the registration no longer complies with a treaty;

(v) where, after the registration, the registered trademark has become a trademark falling under Section 4(1)(i) to (iii), (v), (vii) or (xvi).

(2) Even after the extinguishment of a trademark right, a trial under the preceding subsection may be demanded.

(3) Where a trial under subsection (1) has been demanded, the trial examiner-in-chief shall notify the owner of a right of exclusive use with respect to the trademark right and other persons who have any registered rights relating to the trademark registration.

~~46~~^{46bis}(46-2). — (1) Where a trial decision that the trademark registration is to be invalidated has become final and conclusive, the trademark right shall be deemed never to have existed. However, where a trademark registration falls under Section 46(1)(iv) or (v) and a trial decision that the trademark registration is to be invalidated has become final and conclusive, the trademark right shall be deemed not to have existed from the time when the trademark registration came to fall under Section 46(1)(iv) or (v).

(2) In the case of proviso to the preceding subsection, where a time at which the registered trademark came to fall under Section 46(1)(iv) or (v) cannot be established, the trademark right shall be deemed not to have existed from the date of the registration of a demand for a trial to invalidate the trademark registration.

47. — Where a trademark registration has been effected contrary to Section 3, 4(1)(viii) or (xi) to (xiv) or 8(1), (2) or (5), contrary to Section 4(1)(x) or (xvii) (except where registration was obtained with the intention of violating the rules of fair competition) or contrary to Section 4(1)(xv) (except where the registration was obtained for unfair intention), or where a trademark registration falls under Section 46(1)(iii), a trial on the trademark registration may not be demanded under Section 46(1) after five years from the registration of the establishment of the trademark right.

48. — *Deleted*

49. — *Deleted*

(Trial for cancellation of trademark registration)

50. — (1) Where neither the owner of the trademark right nor the owner of a right of exclusive use nor the owner of a right of non-exclusive use has been continuously using, in Japan for three years or more, the registered trademark (including a trademark consisting of identical characters only with their fonts modified, trademarks which, with their indication mutually replaced in character of hiragana and katakana (Japanese phonetic characters) and Latin alphabet may imply an identical pronunciation and concept, a trademark consisting of figures common in appearance and other trademarks regarded to be generally accepted as identical with the registered trademark — hereinafter referred to in this Section as “registered trademark”) in respect of each item of the designated goods or designated services, any person may demand a trial for the cancellation of registration of the trademark with respect to such designated goods or designated services.

(2) In the case where a trial under the preceding subsection has been demanded, unless the defendant can prove that either the owner of the trademark right or owner of a right of exclusive use or owner of a right of non-exclusive use has used in Japan within three years prior to the registration of the demand for the trial the registered trademark in respect of any item of the designated goods or designated services to which the demand referred to relates, the owner of the trademark shall not avert the cancellation of the registered trademark for the designated goods or designated services. However, this provision shall not apply where the defendant justifies that there are legitimate reasons for the failure to use the registered trademark in respect of the designated goods or designated services.

(3) Where a registered trademark of which the cancellation trial has been demanded under subsection (1) is used by the owner of the trademark right or owner of a right of its exclusive use or its non-exclusive use in respect of the designated goods or designated services to which the demand referred to relates from three months before a demand for such cancellation till the date of the registration of the demand, such a use of the registered trademark shall not fall under the use of the registered trademark referred to in subsection (1) provided that the defendant proves that the registered trademark was used with the knowledge that the cancellation trial for the registered trademark had been demanded. However, this provision shall not apply where the defendant justifies that there are legitimate reasons for such use of the registered trademark.

51. — (1) Where the owner of the trademark right intentionally uses a trademark similar to the registered trademark in respect of the designated goods or designated services, or intentionally uses the registered trademark or similar trademark in respect of goods or services similar to the designated goods or designated services in a way which may be misleading as to the quality of the goods or services or which may cause confusion with goods or services connected with any other person's business, any person may demand a trial for the cancellation of the trademark registration.

(2) Where a trademark registration has been canceled under the preceding subsection, the former owner of the trademark right may not obtain a trademark registration of the same or a similar trademark, for the designated goods or designated services covered by the trademark registration or for goods or services similar thereto, until five years have elapsed since the date when the trial decision ordering cancellation became final and conclusive.

52. — The trial under Section 51 (1) may not be demanded after five years from the date on which the owner of a trademark right ceased to use the trademark in the manner referred to in that subsection.

52^{bis}(52-2). — (1) Where, as a result of the transfer of a trademark right, the trademark right to a similar registered trademark that is used for identical goods or services or the identical or similar registered trademark that is used for similar goods or services comes to belong to a different owner and where the use of one registered trademark by its owner is use, with an intention of violating the rules of fair competition, of the registered trademark for its designated

goods or designated services in a way which may cause confusion with goods or services connected with the business of the owner of other registered trademark or owner of the right of its exclusive or non-exclusive use, any person may demand a trial for the cancellation of the trademark registration.

(2) Sections 51(2) and 52 shall apply mutatis mutandis to the trial under subsection (1).

53. — (1) Where the owner of a right of exclusive or non-exclusive use uses the registered trademark or a similar trademark in respect of the designated goods or designated services or goods or services similar thereto in a way which may be misleading as to the quality of the goods or services or which may cause confusion with goods or services connected with any other person's business, any person may demand a trial for the cancellation of the trademark registration. However, this provision shall not apply where the owner of the trademark right was both unaware of the fact and taking appropriate care.

(2) Where a trademark registration has been canceled under the preceding subsection, the former owner of the trademark right and the former owner of the right of exclusive or non-exclusive use who had used the mark in the way referred to in the preceding subsection may not obtain a trademark registration of the registered trademark or a similar trademark, for the designated goods or designated services covered by the trademark registration or for goods or services similar thereto, until five years have elapsed since the date when the trial decision ordering cancellation became final and conclusive.

(3) Section 52 shall apply mutatis mutandis to the trial under subsection (1).

53^{bis}(53-2). — Where a registered trademark is the trademark of a person who has the right to the trademark in a country party to the Paris Convention or a Member of the World Trade Organization or a country party to the Trademark Law Treaty (but only where such right is equivalent to the trademark right) or is similar to such a trademark, and the goods or services relating to such right or similar goods or services have been made the designated goods or designated services, and moreover the trademark application concerned was made, without a legitimate reason and without the authorization of the person who has the right to the trademark, by his agent or representative or by a person who was his agent or representative at any time during the year preceding the filing date of the application, the person who has the right to the trademark may demand a trial for the cancellation of its registration.

53^{ter}(53-3). — The trial under Section 53^{bis}(53-2) may not be demanded after five years from the registration of the establishment of the trademark right.

54. — (1) When a trial decision ordering cancellation of a trademark registration has become final and conclusive, the trademark right shall from that moment become extinguished.

(2) Notwithstanding the preceding subsection, a trademark right shall be deemed to have extinguished on the date of registration of a demand for the trial where the trial decision that a

trademark registration is to be canceled has become final and conclusive on the trial under Section 50(1).

55. — Section 46(3) shall apply mutatis mutandis to the trials demanded under Sections 50(1), 51(1), 52^{bis}(52-2)(1), 53(1) or 53^{bis}(53-2).

(Special provisions for trials against examiner’s decision of refusal)

55^{bis}(55-2). — (1) Sections 15^{bis}(15-2) and 15^{ter}(15-3) of this Law shall apply mutatis mutandis where a reason for refusal which was not contained in the examiner’s decision is found in the trial under Section 44(1).

(2) Section 16 shall apply where a demand made under Section 44(1) is to be allowed. However, this provision shall not apply where a trial decision is made for a trademark application to be further examined under Section 160(1) of the Patent Law as applied under Section 56(1).

(3) Sections 16^{bis}(16-2) of this Law and Section 17^{ter}(17-3) of the Design Law shall apply mutatis mutandis to a trial under Section 44(1) of this Law. In such a case, “has demanded a trial under Section 45(1)” in Section 16^{bis}(16-2)(4) shall read “has instituted an action under Section 63(1)”.

(Application mutatis mutandis of Patent Law)

56. — (1) Sections 131(1), 131^{bis}(131-2)(1), 132 to 133^{bis}(133-2), 134(1), (3) and (4), 135 to 154, 155(1) and (2), 156 to 158, 160(1) and (2), 161 and 167 to 170 of the Patent Law shall apply mutatis mutandis to trials under this Law. In such a case, the amendment made to the grounds for the demand under said Section (1)(iii) except in the case where a demand is made for the trial other than the patent invalidation trial or where a permission was granted by the trial examiner-in-chief under the following subsection” in Section 131^{bis}(131-2)(1) of the Patent Law shall read “the amendment made to the grounds for the demand under Section 131(1)(iii) of the Patent Law as applied under Section 56(1) of the Trademark Law except in the case where a demand is made for the trial other than the trial under Section 46(1) of the Trademark Law”, “a patent invalidation trial or an extended registration invalidation trial” in Sections 132(1) and 167 of the Patent Law and “a patent invalidation trial and an extended registration invalidation trial” in Sections 145(1) and 169(1) of the Patent Law shall read “a trial under Section 46(1), 50(1), 51(1), 52^{bis}(52-2)(1), 53(1) or 53^{bis}(53-2) of the Trademark Law”, “a party or an intervenor” in Section 139(i), (ii) and (v) of the Patent Law shall read “a party, an intervenor or an opponent”, “a party or an intervenor” in 139(iii) of the Patent Law shall read “a party, an intervenor or an opponent”, “an appeal trial against examiner’s refusal” in Section 161 of the Patent Law and “an appeal trial against examiner’s refusal and a correction trial” in Section 169(3) of the Patent Law shall read “a trial under Section 44(1) or 45(1) of the Trademark Law”, and “the trial decision in another trial” in Section 168(1) of the Patent Law shall read “the ruling on the opposition to the registration or the trial decision in another trial”.

(2) Section 155(3) of the Patent Law shall apply mutatis mutandis to the trial under Section 46(1).

(Application mutatis mutandis of Design Law)

56^{bis}(56-2). — Section 51 of the Design Law shall apply mutatis mutandis to a trial under Section 45(1) of this Law.

Chapter VI — Retrial and Litigation

(Demand for retrial)

57. — (1) Against a final and conclusive ruling to revoke or a final and conclusive trial decision or retrial decision, the party concerned or an intervenor may demand a retrial.

(2) Sections 338(1) and (2) and 339 (grounds for retrial) of the Code of Civil Procedure (Law No. 109 of 1996) shall apply *mutatis mutandis* to demands for a retrial under the preceding subsection.

58. — (1) Where the demandant and the defendant in a trial have in collusion caused a trial decision to be rendered, with the purpose of injuring the rights or interest of a third person, such person may demand a retrial against the final and conclusive trial decision.

(2) In such a retrial, the demandant and the defendant shall be made joint defendants.

(Restriction on effects of trademark right restored by retrial)

59. — Where a trademark right relating to a revoked or invalidated or canceled trademark registration has been restored through a retrial, the effects of the trademark right shall not extend to the following acts:

(i) the use in good faith of the registered trademark in respect of the designated goods or designated services after the ruling to revoke or the trial or retrial decision became final and conclusive but before the registration of the demand for a retrial;

(ii) the acts mentioned in each paragraph of Section 37 performed in good faith after the ruling to revoke or the trial or retrial decision became final and conclusive but before the registration of the demand for a retrial.

60. — (1) Where a trademark right relating to a revoked or invalidated or canceled trademark registration has been restored through a retrial, or where the establishment of a trademark right under a trademark application which was refused by a trial or retrial decision, has been registered through a retrial, and where a person has, in good faith, been using the registered trademark in Japan or a trademark similar thereto on the designated goods or designated services or goods or services similar thereto after the ruling to revoke or the trial or retrial decision became final and conclusive but before the registration of the demand for a retrial and, as a result, the trademark has become well-known among consumers as indicating the goods or services as being connected with his business at the time of registration of the demand for a retrial, such person shall have a right to use the trademark in the goods or services provided that he does so continuously. The same shall apply in the case of a person who has succeeded to the business concerned.

(2) Section 32(2) shall apply *mutatis mutandis* to the preceding subsection.

(Application mutatis mutandis of provisions of trial)

60^{bis}(60-2). — (1) Sections 43^{ter}(43-3), 43^{quinqies}(43-5) to 43^{novies}(43-9), 43^{duodecies}(43-12) to 43^{quater decies}(43-14) of this Law, Sections 131(1), the principal sentence of 131^{bis}(131-2)(1), 132(3), 154, 155(1) and 156 of the Patent Law as applied under Section 56(1) of this Law and Section 155(3) of the Patent Law as applied under Section 156(2) of this Law shall apply mutatis mutandis to a retrial against the final and conclusive ruling to revoke.

(2) Section 55^{bis}(55-2) shall apply mutatis mutandis to a retrial against the final and conclusive trial decision on a trial under Section 44(1).

(3) Section 56^{bis}(56-2) shall apply mutatis mutandis to a retrial against the final and conclusive trial decision on a trial under Section 45(1).

(Application mutatis mutandis of Patent Law)

61. — Sections 173 and 174(2) and (4) of the Patent Law shall apply mutatis mutandis to retrials under this Law. In such a case, “the trial decision” in Section 173(1), (3) to (5) of the Patent Law shall read “the ruling to revoke a patent or the trial decision”, and “a patent invalidation trial or an extended registration invalidation trial” in Section 174(2) of the Patent Law shall read “a trial under Section 46(1), 50(1), 51(1), 52^{bis}(52-2)(1), 53(1) or 53^{bis}(53-2) of the Trademark Law”.

(Application mutatis mutandis of Design Law)

62. — (1) Section 58(2) of the Design Law shall apply mutatis mutandis to a retrial against the final and conclusive trial decision on a trial under Section 44(1) of this Law.

(2) Section 58(3) of the Design Law shall apply mutatis mutandis to a retrial against the final and conclusive trial decision on a trial under Section 45(1) of this Law.

(Actions against trial decisions, etc.)

63. — (1) An action against a ruling to revoke or a trial decision or a ruling to decline an amendment under Section 16^{bis}(16-2)(1) as applied under Section 55^{bis}(55-2)(3) (including its application under Section 60^{bis}(60-2)(2)) or an action against a ruling of dismissal of a written opposition or a demand for a trial or retrial shall come under the exclusive jurisdiction of the Tokyo High Court.

(2) Sections 178(2) to (6), 179 to 180^{bis}(180-2), 181(1) and (5) and 182 of the Patent Law shall apply mutatis mutandis to actions under the preceding subsection. In such a case, “the trial” in Section 178(2) of the Patent Law shall read “the examination of the opposition to the registration, the trial”, and “a patent invalidation trial or an extended registration invalidation trial” in Section 179 of the Patent Law shall read “a trial under Section 46(1), 50(1), 51(1), 52^{bis}(52-2)(1), 53(1) or 53^{bis}(53-2) of the Trademark Law”.

(Relationship between administrative appeal and litigation)

63^{bis}(63-2). — Section 184^{bis}(184-2) of the Patent Law shall apply mutatis mutandis to actions for the annulment of measures (with the exception of measures under Section 77(7)) taken under this Law or an order or ordinance thereunder.

Chapter VII — Defensive Marks

(Registrability of defensive marks)

64. — (1) The owner of a trademark right may, when his registered trademark in respect of goods has become well-known among consumers as indicating the designated goods as being connected with his business and when the use of the registered trademark by any other person in respect of goods other than the designated goods covered by the registered trademark and goods similar thereto or services similar to the designated goods is likely to cause confusion between such goods or services and the designated goods in connection with his business, obtain a defensive mark registration of a mark identical with the registered trademark with respect to goods or services for which such possibility of confusion exists.

(2) The owner of a trademark right may, when his registered trademark in respect of services has become well known among consumers as indicating the designated services as being connected with his business and when the use of the registered trademark by any other person in respect of services other than the designated services covered by the registered trademark and services similar thereto or goods similar to the designated services is likely to cause confusion between such services or goods and designated services in connection with his business, obtain a defensive mark registration of a mark identical with the registered trademark with respect to services or goods for which such possibility of confusion exists.

(Conversion of applications)

65. — (1) An applicant may convert his application for trademark registration into an application for registration of a defensive mark.

(2) An application may not be converted under the preceding subsection after the examiner's decision or the trial decision with respect to the application has become final and conclusive.

(3) Sections 10(2) and (3) and 11(4) shall apply mutatis mutandis to the case of conversion of an application under subsection (1).

(Term of right based on defensive mark registration)

65^{bis}(65-2). — (1) The term of a right based on a defensive mark registration shall be 10 years from the date of the registration of its establishment.

(2) The term of a right based on a defensive mark registration may be renewed by making a request for registration of a renewal of its registration. However, this provision shall not apply where the registered defensive mark has become not registrable under Section 64.

(Registration of renewal of term of right based on defensive mark registration)

65^{ter}(65-3). — (1) Any person desiring registration of renewal of the term of a right based on a defensive mark registration shall submit a request to the Commissioner of the Patent Office, stating the following:

- (i) the name and the domicile or residence of the applicant;
- (ii) the registration number of the defensive mark;
- (iii) other necessary particulars as prescribed by an ordinance of the Ministry of Economy, Trade and Industry.

(2) An application for registration of the renewal shall be made within six months prior to the date of the expiration of the term.

(3) Where a person desiring registration of renewal of a right based on a defensive mark registration has been unable to make an application for registration of renewal of that right within the time limit allowing him to make such application under the preceding subsection due to reasons outside his control, he may make such application within 14 days (where he is a resident abroad, two months) from the date on which the reasons ceased to be applicable but not later than six months following the expiration of the said time limit.

(4) When an application has been made for registration of renewal of the term of the right based on a defensive mark registration, the term shall be deemed to have been renewed upon expiration of the term (or, in case of an application under the preceding subsection, on the filing date of such application). However, this provision shall not apply when the examiner's decision or trial decision that the application is to be refused has become final and conclusive or when renewal of the term of the right based on a defensive mark registration has been registered.

65^{quater}(65-4). — (1) Where an application for registration of renewal of a right based on a defensive mark registration falls under any of the following paragraphs, the examiners shall make a decision that the application is to be refused:

- (i) the registered defensive mark in such application has become not registrable under Section 64;
- (ii) the applicant is not the owner of the right based on the defensive mark registration.

(2) Where the examiner finds no reasons for refusing an application for registration of renewal, he shall make a decision that the renewal is to be registered.

65^{quinques}(65-5). — Sections 14 and 15^{bis}(15-2) of this Law and Sections 48 and 52 of the Patent Law shall apply mutatis mutandis to an examination of an application for registration of renewal of a right based on a defensive mark registration.

(Registration of renewal of term of right based on defensive mark registration)

65^{sexies}(65-6). — (1) When a registration fee under Section 65^{septies}(65-7)(2) has been paid, the renewal of the term of the right based on the defensive mark registration shall be registered.

(2) Upon the registration under the preceding subsection, the following shall be published in the Trademark Gazette:

- (i) the name and the domicile or residence of the owner of the right based on the defensive mark registration;
- (ii) the registration number and the date of renewal registration;

(iii) other necessary particulars.

(Registration fees)

65^{septies}(65-7). — (1) A person who obtains registration of a right based on a defensive mark registration shall pay the amount of 66,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services as a registration fee.

(2) A person obtaining registration of renewal of the term of a right based on a defensive mark registration shall pay the amount of 130,000 yen per case or this amount multiplied by the number of classes of the classification of goods and services covered, as a registration fee.

(3) Section 40(3) to (5) shall apply mutatis mutandis to the preceding two subsections.

(Time limit for payment of registration fees)

65^{octies}(65-8). — (1) The registration fee under Section 65^{septies}(65-7)(1) shall be paid within 30 days from the date of the transmittal of the examiner's decision or the trial decision that the defensive mark is to be registered.

(2) The registration fee under Section 65^{septies}(65-7)(2) shall be paid within 30 days from the date of the transmittal of the examiner's decision or a trial decision that the renewal of a right based on a defensive mark registration is to be registered (where such transmittal is made before the date of the expiration of the term of a right based on a defensive mark registration, the date of the expiration of the term).

(3) Upon the request of a person liable to pay a registration fee, the Commissioner of the Patent Office may extend the period prescribed in the preceding two subsections by a period not exceeding 30 days.

(Payment of registration fee by an interested person)

65^{novies}(65-9). — (1) Any interested person may pay a registration fee prescribed in Section 65^{septies}(65-7)(1) or (2) even against the will of the person liable to pay the registration fee.

(2) An interested person who has paid a registration fee under the preceding subsection may demand reimbursement of the expenditure to the extent that the person liable to pay the registration fee is actually making a profit.

(Refund of registration fee paid by mistake or in excess)

65^{decies}(65-10). — (1) A registration fee paid by mistake or in excess under Section 65^{septies}(65-7)(1) or (2) shall be refunded on the request of the person making the payment.

(2) No refund of a registration fee under the preceding subsection may be requested after one year from the date of payment.

(Dependence of right based on defensive mark registration)

66. — (1) The right based on a defensive mark registration shall be extinguished if the principal trademark right has been divided.

(2) The right based on a defensive mark registration shall be transferred together with the principal trademark right if the principal trademark right is transferred.

(3) The right based on a defensive mark registration shall be extinguished if the principal trademark right is extinguished.

(4) Where a trademark right is deemed to have been extinguished under Section 20(4), the effect of the right based on a defensive mark relating to the trademark right restored under Section 21(2) shall not extend to acts prescribed in the paragraphs of the Section 67 before the term of the trademark is registered under Section 21(1) after the lapse of a period during which an application for the registration of a renewal of the trademark may be filed as prescribed in Article 20(3).

(Acts deemed to be an infringement)

67. — The following acts shall be deemed to be an infringement of the principal trademark right or a right of exclusive use:

(i) use of a registered defensive mark in respect of the designated goods or designated services;

(ii) acts of holding, for the purpose of assignment or delivery, the designated goods on which or on the packaging of which the registered defensive mark has been applied;

(iii) acts of holding or importing articles which are for use by persons to whom the services are provided and to which the registered defensive mark has been applied, in the provision of the designated services, for the purpose of using such articles in the provision of such services;

(iv) acts of assigning or delivering articles which are for use by persons to whom the services are provided and to which the registered defensive mark has been applied, in the provision of the designated services, for the purpose of causing such articles to be used in the provision of such service, or acts of holding or importing such articles for the purpose of assigning or delivering them;

(v) acts of holding goods bearing a reproduction of the registered defensive mark for the purpose of using such a mark in respect of the designated goods or designated services;

(vi) acts of assigning or delivering, or of holding for the purpose of assignment or delivery, goods bearing a reproduction of the registered defensive mark, for the purpose of causing such defensive mark to be used in respect of the designated goods or designated services;

(vii) acts of manufacturing or importing goods bearing a reproduction of the registered defensive mark for the purpose of using such defensive mark, or causing it to be used, in respect of the designated goods or designated services.

(Application mutatis mutandis of provisions on trademarks)

68. — (1) Sections 5, 5^{bis}(5-2), 6(1) and (2), 9^{bis}(9-2) to 10, 12^{bis}(12-2), 13(1) and

13^{bis}(13-2) shall apply mutatis mutandis to an application for the registration of defensive marks. In such a case, “(iii) the designated goods or designated services and the class of classification of the goods and services as prescribed by Cabinet Order referred to in Section 6(2)” in Section 5(1) shall read “(iii) the designated goods or designated services and the class of classification of the goods and services as prescribed by Cabinet Order referred to in Section 6(2); (iv) the registration number of the principal trademark registration to which the application for registration of the defensive mark relates”, “(iv) where designated goods or designated services are not stated” in Section 5^{bis}(5-2)(1) shall read “(iv) where designated goods or designated services are not stated; and (v) the registration number of the principal trademark registration to which the application for registration of the defensive mark relates is not stated” and “Section 37” in Section 13^{bis}(13-2)(5) shall read “Section 67 (with the exception of the proportion relating to paragraph (i))”.

(2) Sections 14 to 15^{bis}(15-2) and 16 to 17^{bis}(17-2) shall apply mutatis mutandis to the examination of an application for the registration of a defensive mark. In such a case, “Section 3, 4(1), 8(2) or (5), 51(2) (including its application under Section 52^{bis}(52-2)(2)) or 53(2)” in Section 15(i) shall read “Section 64”.

(3) Sections 18, 26 to 28^{bis}(28-2), 32 to 33^{ter}(33-3), 35 and 69 shall apply mutatis mutandis to a right based on a defensive mark registration. In such a case, “the registration fee under Section 40(1) or the registration fee due to be paid within 30 days from the date of the transmittal of the examiner’s decision or a trial decision that the trademark is to be registered under Section 41^{bis}(41-2)(1)” in Section 18(2) shall read “a registration fee under Section 65septies(65-7)(1)”.

(4) Sections 43^{bis}(43-2) to 46^{bis}(46-2), 53^{bis}(53-2), 53^{ter}(53-3), 54(1) and 55^{bis}(55-2) to 56^{bis}(56-2) shall apply mutatis mutandis to an opposition to and a trial relating to the registration of a defensive trademark. In such a case, “Section 3, 4(1), 8(1), (2) or (5), 51(2) (including its application under Section 52^{bis}(52-2)(2)) or 53(2)” in Sections 43^{bis}(43-2)(i) and 46(1)(i) shall read “Section 64” and “where, after the registration, the registered trademark has become a trademark falling under Section 4(1)(i) to (iii), (v), (vii) or (xvi)” in Section 46(1)(v) shall read “the trademark registration has come be contrary to the provision of Section 64”.

(5) Sections 57 to 63^{bis}(63-2) shall apply mutatis mutandis to a retrial and an action relating to the registration of a defensive trademark. In such a case, “each paragraph of Section 37” in Section 59(ii) shall read “Section 67(ii) to (vii)”, “a trademark right relating to a revoked or invalidated or canceled trademark registration” in Section 60 shall read “a right based on a defensive mark registration relating to a revoked or invalidated or canceled defensive mark registration” and “a trademark registration application” shall read “an application for the registration of a defensive mark or an application for the registration of a renewal of a right based on a defensive mark registration” and “the establishment of a trademark right” shall read “the establishment of a right based on defensive mark registration or registration of renewal of its term” and “the registered trademark ... or a trademark similar thereto ... on designated goods or designated services or goods or services similar thereto” shall read “identical trademark with the registered defensive mark”.

Chapter VII^{bis} — Special Provisions under the Protocol of the Madrid Agreement

1. *Application for International Registration*

(Application for International Registration)

68^{bis}(68-2). — (1) A Japanese national or an alien who is domiciled or resident (or, in the case of a legal entity, established) in Japan, who desires to seek an international registration (hereinafter referred to as “the international registration”) as referred to in Article 2(1) of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks as adopted at Madrid on June 27, 1989 (hereinafter referred to as “the Protocol”), shall file with the Commissioner of the Patent Office an application (hereinafter referred to as “international application”), as referred to in Article 2(2) of the Protocol, based on either one of the following paragraphs. In such a case, where it complies with the requirement specified in an ordinance of the Ministry of Economy, Trade and Industry, two or more persons may make a joint international application:

(i) their application for trademark registration or for defensive mark registration pending with the Patent Office (hereinafter referred to as “an application for trademark registration, etc.”);

(ii) their trademark registration or defensive mark registration (hereinafter referred to as “trademark registration, etc.”).

(2) Any person desiring to file an international application shall submit the form prescribed by the Registrations under the Protocol (hereinafter in this Chapter referred to as “the request and necessary documents”) prepared in a foreign language, as provided for in an ordinance of the Ministry of Economy, Trade and Industry.

(3) The following particulars shall be indicated in the request:

(i) the names of the Contracting States of the Protocol for which the protection of the trademarks relating to the international application is sought;

(ii) the goods or services in respect of which protection of the mark relating to the international application is sought, and the class or classes of the classification prescribed by Cabinet Order in Section 6(2).

(4) Any person desiring to seek the application of Article 3(3) of the Protocol for trademarks or marks relating to the international application shall indicate in the request a statement to that effect and a description of the color or the combination of colors affixed, and also shall append to the request copies in color of the trademarks or marks or of the registered trademarks or registered defensive marks relating to the application for trademark registration, etc.

68^{ter}(68-3). — (1) The Commissioner of the Patent Office shall transmit the request of the international application and necessary documents to the International Bureau as referred to in Article 2(1) of the Protocol (hereinafter referred to as “the International Bureau”).

(2) In the case of the preceding subsection, the Commissioner of the Patent Office shall certify that the particulars appearing in the international application correspond to the particu-

lars appearing in the basic application, etc. or in the basic registration, etc. and also indicate the date of the international application.

(3) In the case of subsection (1), the Commissioner of the Patent Office shall transmit to the applicant for the said international application a copy of the request of the international application transmitted to the International Bureau.

(Later designation)

68^{quater}(68-4). — As provided for in an ordinance of the Ministry of Economy, Trade and Industry, the holder of international registration may present a request for territorial extension to the Commissioner of the Patent Office under Article 3^{ter}(3-3) of the Protocol (hereinafter referred to as “the later designation”).

(Request for renewal of international registration)

68^{quinques}(68-5). — As provided for in an ordinance of the Ministry of Economy, Trade and Industry, the holder of international registration may present a request for renewal of his international registration to the Commissioner of the Patent Office under Article 7(1) of the Protocol (hereinafter referred to as “the renewal of the international registration”).

(Request for recordal of change in the ownership of international registration)

68^{sexies}(68-6). — (1) As provided for in an ordinance of the Ministry of Economy, Trade and Industry, the holder of international registration or his assignee may present a request for the recordal of change in the ownership of the international registration to the Commissioner of the Patent Office under Article 9 of the Protocol (hereinafter referred to as “the change in the ownership of the international registration”).

(2) The request as referred to in the preceding subsection may be made in respect of all or some of the Contracting Parties in whose territories the said registration has effect and in respect of all or some of the goods or services listed in the registration.

(Application mutatis mutandis of provisions on an application for trademark registration)

68^{septies}(68-7). — Sections 17(3) (limited to the proportion relating to paragraph (iii)) and 18(1) of the Patent Law as applied under Section 77(2) of this Law shall apply mutatis mutandis to the international application, the later designation, the request for the renewal of international registration and the request for the recordal of change in the ownership of international registration.

(Delegation to ordinance of the Ministry of Economy, Trade and Industry)

68^{octies}(68-8). — In addition to the matters provided for in Sections 68^{bis}(68-2) to 68^{septies}(68-7), necessary details for implementing the Protocol and the Regulations thereunder shall be provided for in an ordinance of the Ministry of Economy, Trade and Industry, relating

to the international application, the later designation, the request for the renewal of international registration and the request for the recordal of change in the ownership of international registration.

2. Special Provisions Relating to Application for International Trademark Registration

(Trademark application based on request for territorial extension)

68^{novies}(68-9). — (1) A request for territorial extension with respect to Japan shall be considered to be an application for trademark registration having been filed on the date of international registration made in accordance with Article 3(4) of the Protocol (hereinafter referred to as “the date of international registration”). However, in the case of later designation, under Article 3^{ter}(3-3)(2) of the Protocol, the application for trademark registration shall be considered to be the application having been filed on the date (hereinafter referred to as “the date of later designation”) on which later designation is recorded in the register of the International Bureau defined in Article 2(1) of the Protocol (hereinafter referred to as “International Register”).

(2) The matters specified in the left-hand column of the following table contained in the International Register of the international registration with respect to Japan shall be considered to be the matters specified in the right-hand column of the following table stated in the request of the application for trademark registration filed under Section 5(1):

The name and the domicile of the holder of the international registration	The name and the domicile or residence of the applicant for trademark registration
The mark registered in the International Register	The mark for which registration is sought
The goods or services listed in the international registration and the class of the classification of goods or services	The designated goods or designated services and the class of the classification of goods or services as prescribed by Cabinet Order referred to in Section 6(2)

(Special provisions for time of filing of an application for international trademark registration)

68^{decies}(68-10). — (1) Where a registered trademark (hereinafter in this Section referred to as “the registered trademark based on international registration”) relating to the request for territorial extension considered to be an application for trademark registration under 68^{novies}(68-9)(1) (hereinafter in this Chapter referred to as “the application for international trademark registration”) is identical with a trademark prior to the trademark registration (excluding trademarks based on international registration; hereinafter in this Section referred to as “the registered trademark based on national registration”), and the designated goods or disig-

nated services relating to the registered trademark based on international registration are the same as the designated goods or designated services relating to the registered trademark based on the national registration, and also where the trademark holder of the registered trademark based on the international registration and the trademark holder of registered trademark based on the national registration are identical, the application for international trademark registration shall be deemed to have been made to the extent that such scope has overlapped on the date of the application for trademark registration relating to the registered trademark based on the national registration.

(2) Section 68^{duotricies}(68-32)(3) and (4) shall apply mutatis mutandis to the application for international trademark registration in the preceding subsection.

(Special provisions for time of filing of application)

68^{undecies}(68-11). — For the purpose of Section 9(2) for an application for international trademark registration, “simultaneously with the trademark application” in Section 9(2) shall read “within 30 days from the date of filing of the application for international trademark registration”.

(Special provisions for division of applications)

68^{duodecies}(68-12). — Section 10 shall not apply to an application for international trademark registration.

(Special provisions for conversion of applications)

68^{terdecies}(68-13). — Sections 11 and 65 shall not apply to an application for international trademark registration.

(Special provisions for matters published in Trademark Gazette relating to publication of applications)

68^{quater decies}(68-14). — For the purpose of Section 12^{bis}(12-2)(2) for an application for international trademark registration, “the number and date of the application for trademark registration” in Section 12^{bis}(12-2)(2)(i) shall read “the number of the international registration and the date of the international registration (in the case of an international trademark registration relating to late designation, the date of later designation)”.

(Special provisions for proceedings for priority claim under the Paris Convention, etc.)

68^{quindecies}(68-15). — (1) Section 43(1) to (4) of the Patent Law, as applied under Section 13(1) of this Law shall not apply to an application for international trademark registration.

(2) For the purpose of Section 43(1) of the Patent Law, as applied under Section 43^{bis}(43-2)(3) of the said Law as applied under Section 13(1) of this Law for an application for international trademark registration, “simultaneously with the patent application” in the said Section

43(1) shall read “within 30 days from the date of filing of an application for international trademark registration”.

(Special provisions for rights resulting from an application for trademark registration)

68^{sedecies}(68-16). — (1) For the purpose of Section 34(4) of the Patent Law, as applied under Section 13(2) of this Law for an application for international trademark registration, “the Commissioner of the Patent Office... except in the case of inheritance or other general succession” in Section 34(4) of the Patent Law shall read “the International Bureau”.

(2) Section 34(5) to (7) of the Patent Law as applied under Section 13(2) of this Law shall not apply to an application for international trademark registration.

(Dealing with an application for international trademark registration resulting from change in the ownership of an international registration)

68^{septies decies}(68-17). — Where all or some goods or services listed in the international registration has been divided and assigned resulting from change in the ownership of international trademark registration, the application for international trademark registration shall be considered to have become an application for trademark registration with respect to each of holder after the change.

(Special provisions for a new application for trademark as amended)

68^{duodevicies}(68-18). — (1) Section 17^{ter}(17-3) of the Design Law as applied under Section 17^{bis}(17-2)(1) or Section 55^{bis}(55-2)(3) (including its application under Section 60^{bis}(60-2)(2)) of this Law shall not apply to an application for international trademark registration.

(2) Section 17^{quat}(17-4) of the Design Law, as applied under Section 17^{bis}(17-2)(2) of this Law shall not apply to an application for international trademark registration.

(Special provisions for registration of establishment of trademark right)

68^{undevicies}(68-19). — (1) For the purpose of Section 18(2) for an application for international trademark registration, “when the registration fee under Section 40(1) or the registration fee due to be paid within 30 days from the date of the transmittal of the examiner’s decision or the trial decision that the trademark is to be registered under Section 41^{bis}(41-2)(1) has been paid” in Section 18(2) shall read “when the International Bureau notifies that the payment of the individual fee under Section 68^{tricies}(68-30)(1)(ii) has been recorded in the International Register”.

(2) For the purpose of Section 18(3) for an application for international trademark registration, “the number and date of the trademark application” in Section 18(3)(ii) shall read “the number of the international registration and the date of the international registration (the date of later designation in the case of the application for international trademark registration with respect to the later designation,” and “the registration number and date of the registration of the

establishment” in Section 18(3)(v) shall read “the number of the international registration and the date of the registration of the establishment”.

(Effects of extinguishment of international registration)

68^{vicies}(68-20). — (1) Where all or some of the international registration on which it is based has been extinguished, an application for international trademark registration shall be deemed to have been withdrawn to the extent all or some of the designated goods or designated services has been extinguished.

(2) Where all or some of the international registration on which it is based has been extinguished, the trademark right which has been granted the registration of the establishment under Section 18(2) as applied under Section 68^{undevicies}(68-19)(1) (hereinafter referred to as “the trademark right based on the international registration”) shall be deemed to have been extinguished to the extent that all or some of the designated goods or designated services has been extinguished.

(3) The effects under the preceding two subsections shall come into force from the date on which the international registration in the International Register has been extinguished.

(Term of trademark right based on international registration)

68^{unvicies}(68-21). — (1) The term of a trademark right based on the international registration shall be ten years from the date (the date of its latest renewal, if the term of international registration has been renewed prior to the registration of the establishment of the trademark right) of the international registration.

(2) The term of the trademark right based on the international registration may be renewed on the renewal of the term of the international registration.

(3) When the term of the international registration has been renewed, the term of the trademark right based on international registration shall be deemed to have been renewed upon expiration of the term.

(4) When the term of the international registration has not been renewed, the trademark right based on international registration shall be deemed to have been extinguished retroactively from the time of the expiration of the term.

(Special provisions for registration of renewal of term)

68^{duovicies}(68-22). — (1) Sections 19 to 22 and 23(1) and (2) shall not apply to the trademark rights based on the international registration.

(2) For the purpose of Section 23(3) for the trademark rights based on the international registration, “registration in the preceding two subsections” in Section 23(3) shall read “the renewal of the term of international registration,” and “the number of registration and the date of the registration of renewal” in Section 23(3)(ii) shall read “the number of international registration and the date of renewal of the term of international registration”.

(Special provisions for division of trademark rights)

68^{ter}vicies(68-23). — Section 24 shall not apply to the trademark rights based on the international registration.

(Special provisions for transfer of collective trademark right)

68^{quater}vicies(68-24). — (1) The collective trademark right trademark rights based on the international registration may not be transferred, except in the case where the documents prescribed in Section 7(3) are submitted.

(2) Section 24^{ter}(24-3) shall not apply to the trademark rights based on international registration.

(Special provisions for surrender of trademark rights)

68^{quinties}vicies(68-25). — (1) The owner of the trademark rights based on the international registration may surrender his trademark rights.

(2) Section 97(1) of the Patent Law as applied under Section 35 of this Law shall not apply to the trademark rights based on the international registration.

(Special provisions for effects of registration of trademark rights)

68^{sexties}vicies(68-26). — (1) The transfer, extinguishment by surrender or restriction on disposal of the trademark rights based on the international registration shall be of no effect unless it is registered.

(2) Section 98(1)(i) and (2) of the Patent Law as applied under Section 35 of this Law shall not apply to the trademark rights based on the international registration.

(Special provisions for registration in Trademark Register)

68^{septies}vicies(68-27). — (1) For the purpose of Section 71(1)(i) for the trademark rights based on the international registration, “the establishment, renewal of term, division, transfer, change, extinguishment, restoration or restriction on the disposal of trademark rights” in Section 71(1)(i) shall read “the establishment or the restriction on disposal of trademark rights”.

(2) With respect to the renewal, transfer, change or extinguishment of the trademark rights based on the international registration, the entry in the International Register shall prevail.

(Special provisions for amendments of proceedings)

68^{duodetrices}vicies(68-28). — (1) For the purpose of an application for the international trademark registration, amendments to the designated goods or designated services stated in the request, may be made, only within a designated time limit under Section 15^{bis}(15-2) [including its application under Section 55^{bis}(55-2)(1) (including its application under Section 60^{bis}(60-2)(2))] or of Section 15^{ter}(15-3) [including its application under Section 55^{bis}(55-2)(1) (including its application under Section 60^{bis}(60-2)(2))].

(2) Section 68^{quadrages}(68-40) shall not apply to an application for the international trademark registration.

(Special provisions for exceptional provisions on trademark with two or more designated goods or designated services)

68^{undecies}(68-29). — For the purpose of Section 69 for the trademark rights based on the international registration, “Sections 97(1) or 98(1)(i) of the Patent Law as applied under Sections 20(4), 33(1) and 35 of this Law” in Section 69 shall read “Sections 33(1), 68^{quinvicies}(68-25)(1) or 68^{sevicies}(68-26)(1)” and “Section 71(1)(i)” in Section 69 shall read “Sections 71(1)(i), 68^{septies vicies}(68-27)(2) as applied under Section 68^{septies vicies}(68-27)(1)”.

(Individual fee for trademark rights based on international registration)

68^{tricies}(68-30). — (1) Any person desiring the registration of the establishment of trademark rights based on the international registration shall pay to the International Bureau an individual fee, as prescribed in Article 8(7)(a) of the Protocol (hereinafter referred to as “the individual fee”), in the following amount per case:

(i) the amount of ¥4,800 plus ¥15,000 for each class of the classification of goods and services;

(ii) the amount of ¥66,000 multiplied by the number of classes of the classification of goods and services.

(2) The individual fee in the amount mentioned in subsection (1)(i) shall be paid before the international registration and the individual fee in the amount mentioned in subsection (1)(ii) shall be paid within the time limit prescribed by the Ordinance of the Ministry of Economy, Trade and Industry.

(3) Where the examiner’s decision or trial decision has been made to the effect that the trademark in the application for international trademark registration is to be registered, the Commissioner of the Patent Office shall notify the International Bureau of the time limit for the payment of the individual fee in the amount mentioned in subsection (1)(ii) in respect of the application concerned.

(4) Where the international registration on the basis of which the application for international trademark registration was filed has been revoked on the ground that the individual fee in the amount mentioned in subsection (1)(ii) has not been paid, the said application for international trademark registration shall be deemed to have been withdrawn.

(5) Any person desiring to renew the term of the trademark rights based on the international registration shall pay to the International Bureau the individual fee in the amount of ¥151,000 per case multiplied by the number of classes of the classification of goods and services.

(6) Sections 40 to 43 and 76(2) (limited to the proportion specified in the Attached Table 1) shall not apply to an application for the international trademark registration and to the trademark rights based on the international registration.

(Delegation to ordinance of the Ministry of Economy, Trade and Industry)

68^{un}tricies(68-31). — In addition to the matters provided for in Sections 68^{novis}(68-9) to 68^{tricies}(68-30), the details necessary for implementing the Protocol and the Regulations thereunder shall be provided for in an ordinance of the Ministry of Economy, Trade and Industry.

3. Special Provisions for Applications for Trademark Registration, etc.

(Special provisions for trademark registration subsequent to cancellation of international registration)

68^{duotricies}(68-32). — (1) Where the international registration is cancelled under Article 6(4) of the Protocol in respect of all or some of the goods and services listed in the said registration, the person who was the holder of international registration, may file an application for the registration of the same mark which was registered in the International Register with respect to Japan in respect of all or some of the said goods or services.

(2) The application for the trademark registration under the preceding subsection shall be deemed to have been filed on the date of international registration as referred to in the said subsection (in the case of the international registration as referred to in the said subsection in respect of subsequent designation, the date of the said subsequent designation) provided that the said application falls under any one of the following paragraphs:

(i) such application in the preceding subsection is filed within three months from the date on which the international registration as referred to in the preceding subsection was cancelled;

(ii) the trademark of which registration is sought is identical with the trademark in respect of such international registration in the preceding subsection;

(iii) the designated goods or the designated services in respect of such application are in fact covered by the list of goods and services contained in such international registration in the preceding subsection.

(3) Where the international registration as referred to in subsection (1) enjoyed the right of priority provided for by Article 4 of the Paris Convention, that application under subsection (1) shall enjoy the same right of priority.

(4) The preceding subsection shall also apply, where the priority was enjoyed under Section 43^{bis}(43-2)(2) of the Patent Law as applied under Section 9^{ter}(9-3) or 13(1) of this Law for the application for international trademark registration in respect of the international registration as referred to in subsection (1).

(5) For the purpose of Section 10(1) with respect to the application for trademark registration under subsection (1), “a part of his application for trademark registration” in Section 10(1) shall read “a part of his application for trademark registration (limited to the goods and services covered by the list of goods and services contained in the international registration as referred to in Section 68^{duotricies}(68-32)(1))”.

(Special provisions for an application for trademark registration subsequent to denunciation of Protocol)

68^{ter}tricies(68-33). — (1) Where the holder of the international registration having effect in Japan at the date on which the denunciation under Article 15(5)(b) of the Protocol becomes effective, who, because of the denunciation, is no longer entitled to file the international application under Article 2(1) of the Protocol, may file an application for trademark registration for the goods or services listed in the said international registration.

(2) Section 68^{duo}tricies(68-32)(2) to (5) shall apply mutatis mutandis to the application for trademark registration under the preceding subsection. In such a case, “within three months from the date on which the international registration in the preceding subsection was cancelled” in Section 68^{duo}tricies(68-32)(2)(i) shall read “within two years from the date on which the denunciation under Article 15(3) of the Protocol took effect”.

(Special provisions for reasons for refusal)

68^{quater} tricies(68-34). — (1) For the purpose of Section 15 for the application for trademark registration under Section 68^{duo}tricies(68-32)(1) or 68^{ter}tricies(68-33)(1), “where it falls under any of the following paragraphs” in Section 15 shall read “where it falls under any of the following paragraphs, or where the application for trademark registration under Section 68^{duo}tricies(68-32)(1) or 68^{ter}tricies(68-33)(1) does not comply with Section 68^{duo}tricies(68-32)(1) or 68^{ter}tricies(68-33)(2) (including its application as applied under Section 68^{ter}tricies(68-33)(2))”.

(2) Section 15 (limited to the proportion for paragraphs (i) and (ii)) shall not apply to the application for trademark registration under Section 68^{duo}tricies(68-32)(1) or 68^{ter}tricies(68-33)(1) relating to the trademark right based on the international registration (referred to as “re-filing of trademark right relating to former international registration” in Sections 68^{septies}tricies(68-37) and 68^{undecim}tricies(68-39)).

(Special provisions for registration of establishment of trademark right)

68^{quin}tricies(68-35). — Notwithstanding Section 18(2), the establishment of trademark right shall be registered for the application for trademark registration under Section 68^{duo}tricies(68-32)(1) or 68^{ter}tricies(68-33)(1), where the examiner’s decision or trial decision has been made to the effect that the trademark is to be registered within ten years from the date of international registration relating to the said application (the date of its latest renewal, where the renewal of the term of the said international registration has been made), and where the individual fee in the amount mentioned in Section 68^{tricies}(68-30)(1)(ii) has been paid to the International Bureau before the date on which the international registration relating to the said application was revoked under Article 6(4) of the Protocol or before the date on which the denunciation under Article 15(3) of the Protocol took effect.

(Special provisions for term)

68^{set}tricies(68-36). — (1) The term of trademark right as referred to in Section 68^{quin}tricies(68-35) shall be ten years from the date of international registration relating to the

said application (the date of its latest renewal, where the renewal of the said international registration has been made).

(2) Section 19(1) shall not apply to the term of trademark right referred to in the preceding subsection.

(Special provisions for opposition to registration)

68septies tericies(68-37). — For the purpose of Section 43^{bis}(43-2) for the trademark registration made in consequence of the re-filing of the application for trademark right from the former international registration, “trademark registration” in Section 43^{bis}(43-2) shall read “trademark registration (excluding the trademark registration made in consequence of the re-filing of the application for trademark right from the former international registration for which the term prescribed under this Section has expired without having any opposition raised to the trademark registration relying on the former international registration)”.

(Special provisions for trial for invalidation of trademark registration)

68duodequadragies(68-38). — For the purpose of the trial in Section 46(1) for the trademark registration relating to the application for trademark registration under Section 68^{duotricies}(68-32)(1) or 68^{tericies}(68-33)(1), “In the following cases” in Section 46(1) shall read “In the following cases, or in the case where the trademark registration has been effected contrary to Section 68^{duotricies}(68-32)(1), 68^{tericies}(68-33)(1) or each paragraph of Section 68^{duotricies}(68-32)(2) (including its application under Section 68^{tericies}(68-33)(2))”.

68undequadragies(68-39). — For the purpose of Section 47 for the trademark registration for the re-filing of the application for the registration of trademark right based on any former international registration, “may not be demanded”. In Section 47 shall read “may not be demanded. The same shall apply prior to the expiration of five years from the date of registration of the establishment of the trademark right, with respect to the trademark registration relating to re-filing of the application for trademark right relating to former international registration, when it has become impossible to make a demand for trial under Section 46(1) with respect to the trademark registration from the former international registration”.

Chapter VIII — Miscellaneous Provisions

(Amendment of proceedings)

68^{quadrages}(68-40). — (1) With respect to a procedure relating to a trademark application, a defensive mark application, a demand or other procedure relating to trademark or defensive mark registration, the person carrying on such procedure may make an amendment only during the pendency of the case in examination, opposition to registration, trial or retrial.

(2) Notwithstanding the preceding subsection, the person who has applied for trademark registration may, simultaneously with the payment of the registration fee under Section 40(1) or 41^{bis}(41-2)(1), amend to reduce the number of classes of the classification of goods and services in his application.

(Exceptional provisions on trademark right with two or more designated goods or designated services)

69. — For the purpose of Section 13^{bis}(13-2)(4) (including its application under Section 68(1)), 20(4) and 33(1) of this Law, Section 97(1) or 98(1)(i) of the Patent Law as applied under Section 35 of this Law, Sections 43^{ter}(43-3)(3), 46(2), 46^{bis}(46-2), 54 of this Law, Section 132(1) of the Patent Law as respectively applied under Section 56(1) of this Law or under Section 174(2) of the Patent Law as applied under Section 61 of this Law, Section 59, 60 or 71(1)(i) or 75(2)(iv) of this Law, relating to trademark registration or the trademark right, where there are two or more items of designated goods or designated services, the trademark registration shall be deemed to have been effected, or a trademark right shall be deemed to exist, for each of such designated goods or designated services.

(Exceptional provisions on trademarks, etc. similar to registered trademarks)

70. — (1) The references to “registered trademark” in Section 25, 29, 30(2), 31(2), 31^{bis}(31-2)(1), 34(1), 38(3), 50, 52^{bis}(52-2)(1), 59(i), 64, 73 or 74 shall include trademarks which are similar to the registered trademark and would be considered identical if they had the same coloring.

(2) The references to “registered defensive mark” in Sections 4(1)(xii) and 67 shall include marks which are similar to the registered defensive mark and would be considered identical if they had the same coloring.

(3) The references to “trademark similar to the registered trademark” in Sections 37(i) and 51(1) shall not include trademarks which are similar to the registered trademark and would be considered identical if they had the same coloring.

(Registration in Trademark Register)

71. — (1) The following matters shall be registered in the Trademark Register kept in the Patent Office:

(i) the establishment, renewal of term, division, transfer, modification, extinguishment, restoration or restriction on disposal of a trademark right;

(ii) the establishment, renewal of term, transfer or extinguishment of a right based on a defensive mark registration;

(iii) the establishment, maintenance, transfer, modification, extinguishment or restriction on disposal of a right of exclusive or non-exclusive use;

(iv) the establishment, transfer, modification, extinguishment or restriction on disposal of rights in a pledge upon a trademark right or a right of exclusive or non-exclusive use.

(2) The Trademark Register, either in whole or in part, may be prepared by means of magnetic tapes (including other materials on which matters can be accurately recorded by an equivalent method — hereinafter referred to as “magnetic tapes”).

(3) Other matters relating to registration that are not provided for in this Law shall be prescribed by Cabinet Order.

(Issuance of trademark registration certificate, etc.)

71^{bis}(71-2). — (1) When the establishment of a trademark right has been registered or the establishment of a right based on a defensive mark has been registered, the Commissioner of the Patent Office shall issue to the owner of the right a certificate of trademark registration or a certificate of defensive mark registration.

(2) The re-issuance of a certificate of trademark registration or a certificate of defensive mark registration shall be prescribed by an ordinance of the Ministry of Economy, Trade and Industry.

(Request for certification, etc.)

72. — (1) Anyone may request the Commissioner of the Patent Office to issue a certificate, a copy or an extract of documents, to allow the inspection or copying of documents or to issue documents whose contents are recorded in the part of the Trademark Register prepared by magnetic tapes, where such documents relate to trademark or defensive mark registrations. However, this provision shall not apply in the case of the following documents, which the Commissioner of the Patent Office considers it necessary to keep secret:

(i) documents concerning a trial as prescribed in Section 46(1) (including its application *mutatis mutandis* under Section 68(4)), Section 50(1), 51(1), 52^{bis}(52-2)(1), 53(1) or Section 53^{bis}(53-2) (including its application *mutatis mutandis* under Section 68(4)) or a retrial of the final and conclusive trial decision, with respect to which parties or intervenors concerned have given a notice that there has been described a trade secret (meaning trade secret as referred to in Section 2(4) of the Law for the Repression of Unfair Competition (Law No. 47 of 1993)) owned by the parties or intervenors concerned;

(ii) matters liable to injure the reputation or peaceful existence of an individual;

(iii) matters liable to contravene public order or morality.

(2) Where a demand made with respect for documents as prescribed in the paragraphs of the preceding subsection is allowed, the Commissioner of the Patent Office shall notify a person, who has submitted such documents, to that effect with a reason therefor.

(3) The Law Concerning Access to Information held by Administrative Organs (Law No. 42 of 1999) shall not apply for those parts of documents and of the Trademark Register relating to trademark or defensive mark registrations, which have been prepared by magnetic tapes.

(Indication of existence of trademark registration)

73. — The owner of a trademark right or of a right of exclusive or non-exclusive use shall, when applying a registered trademark to the designated goods or their packaging, or to articles for use in the provision of the designated services, or in the provision of the designated services, to articles related to the provision of relevant designated services belonging to persons to whom the services are provided, take steps to attach to the trademark an indication to the effect that the trademark is a registered trademark (hereinafter referred to as “indication of trademark registration”) as prescribed in an ordinance of the Ministry of Economy, Trade and Industry.

(Prohibition of false marking)

74. — No person may commit any of the following acts:

(i) acts of attaching to such trademark an indication of a trademark registration or an indication confusingly similar thereto when using a trademark which is not a registered trademark;

(ii) acts of attaching to such trademark an indication of a trademark registration or an indication confusingly similar thereto when using a registered trademark in relation to goods or services other than the designated goods or designated services;

(iii) acts of holding, for the purpose of assignment or delivery, goods to which or to the packaging of which a trademark other than a registered trademark has been attached, which are other than the designated goods to which or to the packaging of which a trademark registered in relation to goods has been attached, or to which or to the packaging of which a trademark registered in respect to services has been attached, and in respect of which an indication of a trademark registration, or an indication confusingly similar thereto, has been attached to such trademark;

(iv) acts of holding, in the provision of services, articles which are for use by persons to whom the services are provided and to which a trademark other than a registered trademark has been applied, which, in the provision of services other than the designated services, are for use by persons to whom the services are provided and to which a trademark registered in respect to services has been applied, or which, in the course or providing services are to be supplied for use by persons to whom the services are provided and to which a trademark registered in respect to goods has been applied, and in respect of which an indication of a trademark registration, or an indication confusingly similar thereto, has been attached to such trademark (such articles being referred to in the next paragraph as “articles with a false indication of trademark registration in respect to services”);

(v) acts of assigning or delivering, or of holding or importing for the purpose of assignment or delivery, articles with a false indication of trademark registration in respect to services, for the purpose of causing such articles to be used in the provision of such services.

(Trademark Gazette)

75. — (1) The Patent Office shall publish the Trademark Gazette.

(2) In addition to the particulars provided for in this Law, the Trademark Gazette shall contain:

(i) a decision that a trademark application is to be refused, or a abandonment, withdrawal or declining of an application for trademark registration or for defensive mark registration, which is made after the applications having been laid open;

(ii) succession to rights resulting from an application for trademark registration, which is gained after the application having been laid open;

(iii) amendments for designated goods or designated services stated in an application or for trademarks for which trademark registrations are sought or marks for which defensive mark registrations are sought, which are made after the applications having been laid open;

(iv) extinguishment of a trademark right (excluding extinguishment due to the expiration of a term or falling under Section 41bis(41-2)(4));

(v) an opposition to a registration or a demand for a trial or a retrial or their withdrawal;

(vi) final and conclusive ruling on an opposition to a registration and final and conclusive decision of a trial or a retrial;

(vii) a final judgment in an action under Section 63(1).

(Fees)

76. — (1) The person specified hereunder shall pay the fee the amount of which shall be prescribed by Cabinet Order with the actual costs taken into consideration:

(i) person making notification of succession in accordance with Section 34(4) of the Patent Law as applied under Section 13(2) of this Law;

(ii) person requesting an extension of a time limit under Section 17^{quater}(17-4) of the Design Law as applied under Section 17^{bis}(17-2)(2) (including its application under Section 68(2) of this Law), Section 4 or 5(1) of the Patent Law as applied under Section 41(2) (including its application under Section 41^{bis}(41-2)(6) of this Law), Section 43^{quater}(43-4)(3) (including its application under Section 68(4) of this Law), Section 65^{octies}(65-8)(3) or Section 77(1) of this Law, or change of date in accordance with Section 5(2) of the Patent Law as applied under Section 77(1) of this Law;

(iii) person filing an international application to the Commissioner of the Patent Office in accordance with Section 68^{bis}(68-2);

(iv) person presenting a request for later designation to the Commissioner of the Patent Office in accordance with Section 68^{quater}(68-4);

(v) person presenting a request for the renewal of the international registration to the Commissioner of the Patent office in accordance with Section 68^{quinquies}(68-5);

(vi) person presenting a request for the recordal of change in the ownership of the international registration to the Commissioner of the Patent Office in accordance with Section 68sexies(68-6);

(vii) person requesting re-issuance of a certificate of trademark registration or defensive mark registration;

(viii) person requesting issuance of certificate in accordance with Section 72(1);

(ix) person requesting issuance of copy or extract of documents in accordance with Section 72(1);

(x) person requesting inspection or copying of documents in accordance with Section 72(1);

(xi) person requesting issuance of documents containing matters recorded in that part of the Trademark Register as prepared on magnetic tape, in accordance with Section 72(1).

(2) The persons specified in the left-hand column of the attached table shall pay the fee the amount of which shall be prescribed by Cabinet Order within the limit of the amounts specified in the right-hand column of the table.

(3) The preceding two subsections shall not apply where the person specified in the left-hand column of the table is the State.

(4) Where the State and the person(s) other than the State jointly own a trademark right, a right arising from a trademark application or a right based on the registration of a defensive mark and there is an agreement with respect to their shares of the right, the registration fee under subsection (1) or (2) (limited to the registration fee prescribed by Cabinet Order) shall be a sum with prescribed registration fee under these subsections multiplied by the ratios of the shares of the person(s) other than the State, and the person(s) other than the State shall pay such sum, notwithstanding the provisions of those subsections.

(5) Where the amount of the registration fee calculated in accordance with the preceding subsection has a fractional figure less than 10 yen, that fractional figure shall be discarded.

(6) The payment of the fee under subsection (1) or (2) shall be made by patent revenue stamps as prescribed by an ordinance of the Ministry of Economy, Trade and Industry. However, wherever so prescribed by an ordinance of the Ministry of Economy, Trade and Industry, such payment may be made in cash.

(7) A fee paid by mistake or in excess shall be refunded upon the request of the person making the payment.

(8) No request for a refund of a fee under the preceding subsection may be made after one year from the date of payment.

(Application mutatis mutandis of Patent Law)

77. — (1) Sections 3 to 5 of the Patent Law shall apply mutatis mutandis to the time limits and dates prescribed in this Law. In such a case, "Section 121(1)" in Section 4 of the Patent Law shall read "Section 44(1) or 45(1) of the Trademark Law".

(2) Sections 6 to 9, 11 to 16, 17(3) and (4), 18 to 24 as well as Section 194 of the Patent Law shall apply mutatis mutandis to trademark and defensive mark applications, demands and

any other proceedings relating to trademark or defensive mark registrations. In such a case, “a request for examination” in Section 6(1)(i) of the Patent Law shall read “an opposition to a registration”, “a trial or retrial demanded by an adverse party” in Section 7(4) of the Patent Law shall read “an opposition to a registration relating to the trademark right or a right based on a defensive mark registration, or a trial or retrial demanded by an adverse party”, “an appeal trial against examiner’s decision” in Section 9 of the Patent Law shall read “a trial under Section 44(1) or 45(1) of the Trademark Law”, “an appeal trial against examiner’s decision” in Section 14 of the Patent Law shall read “a trial under Section 44(1) or 45(1) of the Trademark Law”, “(ii) when the formal requirements specified in this Law or in an order or ordinance thereunder have not been compiled with” in Section 17(3) of the Patent Law shall read “(ii) when the formal requirements specified in this Law or in an order or ordinance thereunder have not been compiled with; (ii)^{bis} when a registration fee under Section 40(2) of the Trademark Law or a registration fee due to be paid at the time of a request for registration of renewal under Section 41^{bis}(41-2)(2) (including a registration fee with a surcharge liable to be paid under Section 43(1) or (2) of the Trademark Law) is not paid, “... which cannot be amended” in Section 18^{bis}(18-2)(1) of the Patent Law shall read “... which cannot be amended (except where it falls under any of paragraphs of Section 5^{bis}(5-2)(1) of the Trademark Law (including its application under Section 68(1) of the Patent Law), “a trial” in Sections 23(1) and 24 of the Patent Law shall read “a trial examination of an opposition to a registration and ruling thereon, a trial”, and “a trial” in Section 194 (1) of the Patent Law shall read “an opposition to a registration, a trial”.

(3) Section 25 of the Patent Law shall apply mutatis mutandis to trademark rights and other rights relating to trademark registrations.

(4) Section 26 of the Patent Law shall apply mutatis mutandis to trademark and defensive mark registrations.

(5) Sections 189 to 192 of the Patent Law shall apply mutatis mutandis to transmittal under this Law.

(6) Section 195^{ter}(195-3) of the Patent Law shall apply mutatis mutandis to measures under this Law or an order or ordinance thereunder this Law.

(7) Section 195^{quater}(195-4) of the Patent Law shall apply mutatis mutandis to examiners’ decisions and rulings to decline an amendment, a ruling to revoke, trial decisions and rulings to dismiss a written opposition to the registration or a demand for trial or retrial under this Law as well as to measures from which no appeal lies in accordance with this Law.

(Transitory Measure)

77^{bis}(77-2). — When Cabinet Order is made or repealed pursuant to this Law, any requisite transitory measures (including transitory measures relating to penal provisions) may, to the extent deemed necessary and reasonable, be made by means of such Cabinet Order.

Chapter IX — Penal Provisions

(Offense of infringement)

78. — Any person who has infringed a trademark right or a right of exclusive use shall be liable to imprisonment with labor not exceeding five years or to a fine not exceeding 5,000,000 yen.

(Offense of fraud)

79. — Any person who has obtained a trademark or defensive mark registration or a registration of renewal of the term of a trademark right or right based on a defensive mark registration, a ruling on an opposition to a registration or a trial decision, by means of a fraudulent act shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 3,000,000 yen.

(Offense of false marking)

80. — Any person infringing Section 74 shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 3,000,000 yen.

(Offense of perjury, etc.)

81. (1) A witness, expert witness or interpreter who, having taken an oath under this Law, has made a false statement or has given a false expert opinion or has interpreted falsely before the Patent Office or a court commissioned thereby shall be liable to imprisonment with labor for a term of not less than three months nor more than ten years.

(2) Where a person committing the offense in the preceding subsection has made a voluntary confession before transmittal of the copying of judgement on the case or before a ruling or a decision on an opposition to the registration has become final and conclusive, his sentence may be reduced or suppressed.

(Dual liability)

82. — Where an officer representing a legal entity or a representative, employee or any other worker of a legal entity or of a natural person has committed an act in violation of any of the provisions prescribed in the following paragraphs with regard to the business of the legal entity or such natural person, the legal entity shall, in addition to the offender, be liable to the fine prescribed in the following paragraphs, and such natural person shall, in addition to the offender, be liable to the fine prescribed in the Sections referred to in the following paragraphs:

- (i) Section 78, subject to a fine up to 150 million yen;
- (ii) Section 79 or 80, subject to a fine up to 100 million yen.

(Administrative penalties)

83. — Where a person, who has taken an oath under Section 207(1) of the Code of Civil Procedure as applied under Section 151 of the Patent Law as respectively applied either under Section 71(3) of the Patent Law as applied under Section 28(3) (including its application under Section 68(3)) of this Law, under Section 43^{optics}(43-8) (including its application under Sections 60bis(60-2)(1) and 68(4)) or 56(1) (including its application under Section 68(4)) of this Law, under Section 174(2) of the Patent Law as applied under Section 61 (including its application under Section 68(5)) of this Law, under Section 58(2) of the Design Law as applied under Section 62(1) (including its application under Section 68(5)) of this Law, or under Section 58(3) of the Design Law as applied under Section 62(2)(including its application under Section 68(5)) of this Law, has made a false statement before the Patent Office or a court commissioned thereby, he shall be liable to an administrative penalty not exceeding 100,000 yen.

84. — Where a person who has been summoned by the Patent Office or a court commissioned thereby in accordance with this Law has failed to appear or has refused to take an oath, to make a statement, to testify, to give an expert opinion or to interpret, without a legitimate reason, he shall be liable to an administrative penalty not exceeding 100,000 yen.

85. — Where a person who has been ordered by the Patent Office or a court commissioned thereby to produce or show documents or other evidence in accordance with this Law relating to the examination or preservation of evidence has failed to comply with the order, without a legitimate reason, he shall be liable to an administrative penalty not exceeding 100,000 yen.

Supplementary Provision
(Law No. 127 of 1959)

The entry into force of this Law shall be established by another law.

.....

Supplementary Provisions
(Extract from Law No. 91 of 1970)

(Entry into force)

1. — This Law shall enter into force on January 1, 1971.

.....

(Transitory measures incident to revision of Trademark Law)

8. — Sections 2 and 5 of these Supplementary Provisions shall apply mutatis mutandis to the transitory measures that are incident to the revision of the Trademark Law under Section 4.

(Delegation to Cabinet Order)

9. — In addition to those provided for in the preceding sections, the transitory measures necessary for the implementation of this Law shall be prescribed by Cabinet Order.

Supplementary Provisions
(Extract from Law No. 46 of 1975)

(Entry into force)

1. — This Law shall enter into force on January 1, 1976, with the following exceptions:

(i) amended Section 40(1) and (2), and the amended table attached to the Trademark Law shall enter into force on the day of promulgation of this Law;

(ii) amended Sections 4(1)(ii) and 9(1) of the Trademark Law, shall enter into force on the day on which become effective the provisions of Articles 1 to 12 of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at the Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958 and at Stockholm on July 14, 1967, in accordance with Article 20(2)(c) of said Paris Convention;

(iii) amended Section 19(2), newly added Section 19(3), newly added Section 20^{bis}, and amended Sections 21(1), 49, 68(3) and 70(1) of the Trademark Law, and Section 5(2) of these Supplementary Provisions shall enter into force on the day on which three years counting from the day of promulgation of this Law have elapsed.

.....

(Transitory measures incident to revision of Patent Law)

2. — (1) A patent application which is pending in the Patent Office at the time of entry into force of this Law shall, except for the fee to be paid in accordance with Section 195(1) of the Patent Law after its revision, be dealt with as heretofore until the examiner's decision or trial decision with respect to the application which has become final and conclusive.

(3) The grounds for invalidation of a patent resulting from a patent application filed before the entry into force of this Law shall be as heretofore.

(Transitory measures incident to revision of Trademark Law)

5. — (1) A trial under Section 50(1) of the Trademark Law which is pending in the Patent Office at the time of entry into force of this Law shall be dealt with as heretofore.

(2) Section 2(1) of these Supplementary Provisions shall apply mutatis mutandis to an application for registration of renewal of the term of a trademark right which is pending in the Patent Office at the time of entry into force of paragraph (iii) of the proviso to Section 1 or these Supplementary Provisions, and Section 2(3) of these Supplementary Provisions shall apply mutatis mutandis to the grounds for invalidation of a registration of renewal of the term of a trademark right resulting from an application for registration of renewal filed before the day on which three years counting from the day of promulgation of this Law have elapsed.

Supplementary Provisions
(Extract from Law No. 45 of 1981)

(Entry into force)

1. — This Law shall enter into force from the day of promulgation.... However, ... the amended provisions of Section 107(1) of the Patent Law, the amended provisions of Section 31(1) of the Utility Model Law, the amended provisions of Section 42(1) and (2) of the Design Law, the amended provisions of Section 40(1) and (2) of the Trademark Law ... shall enter into force on June 1, 1981.

Supplementary Provisions
(Extract from Law No. 41 of 1985)

(Entry into force)

1. — This Law shall enter into force on the day to be set by Cabinet Order within six months from the day of promulgation....

Supplementary Provisions
(Extract from Law No. 27 of 1987)

(Entry into force)

1. — This Law shall enter into force on January 1, 1988.

However, the following provisions shall enter into force on June 1, 1987:

.... Section 40 and “Attached Table” (Related to Section 76).

Supplementary Provisions
(Extract from Law No. 30 of 1990)

(Entry into force)

1. — This Law shall enter into force on December 1, 1990.

Supplementary Provisions
(Extract from Law No. 65 of 1991)

(Entry into force, etc.)

1. — This Law shall come into force as of a day* to be determined by Cabinet Order within a period not exceeding one year counting from the day of promulgation. However, the provisions for amending Section 9, the provisions for adding a further Section after Section 9, the provisions for amending Sections 37 and 67 as well as a part of the provision for amending Section 68(1) to add the words "Section 9^{bis}" after "Section 6(1)," and the provisions of Section 14(2) of the Ancillary Provision shall come into force as of a day the elapsing of six months** from the day on which this Law comes into force, and the provisions of Sections 37 and 67 of the amended Trademark Law (hereinafter referred to as "the new Law") shall apply to acts subsequent to that day.

Supplementary Provisions
(Extract from Law No. 26 of 1993)

(Entry into force)

1. — This Law shall come into force as of a day to be determined by Cabinet Order within a period not exceeding one year counting from the day of promulgation.

Supplementary Provisions
(Extract from Law No. 116 of 1994)

(Entry into force)

1. — This Law shall enter into force on July 1, 1995. However, the provisions indicated in the following paragraphs shall enter into force on the date specified respectively in the said paragraphs:

(i) The amended provisions of Section 30(3) of the Patent Law prescribed in Section 1;

* April 1, 1992.

** October 1, 1992.

the provisions prescribed in Section 5 (excluding the amended provisions of Sections 10(3), 13(1), 44(2) and 63^{bis} of the Trademark Law); and

the provisions prescribed in Section 9:

— July 1, 1995 or the day on which the Marrakesh Agreement Establishing the World Trade Organization become effective in Japan ... whichever is later;

(ii) The provisions prescribed in Section 2;

the amended provisions of Section 3^{bis}(1) (limited to the part amending “publication of application” into “publication of the Patent Gazette containing the matters referred to in each paragraph thereof”), 10(5) and (6), 14(4) and 39(3), the amended provisions of Section 45 (excluding the part adding a subsection to this section), the amended provisions of Section 50^{bis} (limited to the part amending “Section 174(2)” into “Section 174(3)” and “Section 193(2)(v)” into “Section 193(2)(iv)”), the amended provisions of Section 53(2) and the amended provisions of Section 62, of the Utility Model Law;

the amended provisions of Sections 13(3), 19, 58, 68(1) and 75 of the Design Law;

the provisions prescribed in Section 6;

the amended provisions of the Patent Attorney Law prescribed in Section 7; and

the provisions of Sections 8, 9, 10(2), 17 and 19:

— January 1, 1996.

Supplementary Provisions

(Extract from Law No. 68 of 1996)

(Entry into force)

1. — This Law shall enter into force on April 1, 1997.

....

Supplementary Provisions

(Extract from Law No. 51 of 1998)

(Entry into force)

1. — This Law shall enter into force on January 1, 1999.

....

Supplementary Provisions

(Extract from Law No. 41 of 1999)

(Entry into force)

1. — This Law shall enter into force on January 1, 2000.

....

Supplementary Provisions
(Extract from Law No.43 of 1999)

(Entry into force)

1. — This Law shall enter into force on April 1, 2001.

.....

Supplementary Provisions
(Extract from Law No.160 of 1999)

(Entry into force)

1. — This Law shall enter into force on January 6, 2001.

.....

Supplementary Provisions
(Extract from Law No.220 of 1999)

(Entry into force)

1. — This Law shall enter into force on January 6, 2001.

.....

Supplementary Provisions
(Extract from Law No.24 of 2002)

(Entry into force)

1. — This Law shall enter into force on January 1, 2003.

.....

Supplementary Provisions
(Extract from Law No.47 of 2003)

(Entry into force)

1. — This Law shall enter into force on January 1, 2004. However, the provisions indi-

cated in the following paragraphs shall enter into force on the dates specified respectively in the said paragraphs:

.....

(ii) ... the amended provisions of Sections 40, 41^{bis}(41-2), 65^{septies}(65-7) and 76 of the Trademark Law ... —April 1, 2004.

.....

Attached Table
(Related to Section 76)

Person liable to pay	Amounts
1. Person filing an application for trademark registration	¥6,000 per case plus ¥15,000 for each of the classification
2. Person filing an application for defensive mark registration, or renewal of term of right based on defensive mark registration	¥12,000 per case plus ¥30,000 for each of the classification
3. Person demanding the division of a trademark right	¥30,000 per case
4. Person requesting interpretation in accordance with Section 28(1) (including its application under Section 68(3))	¥40,000 per case
5. Person filing opposition to registration	¥3,000 per case plus ¥8,000 for each of the classification
6. Person demanding intervention in a trial examination of the opposition to trademark registration	¥11,000 per case
7. Person demanding trial or retrial	¥15,000 per case plus ¥40,000 for each of the classification
8. Person demanding intervention in trial or retrial	¥55,000 per case