

## Patent Law

(Law No. 121 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. 98 of 1966, Law No. 111 of 1966, Law No. 91 of 1970, Law No. 42 of 1971, Law No. 96 of 1971, Law No. 10 of 1973, Law No. 46 of 1975, Law No. 27 of 1978, Law No. 30 of 1978, Law No. 45 of 1981, Law No. 83 of 1982, Law No. 78 of 1983, Law No. 23 of 1984, Law No. 24 of 1984, Law No. 41 of 1985, Law No. 27 of 1987, Law No. 91 of 1988, Law No. 30 of 1990, 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. 151 of 1999, Law No. 160 of 1999, Law No. 220 of 1999, Law No. 24 of 2002, Law No. 47 of 2003, Law No. 61 of 2003, Law No. 79 of 2004.

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## Patent Law

### Chapter I — General Provisions

#### (Purpose)

1. — The purpose of this Law shall be to encourage inventions by promoting their protection and utilization so as to contribute to the development of industry.

#### (Definitions)

2. — (1) “Invention” in this Law means the highly advanced creation of technical ideas by which a law of nature is utilized.

(2) “Patented invention” in this Law means an invention for which a patent has been granted.

(3) “Working” of an invention in this Law means the following acts:

(i) in the case of an invention of a product (including a program, etc. — hereinafter referred to as “product”), acts of manufacturing, using, assigning, etc. (meaning assigning and leasing; and including, where the product is a program, etc., its providing through electric telecommunication lines), or importing or offering for assignment, etc. (including displaying for the purpose of assignment, etc. — hereinafter referred to as “assignment, etc.”) of, the product;

(ii) in the case of an invention of a process, acts of using the process;

(iii) in the case of an invention of a process of manufacturing a product, acts of using, assigning, etc., or importing or offering for assignment, etc. of, the product manufactured by the process, in addition to the acts mentioned in the preceding paragraph.

(4) “Programs, etc.” in this Law mean programs (a set or sets of instructions to a computer which are combined so as to produce a result — hereinafter referred to as “programs, etc.” in this subsection) and other information equivalent to programs to be used for computer processing.

#### (Computation of time limits)

3. — (1) Time limits fixed in this Law or an order or ordinance under this Law shall be computed according to the following provisions:

(i) the first day of the period shall not be included. However, this provision shall not apply when the period begins from 00.00 a.m.;

(ii) when the period is expressed in months or years, it shall be counted according to the calendar. When the period is not computed from the beginning of a month or year, it shall expire on the day preceding the day of the last month or year corresponding to the day on which the computation begins. However, where there is no corresponding day in the last month, it shall expire on the last day of that month.

(2) Where the last day of a period prescribed for the filing of a patent application or demand or for any other procedure relating to a patent (hereinafter referred to as “procedure”) falls on a Sunday, a holiday referred to in each of the paragraphs of Section 1(1) of the Law concerning holidays of administrative organizations (Law No. 91 of 1988), the last day of the period shall be the day following such holiday or holidays.

#### (Extension, etc. of time limits)

4. — 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 prescribed in Section 46bis(46-2)(1)(iii), 108(1), 121(1) or 173(1).

5. — (1) The Commissioner of the Patent Office, the trial examiner-in-chief or the examiner may, where he has designated a time limit for a procedure to be initiated under this Law, extend the time limit upon request or ex officio.

(2) The trial examiner-in-chief may, where he has designated a date under this Law, change the date upon request or ex officio.

#### (Capacity of associations, etc. which are not legal entities to proceed before the Office)

6. — (1) An association or foundation which is not a legal entity but for which an officer representing it or an administrator has been designated may, in its name:

(i) make a request for examination;

(ii) demand for a patent invalidation trial or extended registration invalidation trial;

(iii) demand for retrial against a final and conclusive trial decision with respect to a patent invalidation trial or extended registration invalidation trial, in accordance with Section 171(1).

(2) An association or foundation which is not a legal entity but for which an officer representing it or an administrator has been designated may be made a party in its name to a retrial against a final and conclusive trial decision with respect to a patent invalidation trial or extended registration invalidation trial.

#### (Capacity of minors or majors under guardianship, etc. to proceed before the Office)

7. — (1) Minors and majors placed under guardianship may proceed before the Office only through their legal representatives. However, this provision shall not apply where a minor can perform a legal act independently.

(2) Where a person placed under curatorship proceeds before the Office, he shall obtain the consent of his curator.

(3) Where a legal representative proceeds before the Office and there is a supervisor of the guardian, the former shall obtain the consent of the latter.

(4) Where a person placed under curatorship or a legal representative takes part in a procedure with regard to a trial or retrial demanded by an adverse party, the preceding two subsections shall not apply.

#### **(Patent administrator for residents abroad)**

8. — (1) A person who has neither his domicile nor residence (nor, in the case of a legal entity, its establishment) in Japan (hereinafter referred to as a “resident abroad”) may not, except where prescribed by Cabinet Order, proceed before the Office or institute a suit against any measure taken by an administrative agency in accordance with this Law or an order or ordinance thereunder, except through his representative with respect to his patent who has his domicile or residence in Japan (hereinafter referred to as “patent administrator”).

(2) The patent administrator shall represent the principal in all procedures and in a suit instituted against measures taken by an administrative agency in accordance with this Law or an order or ordinance thereunder. However, this provision shall not apply where a resident abroad restricts the scope of power of attorney of his patent administrator.

#### **(Scope of powers of attorney)**

9. — A representative of a person who is domiciled or a resident (or, in the case of a legal entity, establishment) in Japan and who is proceeding before the Office shall not, unless expressly so empowered, convert, abandon or withdraw a patent application, withdraw an application for registration of an extension of the term of a patent right, withdraw a demand, request or motion, make or withdraw a priority claim under Section 41(1), file a patent application based on a utility model registration under Section 46<sup>bis</sup>(46-2)(1), make a request for laying open of an application, demand an appeal trial against examiner’s refusal, surrender a patent right or appoint a sub-representative.

#### **(Proof of powers of attorney)**

10. — *Deleted*

#### **(Non-extinguishment of powers of attorney)**

11. — The power of attorney of a representative of a person proceeding before the Office shall not become extinguished on the principal’s death or on merger in the case of a legal entity, or on the termination of the duty of trust, where a trustee is the principal, or on the death of a legal representative or on the modification or extinguishment of his power of attorney.

#### **(Independent representation)**

12. — Where a person proceeding before the Office has two or more representatives, each of them shall represent the principal.

#### **(Replacement of representatives, etc.)**

13. — (1) The Commissioner of the Patent Office or the trial examiner-in-chief may, if he considers a person proceeding before the Office to be incompetent, order a representative to act.

(2) The Commissioner of the Patent Office or the trial examiner-in-chief may, if he considers the representative of a person proceeding before the Office to be incompetent, order him to be replaced.

(3) In the case of the preceding two subsections, the Commissioner of the Patent Office or the trial examiner-in-chief may order that a patent attorney be the representative.

(4) The Commissioner of the Patent Office or the trial examiner-in-chief may dismiss any action taken before the Office by a person or representative referred to respectively in subsection (1) or (2) after the issuance of an order under subsection (1) or (2).

#### **(Mutual representation of parties)**

14. — Where two or more persons are jointly proceeding before the Office, each of them shall represent the other or others with respect to a procedure other than the conversion, abandonment and withdrawal of a patent application, the withdrawal of an application for registration of an extension of the term of a patent right, the withdrawal of a demand, request, or motion, the making and withdrawal of a priority claim under Section 41(1), the making of a request for laying open of an application, and the demand for an appeal trial against examiner’s refusal. However, this provision shall not apply where they have appointed a representative for both or all of them and have notified the Office accordingly.

### **(Venue of court for residents abroad)**

**15.** — With respect to a patent right or other right relating to a patent of a resident abroad, the domicile or residence of his patent administrator or, where there is no such administrator, the location of the Patent Office shall be the place of the property under Section 5(iv) of the Code of Civil Procedure (Law No. 109 of 1996).

### **(Ratification of acts of persons lacking capacity)**

**16.** — (1) The acts of a minor (other than one who has independent capacity to perform legal acts) or of a major placed under guardianship may be ratified by his legal representative (or by the principal when he has gained capacity to proceed before the Office).

(2) The acts of a person who has no power of attorney may be ratified by the principal when he has capacity to proceed before the Office or by his legal representative.

(3) The acts of a person placed under curatorship taken without his curator's consent may be ratified by such person with his curator's consent.

(4) The acts of a legal representative taken without consent of a supervisor of the guardian, where there is such a supervisor, may be ratified by the legal representative when he has obtained the supervisor's consent or by the principal when he has gained capacity to proceed before the Office.

### **(Amendment of proceedings)**

**17.** — (1) A person who is proceeding before the Office may make amendments only during the pendency of the case before the Office. However, subject to Sections 17<sup>bis</sup>(17-2) to 17<sup>quater</sup>(17-4), he may not amend the description, patent claim(s), drawing(s) or abstract attached to the request as well as the corrected description, patent claim(s), drawing(s) attached to the written demand for correction under Section 134<sup>bis</sup>(134-2)(1) or demand for a correction trial.

(2) Notwithstanding the principal sentence of subsection (1), an applicant of a foreign language file application referred to in Section 36<sup>bis</sup>(36-2)(2) may not amend the foreign language file and foreign language abstract referred to in Section 36<sup>bis</sup>(36-2)(1).

(3) The Commissioner of the Patent Office may invite amendment, designating an adequate time limit, in the following cases:

- (i) when the requirements of Section 7(1) to (3) or 9 have not been complied with;
- (ii) when the formal requirements specified in this Law or in an order or ordinance thereunder have not been complied with;
- (iii) when the fees due to be paid under Section 195(1) to (3) have not been paid with respect to a procedure.

(4) Subject to Section 17<sup>bis</sup>(17-2)(2), any amendment under the principal sentence of subsection (1) of this Section (except in the case of the payment of fees) shall be submitted in writing.

### **(Amendment of description, patent claim(s) or drawing(s) attached to request)**

**17<sup>bis</sup>(17-2).** — (1) An applicant for patent may, before the transmittal of the copy of an examiner's decision that a patent is to be granted, amend the description, patent claim(s) or drawing(s) attached to the request. However, after the receipt of the notification under Section 50, the amendment may be made only in the following cases:

(i) where the applicant has received a first notification (referred to in this Section as "the notification of reasons for refusal") under Section 50 [including its application under Section 159(2) (including its application under Section 174(1)) and under Section 163(2) (hereinafter referred to in this paragraph as "Section 50")] and amendment is made within the time limit designated in accordance with Section 50;

(ii) where, after receipt of a notification of reasons for refusal, the applicant has received a notification under Section 48(7) and amendment is made within the time limit designated in accordance with that Section;

(iii) where, after receipt of the first notification of reasons for refusal, the applicant has further received the notification of reasons for refusal and amendment is made, in respect of the final notification of reasons for refusal, within the time limit designated in accordance with Section 50.

(iv) where the applicant demands an appeal trial against examiner's refusal and amendment is made within 30 days of such demand.

(2) Where the applicant filing in foreign language an application under Section 36<sup>bis</sup>(36-2)(2) amends the description, patent claim(s) or drawing(s) under subsection (1) for the object of the correction of an incorrect translation, he shall submit a written correction of an incorrect translation stating the grounds thereof.

(3) An amendment of the description, patent claim(s) or drawing(s) under subsection (1) shall, except in the case of submission of the written correction of an incorrect translation, remain within the scope of the features disclosed in the description, patent claim(s) or drawing(s) originally attached to the request [in the case of filing an application in foreign language under Section 36<sup>bis</sup>(36-2)(2), the translation of the foreign language file referred to in the said subsection (2) is considered to be the description, patent claim(s) or drawing(s) by virtue of the said Section (4) (in the case where the applicant amended the description, patent claim(s) or drawing(s) by submitting of the written correction of an incorrect translation, the said translation, the description, patent claim(s) or drawing(s) as amended)].

(4) Subject to the preceding subsection, in the case of subsection (1)(iii) and (iv) of this Section, the amendment to the patent claim(s) shall be limited to the following:

- (i) the cancellation of the claim(s) referred to in Section 36(5);
  - (ii) the restriction of the claim(s) (only the restriction of all or some of the matters necessary to define the invention claimed in the claim(s) under Section 36(5) and the industrial applicability and the problem to be solved of the invention claimed in the amended claim(s) are the same as those of the invention claimed in the claim(s) prior to the amendment);
  - (iii) the correction of errors in the description;
  - (iv) the clarification of an ambiguous description (only the amendment with respect to the matters mentioned in the reasons for the refusal concerned in the notification of the reasons for the refusal).
- (5) Section 126(5) shall apply mutatis mutandis to the case of the preceding subsection (ii).

#### **(Amendment of abstract)**

**17ter(17-3).** — An applicant for patent may amend the abstract attached to the request within one year and three months from the filing date of his patent application (excluding the period after a request made for laying open of an application) [or - in the case of a patent application containing a priority claim under Section 41(1) — the filing date of the earlier application referred to in Section 41(1), - in the case of a patent application containing a priority claim under Section 43(1) or 43<sup>bis</sup>(43-2)(1) or (2) - the filing date of the first application or the application considered to be the first application in accordance with Article 4C(4) of 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 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 “Paris Convention”) or of an application recognized as the first application in accordance with 4A(2) of the Paris Convention; and in the case of a patent application containing two or more priority claims under 41(1), 43(1) or 43<sup>bis</sup>(43-2)(1) or (2), from the earliest date amongst the filing dates of the applications whose priorities are so claimed — the same meaning as Section 64(1)].

#### **(Amendment of corrected description, patent claim(s) or drawing(s))**

**17quater(17-4).** — (1) A defendant for a patent invalidation trial may amend the corrected description, patent claim(s) or drawing(s) attached to the written demand for a correction under Section 134<sup>bis</sup>(1), only within the time limit designated in accordance with Section 134(1) or (2), 134<sup>bis</sup>(3), 134<sup>ter</sup>(1) or (2) or 153(2).

(2) The defendant of a correction trial may amend the corrected description, patent claim(s) or drawing(s) attached to the written demand for a correction trial, only before he is notified under Section 156(1) (in the case where the trial has been reopened under Section 156(2), before he is notified again under Section 156(1)).

#### **(Dismissal of procedure)**

**18.** — (1) The Commissioner of the Patent Office may dismiss a procedure when a person whom he has invited to make amendment in accordance with Section 17(3) fails to do so within the time limit designated in accordance with that subsection or when a person who is to obtain registration of the establishment of a patent right fails to pay the annual fees within the time limit fixed in Section 108(1).

(2) The Commissioner of the Patent Office may dismiss an application for patent where he has invited the applicant, in accordance with Section 17(3), to pay the fee under Section 195(3) and the applicant fails to do so within the time limit designated in accordance with Section 17(3).

#### **(Dismissal of an irregular procedure)**

**18bis(18-2).** — (1) The Commissioner of the Patent Office shall dismiss an irregular procedure which cannot be amended.

(2) Where the Commissioner of the Patent Office intends to dismiss a procedure under the preceding subsection, he shall notify the person who is proceeding of the reasons for dismissal designating an adequate time limit and give him an opportunity to submit a statement describing an explanation (hereinafter referred to as “explanatory statement”).

#### **(Time of submission of request, etc.)**

**19.** — Where a request, document or any other matter to be submitted to the Patent Office in accordance with this Law, or an order or ordinance thereunder, within a specified time limit is sent by mail, the request, document or matter shall be deemed to have reached the Office at the date and time when it was handed in to a post office, if such date and time are proved by the receipt of the mail, or at the date and time on the postmark if they are clearly indicated, or at 12.00 p.m. on the date indicated on the postmark if only the date is clear.

#### **(Succession to effects of procedure)**

**20.** — The effects of a procedure regarding a patent right or other right relating to a patent shall extend to a successor in title.

#### **(Continuation of procedure)**

**21.** — Where a patent right or other right relating to a patent is transferred while the case is

pending in the Patent Office, the Commissioner of the Patent Office or the trial examiner-in-chief may continue the procedure concerned on behalf of the successor in title.

#### **(Interruption or suspension of procedure)**

**22.** — (1) The Commissioner of the Patent Office or the trial examiner shall, in regard to a motion for the resumption of a procedure interrupted after the transmittal of a ruling, an examiner's decision or a trial decision, render a ruling as to whether the procedure may be resumed.

(2) Such a ruling shall be in writing and state the reasons therefor.

**23.** — (1) Where a person who is to resume the procedure for an examination, a trial or retrial which has been interrupted fails to do so, the Commissioner of the Patent Office or the trial examiner shall, upon a motion or ex officio, order such person to resume the procedure and designate an adequate time limit for this purpose.

(2) Where the procedure is not resumed within the time limit designated in accordance with the preceding subsection, the resumption may be deemed by the Commissioner of the Patent Office or the trial examiner to have commenced on the date when the time limit expired.

(3) When the resumption is deemed to have taken place, in accordance with the preceding subsection, the Commissioner of the Patent Office or the trial examiner-in-chief shall notify the parties accordingly.

**24.** — Sections 124 (excluding subsection (1)(vi)), 126, 127, 128(1), 130, 131 and 132(2) (interruption or suspension of litigation) of the Code of Civil Procedure shall apply mutatis mutandis to a procedure with respect to an examination, a trial or retrial. In such a case, a "process attorney" in Section 124(2), "court" in Section 127, "court" in Section 128(1) and 131, and "court" in Section 130 of the said Code shall read, respectively, "representative entrusted with the examination, trial examination or an opposition to the patent and ruling thereon, a trial or retrial," "Commissioner of the Patent Office or the trial examination-in-chief," "Commissioner of the Patent Office or the trial examiner," and "Patent Office".

#### **(Enjoyment of rights by aliens)**

**25.** — An alien who is neither domiciled nor a resident (nor established, in the case of a legal entity) in Japan shall not enjoy a patent right or other right relating to a patent, except in any one of the following cases:

(i) where his country allows Japanese nationals to enjoy patent rights or other rights relating to a patent under the same conditions as its own nationals;

(ii) where his country allows Japanese nationals to enjoy patent rights or other rights relating to a patent under the same conditions as its own nationals provided that Japan allows his country's nationals to enjoy such rights;

(iii) where there are specific provisions in a treaty.

#### **(Effect of treaties)**

**26.** — Where there are specific provisions relating to patents in a treaty, such provisions shall prevail.

#### **(Registration in Patent Register)**

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

(i) the establishment, extension of the term, transfer, extinguishment, restoration or restriction on disposal, of a patent right;

(ii) the establishment, maintenance, transfer, modification, extinguishment or restriction on disposal, of an exclusive or non-exclusive license;

(iii) the establishment, transfer, modification, extinguishment or restriction on disposal, of rights in a pledge upon a patent right or an exclusive or non-exclusive license.

(2) The Patent 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 Certificate of Patent)**

**28.** — (1) When the establishment of a patent right has been registered or when a trial decision to the effect that the description, patent claim(s) or drawing(s) attached to the request are to be corrected has become final and conclusive and such decision has been registered, the Commissioner of the Patent Office shall issue the certificate of patent to the patentee.

(2) Re-issuance of the certificate of patent shall be prescribed by an ordinance of the Ministry of Economy, Trade and Industry.

## **Chapter II — Patents and Applications for Patents**

### **(Patentability of inventions)**

**29.** — (1) Any person who has made an invention which is industrially applicable may obtain a patent therefor, except in the case of the following inventions:

(i) inventions which were publicly known in Japan or elsewhere prior to the filing of the patent application;

(ii) inventions which were publicly worked in Japan or elsewhere prior to the filing of the patent application;

(iii) inventions which were described in a distributed publication or made available to the public through electric telecommunication lines in Japan or elsewhere prior to the filing of the patent application.

(2) Where an invention could easily have been made, prior to the filing of the patent application, by a person with ordinary skill in the art to which the invention pertains, on the basis of an invention or inventions referred to in any of the paragraphs of subsection (1), a patent shall not be granted for such an invention notwithstanding subsection (1).

**29bis(29-2).** — Where an invention claimed in a patent application is identical with an invention or device (excluding an invention or device made by the same person as the inventor of the invention claimed in the patent application) disclosed in the description, claim(s) for patent or utility model registration or drawing(s) originally attached to the request of another application for patent (in the case of a foreign language file application referred to in Section 36<sup>bis</sup>(36-2)(2) of this Law, the foreign language file referred to in Section 36<sup>bis</sup>(36-2)(1) of the said Law) or of an application for utility model registration which was filed prior to the filing date of the patent application and for which the Patent Gazette which states the matter referred to in each paragraph of Section 66(3) of the said Law (hereinafter referred to as “the Gazette containing the Patent”) was published under the said subsection or the laying open for public inspection (Kōkai) was effected or the Utility Model Gazette which states the matter referred to in each paragraph of Section 14(3) of Utility Model Law (No. 123 of 1959) (hereinafter referred to as “the Gazette containing the Utility Model”) was published under the said subsection after the filing of the patent application, a patent shall not be granted for the invention notwithstanding Section 29(1). However, this provision shall not apply where, at the time of filing of the patent application, the applicant of the patent application and the applicant of the other application for patent or the application for utility model registration are the same person.

### **(Exceptions to lack of novelty of invention)**

**30.** — (1) In the case of an invention which has fallen under any of the paragraphs of Section 29(1) by reason of the fact that the person having the right to obtain a patent has conducted an experiment, has made a presentation in a printed publication, has made a presentation through electric telecommunication lines, or has made a presentation in writing at a study meeting held by a scientific body designated by the Commissioner of the Patent Office, such invention shall be deemed not have fallen under any of the paragraphs of Section 29(1) for the purposes of Section 29(1) and (2) to the invention claimed in the patent application which has been filed by such person within six months from the date on which the invention first fell under those paragraphs.

(2) In the case of an invention which has fallen under any of the paragraphs of Section 29(1) against the will of the person having the right to obtain a patent, the preceding subsection shall also apply for the purposes of Section 29(1) and (2) to the invention claimed in the patent application which has been filed by such person within six months from the date on which the invention first fell under any of those paragraphs.

(3) In the case of an invention which has fallen under any of the paragraphs of Section 29(1) by reason of the fact that the person having the right to obtain a patent has exhibited the invention at an exhibition held by the Government or by any local public entity (hereinafter referred to as the “Government, etc.”) or at one which is not held by the Government, etc. but is designated by the Commissioner of the Patent Office, or at an international exhibition held in the territory of a country party to the Paris Convention or of a Member of the World Trade Organization by its government, etc. or by a person authorized thereby, or at an international exhibition held in the territory of a country not party to the Paris Convention nor a member of the World Trade Organization by its government, etc. or by a person authorized thereby where such exhibition has been designated by the Commissioner of the Patent Office, subsection (1) shall also apply for the purposes of Section 29(1) and (2) to the invention claimed in the patent application which has been filed by such person within six months from the date on which the invention first fell under those paragraphs.

(4) Any person who desires the application of subsection (1) or the preceding subsection shall submit a written statement to that effect to the Commissioner of the Patent Office simultaneously with the patent application and within 30 days of the filing of the patent application, he shall also submit to the Commissioner of the Patent Office a document proving that the invention that has fallen under any of the paragraphs of Section 29(1) is the invention for which subsection (1) or the preceding subsection may be applicable.

**31.** — *Deleted*

### **(Unpatentable inventions)**

**32.** — The inventions liable to contravene public order, morality or public health shall not be patented, notwithstanding Section 29.

### **(Right to obtain patent)**

- 33.** — (1) The right to obtain a patent may be transferred.
- (2) The right to obtain a patent may not be the subject of a pledge.
- (3) A joint owner of the right to obtain a patent may not assign his share without the consent of all the other joint owners.

**34.** — (1) The succession to the right to obtain a patent before the filing of the patent application shall not be effective against third persons unless the successor in title files the patent application.

(2) Where two or more applications for patent are filed on the same date, on the basis of the same right to obtain a patent that has been derived by succession from the same person, the succession by any person other than the one agreed upon by the patent applicants shall not be effective against third persons.

(3) The preceding subsection shall also apply, where a patent application and a utility model application are filed on the same date, on the basis of a right to obtain a patent and utility model registration for the same invention and device which has been derived by succession from the same person.

(4) The succession to the right to obtain a patent after the filing of the patent application shall not take effect unless the Commissioner of the Patent Office is notified accordingly, except in the case of inheritance or other general succession.

(5) Upon inheritance or other general succession with respect to a right to obtain a patent, the successor in title shall notify the Commissioner of the Patent Office accordingly without delay.

(6) Where two or more notifications are made on the same date, on the basis of the same right to obtain a patent that has been derived by succession from the same person, a notification made by any person other than the one agreed upon after mutual consultation among the persons making the notifications shall not take effect.

(7) Section 39(7) and (8) shall apply mutatis mutandis to the cases under subsections (2), (3) and (6).

### **(Employees' inventions)**

**35.** — (1) An employer, a legal entity or a state or local public entity (hereinafter referred to as the "employer, etc.") shall have a non-exclusive license on the patent right concerned, where an employee, an executive officer of a legal entity or a national or local public official (hereinafter referred to as the "employee, etc.") has obtained a patent for an invention which by reason of its nature falls within the scope of the business of the employer, etc. and an act or acts resulting in the invention were part of the present or past duties of the employee, etc. performed on behalf of the employer, etc. (hereinafter referred to as an "employee's invention") or where a successor in title to the right to obtain a patent for an employee's invention has obtained a patent therefor.

(2) In the case of an employee's invention made by an employee, etc. which is not an employee's invention, any contractual provision, service regulation or other stipulation providing in advance that the right to obtain a patent or the patent right shall pass to the employer, etc. or that he shall have an exclusive license on such invention shall be null and void.

(3) The employee, etc. shall have the right to a reasonable remuneration when he has enabled the right to obtain a patent or the patent right with respect to an employee's invention to pass to the employer, etc. or has given the employer, etc. an exclusive right to such invention in accordance with the contract, service regulation or other stipulation.

(4) The payment of the remuneration in the preceding subsection, as provided for in the contract, service regulation or other stipulation shall not be considered to be unreasonable, in view of the situation under which a negotiation is carried out between employer, etc. and employee, etc. in the course of establishing the criteria for determining the remuneration, the situation under which the criteria established are disclosed, and the situation under which the views of employee, etc. are heard for calculating the amount of the remuneration, etc.

(5) Where there is no stipulation with respect to remuneration referred to in the preceding subsection or where the payment of the remuneration determined thereby shall be considered to be unreasonable, the amount of the remuneration referred to in subsection (3) shall be determined, taking into consideration the amount of profits that the employer, etc. will make from the invention, the burden assumed and contribution made by the employer, etc. in connection with the invention, and the treatment upon the employee, etc. and other circumstances.

### **(Applications for patent)**

**36.** — (1) Any person desiring a patent 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 for the patent;
- (ii) the name and the domicile or residence of the inventor.

(2) The request shall be accompanied by the description, one or more patent claims or one or more drawings (where required) and the abstract.

(3) The description under subsection (2) shall state the following:

- (i) the title of the invention;
- (ii) a brief explanation of the drawings;



(iii) a detailed explanation of the invention.

(4) The detailed explanation of the invention under the preceding subsection (iii) shall comply with the following:

(i) it describes the invention, in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art to which the invention pertains, as provided for in an ordinance of the Ministry of Economy, Trade and Industry;

(ii) where there is an invention relating to the invention described in a publication (meaning the invention referred to in Section 29(1)(iii) – hereinafter the same in this paragraph), of which the person desiring a patent is aware at the time of filing an application for patent, it describes the title of the publication disclosing such invention described in a publication and other source of information on the invention described in a publication.

(5) In the patent claim(s) under subsection (2), there shall be set forth, by statements separated on a claim by a claim basis, all matters which an applicant for patent considers necessary in defining an invention for which a patent is sought. In such a case, it shall not preclude the statements of the patent claim(s) to be such that an invention claimed in one claim is the same as an invention claimed in another claim.

(6) The statement of the patent claim(s) under subsection (2) shall comply with each of the following paragraphs:

(i) statements setting forth the invention(s) for which patent is sought and which is described in the detailed explanation of the invention;

(ii) statements setting forth the invention(s) for which a patent is sought and which is clear;

(iii) statements setting forth the claim(s) which is concise;

(iv) statements which are as provided for in an ordinance of the Ministry of Economy, Trade and Industry.

(7) The abstract under subsection (2) shall state the summary of the invention disclosed in the description, one or more patent claims or one or more drawings (where required) and other matters provided for in an ordinance of the Ministry of Economy, Trade and Industry.

**36bis(36-2).** — (1) Any person desiring a patent may, in lieu of the description, one or more patent claims, one or more drawings (where required) and abstract under Section 36(2), attach to the request a document stating the matters to be described in the description and one or more patent claims under Section 36(3) to (6) in a foreign language specified in an ordinance of the Ministry of Economy, Trade and Industry and any text matter of the drawings in the foreign language (hereinafter referred to as the “foreign language file”) and a document stating the matters to be described in the abstract under Section 36(7) in the foreign language (hereinafter referred to as the “foreign language abstract”).

(2) The applicant of an application for patent to which he has attached the foreign language file and foreign language abstract to the request under the preceding subsection (hereinafter referred to as the “foreign language file application”) shall furnish to the Commissioner of the Patent Office a translation into Japanese of the foreign language file and foreign language abstract within two months from the filing date of the application for patent.

(3) Where the translation of the foreign language file (excluding the drawings) referred to in the preceding subsection has not been furnished within the time limit prescribed in that subsection, the application for patent shall be deemed withdrawn.

(4) The translation of the foreign language file referred to in subsection (2) is deemed to be the description, one or more patent claims and one or more drawings (where required) as attached to the request under Section 36(2) and the translation of the foreign language abstract referred to in subsection (2) is deemed to be the abstract as attached to the request under Section 36(2).

**37.** — Where there are two or more inventions, they may be the subject of a patent application in the same request, only when they have such technical relationship as provided for in an ordinance of the Ministry of Economy, Trade and Industry, and resulting thus falling under a group of inventions which fulfill the requirement of unity of invention.

#### **(Joint applications)**

**38.** — Where the right to obtain a patent is owned jointly, the patent may only be applied for jointly by all the joint owners.

#### **(First-to-file rule)**

**39.** — (1) Where two or more patent applications relating to the same invention are filed on different dates, only the first applicant may obtain a patent for the invention.

(2) Where two or more patent applications relating to the same invention are filed on the same date, only one such applicant, agreed upon after mutual consultation among all the applicants, may obtain a patent for the invention. If no agreement is reached or no consultation is possible, none of the applicants shall obtain a patent for the invention.

(3) Where an invention claimed in a patent application is the same as a device claimed in a utility model application and the applications are filed on different dates, the patent applicant may obtain a patent only if his application was filed before the utility model application.

(4) Where an invention claimed in a patent application is the same as a device claimed in a utility model application (excluding case where an invention in a patent application is identical with an device claimed in utility model application with respect to the utility model registration based on said

patent application including a patent application deemed to have been filed at the time of filing of that patent application under Section 44(2) including its application under Section 46(5)) and the applications are filed on the same date, only one applicant, agreed upon after mutual consultation between the applicants, may obtain the patent or the utility model registration. If no agreement is reached or no consultation is possible, the patent applicant shall not obtain a patent for the invention.

(5) Where a patent application or a utility model application is abandoned, withdrawn or dismissed, or where an examiner's decision or trial decision that a patent application is to be refused has become final and conclusive, such application shall, for the purposes of subsections (1) to (4), be deemed never to have been made. However, this provision shall not apply where an examiner's decision or a trial decision that the patent application is to be refused under the last sentence of subsection (2) or (4) becomes final and conclusive.

(6) A patent application or a utility model application filed by a person who is neither the inventor nor the creator nor the successor in title to the right to obtain a patent or utility model registration shall, for the purposes of subsections (1) to (4), be deemed not to be a patent application or a utility model application.

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

(8) Where the report under the preceding subsection is not made within the time limit designated in accordance with that subsection, the Commissioner of the Patent Office may deem that no agreement under subsection (2) or (4) has been reached.

#### 40. — Deleted

#### **(Priority claim based on patent application, etc.)**

41. — (1) Any person desiring a patent may declare a priority claim for the invention claimed in a patent application on the basis of the invention which has been disclosed in the description, claim(s) for patent or utility model registration or drawing(s) originally attached to the request (in the case where the earlier application is a foreign language file application, the foreign language file) of a patent or utility model application in which he has the right to obtain a patent or utility model registration and which has been filed earlier (hereinafter referred to as an "earlier application") except in the following cases:

(i) the patent application concerned is not one filed within one year from the filing date of the earlier application;

(ii) the earlier application is a new patent application derived out of a patent application under Section 44(1), a patent application converted from an application under Section 46(1) or (2), or a patent application based on the utility model registration under Section 46<sup>bis</sup>(46-2)(1) or a new utility model application derived out of a utility model application under Section 44(1) of this law as applied under Section 11(1) of the Utility Model Law or a utility model application converted from an application under Section 10(1) or (2) of the Utility Model Law;

(iii) at the time when the patent application concerned is filed, the earlier application has been abandoned, withdrawn or dismissed;

(iv) at the time when the patent application concerned is filed, the examiner's decision or the trial decision on the earlier application has become final and conclusive;

(v) at the time when the patent application concerned is filed, the registration of establishment referred to in Section 14(2) of the Utility Model Law with respect to the earlier application has been effected.

(2) For inventions which are amongst those claimed in a patent application containing a priority claim under subsection (1) and which are disclosed in the description, claim(s) for patent or utility model registration or drawing(s) (in the case where the earlier application is a foreign language file application, the foreign language file) originally attached to the request of an earlier application whose priority is so claimed [in the case where the earlier application contains a priority claim under subsection (1) or under Section 8(1) of the Utility Model Law or a priority claim under Section 43(1) or Section 43<sup>bis</sup>(43-2)(1) or (2) of this Law (including its application under Section 11(1) of the Utility Model Law), excluding the inventions disclosed in the document (limited to those equivalent to the description, claim(s) for patent or utility model registration and drawing(s)) submitted at the time of the filing of the application whose priority is claimed for the earlier application], the patent application concerned shall be deemed to have been filed at the time when the earlier application was filed, for the purposes of Section 29, the principal sentence of Section 29<sup>bis</sup>(29-2) and Sections 30(1) to (3), 39(1) to (4), 69(2)(ii), 72, 79, 81, 82(1), 104 [including its application under Section 65(5) (including its application under Section 184<sup>decies</sup>(184-10)(2))], and 126(5) (including its application under Sections 17<sup>bis</sup>(17-2)(5) and 134<sup>bis</sup>(134-2)(5)) of this Law, for the purposes of Sections 7(3) and 17 of the Utility Model Law, for the purposes of Sections 26, 31(2), and 32(2) of the Design Law (Law No. 125 of 1959) and for the purposes of Section 29, 33<sup>bis</sup>(33-2)(1) and 33<sup>ter</sup>(33-3)(1) (including its application under Section 68(3) of the Trademark Law) of the Trademark Law (Law No. 127 of 1959).

(3) For inventions which are amongst those disclosed in the description, patent claim(s) or drawing(s) (in the case of a foreign language file application, the foreign language file) originally attached to the request of a patent application containing a priority claim under subsection (1) and which are disclosed in the description, claim(s) for patent or utility model registration or drawing(s) (in the case where the earlier application is a foreign language file application, the foreign language file) originally attached to the request of an earlier application whose priority is so claimed [in the case where the earlier application contains a priority claim under that subsection or Section 8(1) of the

Utility Model Law or a priority claim under Section 43(1) or 43bis(43-2)(1) or (2) of this Law (including its application under Section 11(1) of the Utility Model Law), excluding the inventions disclosed in the documents (limited to those equivalent to the description, claim(s) for patent or utility model registration or drawing(s)) submitted at the time of the filing of the application whose priority is claimed for the earlier application], the laying open for public inspection or the Gazette containing the Utility Model relating to the earlier application shall be deemed to have been effected or published at the time when the publication of the Gazette containing the Patent or the laying open for public inspection relating to the patent application concerned was published or effected, for the purposes of the principal sentence of Section 29bis(29-2) of this Law or the principal sentence of Section 3bis(3-2) of the Utility Model Law.

(4) A person desiring to declare a priority claim under subsection (1) shall, simultaneously with the patent application, submit to the Commissioner of the Patent Office a document setting forth a statement to that effect and an identification of the earlier application.

#### **(Withdrawal, etc. of earlier application)**

**42.** — (1) The earlier application whose priority is claimed under Section 41(1) shall be deemed to have been withdrawn at the expiration of one year and three months from the filing date of that earlier application. However, where that earlier application has been abandoned, withdrawn or dismissed, where the examiner's decision or trial decision on that earlier application has become final and conclusive, where the registration of establishment referred to in Section 14(2) of the Utility Model Law with respect to the earlier application has been effected, or where all of the priority claims based on that earlier application have been withdrawn, this provision shall not apply.

(2) The applicant of a patent application containing a priority claim under Section 41(1) shall not withdraw the priority claim after the expiration of one year and three months from the filing date of the earlier application.

(3) Where the patent application containing a priority claim under Section 41(1) is withdrawn within one year and three months from the filing date of the earlier application, the priority claim shall be deemed to have been withdrawn simultaneously.

#### **(Priority claim under the Paris Convention)**

**43.** — (1) A person desiring to declare a priority claim in respect of a patent application under D(1) of Article 4 of the Paris Convention shall, simultaneously with the patent application, submit to the Commissioner of the Patent Office a document setting forth a statement to that effect and specifying the country party to the Paris Convention in which the application was first filed, or considered under C(4) of the said Article to have been first filed, or recognized under A(2) of the said Article to have been first filed, as well as the filing date of such application.

(2) A person who has declared a priority claim or priority claims by virtue of the preceding subsection shall submit a written statement to the Commissioner of the Patent Office setting forth the filing date or dates of the application or applications, certified by the country party to the Paris Convention in which the application or applications were first filed, or considered under C(4) of Article 4 of the Paris Convention to have been first filed, or recognized under A(2) of the said Article to have been first filed, as well as a certified copy of each of the documents filed on application and equivalent to the description, claim(s) for patent or utility model registration and drawing(s), or a copy of each of the official gazettes or certificates having the same contents which have been issued by the government of the member country concerned, within one year and four months from the earliest of the following filing dates:

(i) the filing date of the said application first filed, or of the said application considered under C(4) of Article 4 of the Paris Convention to have been first filed or of the said application recognized under A(2) of the said Article to have been first filed;

(ii) the filing date or dates of the said application or applications whose priority or priorities are claimed in the case where the patent application contains a priority claim or priority claims under Section 41(1);

(iii) the filing date or dates of the application whose priority is so claimed, where the patent application concerned contains other priority claim under subsection (1) or Section 43bis(43-2)(1) or (2).

(3) A person who has declared a priority claim by virtue of subsection (1) shall, together with the documents referred to in the preceding subsection, submit a document to the Commissioner of the Patent Office specifying the number of the first application, or the application considered under C(4) of Article 4 the Paris Convention or recognized under A(2) of the said Article to be the first application. However, when the number is not available before the submission of the documents referred to in that subsection, he shall submit a document setting forth the reason therefor instead of the document referred to and shall submit a document specifying the number as soon as it becomes available.

(4) Where a person who has declared a priority claim by virtue of subsection (1) fails to submit the documents referred to in subsection (2) within the time limit prescribed therein, the priority claim concerned shall lose its effect.

(5) Where a person claiming a priority under subsection (1) specifying matters written in the documents as referred to in subsection (2) with the number of the application based on the application which was filed in a country fixed by an ordinance of the Ministry of Economy, Trade and Industry and which can be converted by electromagnetic means (that is, electronic, magnetic and other means which cannot be perceived by human perception) has submitted a paper setting forth the number of the application to the Commissioner of the Patent Office within a time limit prescribed in

subsection (2), the documents as referred to in subsection (2) shall be deemed to have been filed for the purposes of the preceding two subsections.

**(Priority claim declared as governed by the Paris Convention)**

**43bis(43-2).** — (1) 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 for an patent application:

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 — hereinafter the same in subsection (2)).	Member of the World Trade Organization
Nationals of a Member of the World Trade Organization (meaning the nationals of Members provided for in paragraph 3 of Article 1 of the Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization — hereinafter the same in subsection (2)).	Country party to the Paris Convention or Member of the World Trade Organization

(2) A priority claim based on an application which the nationals of a country which is neither a party to the Paris Convention nor a Member of the World Trade Organization (limited to the country which allows Japanese nationals to declare a priority claim under the same condition as in Japan and which the Commissioner of the Patent Office designates — hereinafter referred to as the “specified country” in this subsection) and a priority claim based on an application which Japanese nationals or the nationals of a country party to the Paris Convention or a Member of the World Trade Organization have filed in or for any specified country may be declared as governed by the provisions in Article 4 of the Paris Convention for a patent application.

(3) Section 43 shall apply mutatis mutandis to the declaration of a priority claim under the preceding two subsections.

**(Division of patent applications)**

**44.** — (1) An applicant for patent may divide a patent application comprising two or more inventions into one or more new patent applications only within the time limit by which the description, patent claim(s) or drawing(s) attached to the request may be amended.

(2) In such a case, the new patent application shall be deemed to have been filed at the time of filing of the original application. However, this provision shall not apply where the new patent application is either another application for patent as referred to in Section 29bis(29-2) of this Law or an application for patent as referred to in Section 3bis(3-2) of the Utility Model Law for the purposes of those Sections and of Sections 30(4), 36bis(36-2)(2), 41(4) and 43(1) (including its application under Section 43bis(43-2)(3)).

(3) For the purpose of Section 43(2) (including its application in Section 43bis(43-2)(3)) where a new application is filed under subsection (1), “within one year and four months from the earliest of the filing dates” in Section 43(2) shall read “within one year and four months from the earliest of the filing dates or within three months from the filing date of the new patent application, whichever is later”.

(4) Where the new patent application under subsection (1) is filed, any statements or documents which have been submitted with respect to the original patent application and which shall be submitted with respect to the new patent application in accordance with Section 30(4), 41(4) or 43(1) and (2) (including its application under 43bis(43-2)(3)), shall be deemed to have been submitted to the Commissioner of the Patent Office simultaneously with the said new patent application.

**45.** — Deleted

**(Conversion of applications)**

**46.** — (1) An applicant for utility model registration may convert his application into a patent application. However, this provision shall not apply after three years from the filing date of the application for utility model registration.

(2) An applicant for design registration may convert his application into a patent application. However, this provision shall not apply after 30 days from the transmittal of the examiner’s first decision that the design application is to be refused or after lapse of three years from the filing date of the design application (excluding the 30-day period counted from the transmittal of the examiner’s first decision that the application is to be refused).

(3) The 30-day period prescribed in the proviso to subsection (2) shall, when the time limit prescribed in Section 46(1) of the Design Law has been extended in accordance with Section 4 of this

Law as applied under Section 68(1) of the Design Law, be deemed to have been extended only for that period as extended.

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

(5) Section 44(2) to (4) shall apply mutatis mutandis to the conversion of an application under subsection (1) or (2).

#### **(Application for patent based on utility model registration)**

**46bis(46-2).** — (1) The owner of a utility model right may file an application for a patent on the basis on his utility model registration as provided for in the Ordinance of the Ministry of Economy, Trade and Industry, except in the following cases. In such a case, the owner shall abandon his utility model right:

(i) when three years have expired from the filing date of the utility model application under the utility model registration;

(ii) when a request was made for a technical opinion referred to in Section 12 (1) of the Utility Model Law (hereinafter simple referred to as “a technical opinion as to registrability of a utility model” in the following paragraph) by an applicant for an utility model registration or an owner of a utility model right with respect to the utility model application under the utility model registration or the utility model registration;

(iii) thirty days have expired from the date when the first notification was received under Section 13(2) of the Utility Model Law with respect to the request for a technical opinion as to registrability of a utility model made by a person other than an applicant for a utility model registration or an owner of a utility model right with respect to the utility model application under the utility model registration or the utility model registration;

(iv) when the period first designated under Section 39(1) of the Utility Model Law expired for the invalidation trial which was demanded for the utility model registration of the utility model registration under Section 37(1) of the said Law.

(2) An application for a patent under preceding subsection shall be deemed to have been filed at the time when the application for utility model registration was filed, to the extent that the features disclosed in the description, claim(s) or drawing(s) attached to the request of the application for patent remains within the scope of the features disclosed in the description, claim(s) or drawing(s) attached to the request of the application for the utility model registration on which the patent application is based. However, this provision shall not apply where the patent application is either another application for a patent as referred to in Section 29<sup>bis</sup>(29-2) of this Law or an application for patent as referred to in Section 3<sup>bis</sup>(3-2) of the Utility Model Law for the purposes of those Sections and of Sections 30(4), 36<sup>bis</sup>(36-2)(2), 41(4), 43(1) (including its application under Section 43<sup>bis</sup>(43-2)(3)) and 48<sup>ter</sup>(48-3)(2).

(3) Where, due to reasons outside his control, a person is unable to file an application for a patent under the subsection (1) before the expiration of the time limit prescribed paragraph (iii) of the said subsection, he may, notwithstanding the said paragraph, file the application for a patent within 14 days (where he is a resident abroad, within two months) from the date when the reasons ceased to be applicable but not later than six months, following the expiration of the said time limit.

(4) Where there is an exclusive licensee, a pledgee or non-exclusive licensee under Section 35(1) of this Law as applied under Section 11(3) of the Utility Model Law, Section 77(4) of this Law as applied under Section 18(3) of the Utility Model Law or Section 19(1) of the Utility Model Law, the owner of a utility model right may file an application for a patent only with the consent of such person.

(5) Section 44(3) and (4) shall apply mutatis mutandis to the application for a patent under subsection (1).

### **Chapter III — The Examination**

#### **(Examination by examiner)**

**47.** — (1) The Commissioner of the Patent Office shall have an application for patent examined by an examiner.

(2) The qualifications of examiners shall be prescribed by Cabinet Order.

#### **(Exclusion of examiners)**

**48.** — Section 139(i) to (v) and (vii) shall apply mutatis mutandis to examiners.

#### **(Examination of patent applications)**

**48bis(48-2).** — The examination of patent applications shall be carried out upon a request for examination.

#### **(Requests for examination)**

**48ter(48-3).** — (1) When a patent application has been filed, any person may, within three years from the date thereof, make a request for examination to the Commissioner of the Patent Office.

(2) With respect to a new patent application resulting from the division of a patent application under Section 44(1), a patent application resulting from the conversion of an application under Section 46(1) or (2), or a patent application based on a utility model registration under Section 46bis(46-2)(1), a request for examination may be made even after the period prescribed in the preceding subsection (1), but only within 30 days from the division of the patent application, the conversion of the application, or the patent application based on the utility model registration.

(3) A request for examination may not be withdrawn.

(4) When a request for examination has not been made within the time limit prescribed therefor in subsection (1) or (2), the patent application concerned shall be deemed withdrawn.

**48quater(48-4).** — Any person desiring to make a request for examination shall submit a written request to the Commissioner of the Patent Office stating the following:

- (i) the name and the domicile or residence of the person making the request;
- (ii) the patent application in respect of which the request for examination is made.

**48quinquies(48-5).** — (1) The Commissioner of the Patent Office shall, where a request for examination has been made before the laying open of the application, publish such fact in the Patent Gazette at the time when the application is laid open or as soon as possible thereafter; where a request for examination has been made after the laying open of the application, he shall publish such fact in the Patent Gazette without delay.

(2) Where a request for examination has been made by a person other than the applicant, the Commissioner of the Patent Office shall notify the applicant accordingly.

**(Preferential examination)**

**48sexies(48-6).** — When the Commissioner of the Patent Office recognizes that a person other than the applicant is commercially working the invention claimed in a patent application after the laying open of the application, he may, if necessary, direct the examiner to examine the application in preference to other patent applications.

**(Notification concerning information on invention described in publications)**

**48septies(48-7).** — Where the examiner finds that the application does not comply with Section 36(4)(ii), he may notify the applicant to that effect and give him an opportunity to submit a statement of argument, designating an adequate time limit.

### **(Examiner's decision of refusal)**

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

- (i) the amendment to the description, patent claim(s) or drawing(s) attached to the request does not comply with Section 17<sup>bis</sup>(17-2)(3);
- (ii) the invention claimed in the patent application is not patentable under Section 25, 29, 29<sup>bis</sup>(29-2), 32, 38 or 39(1) to (4);
- (iii) the invention claimed in the patent application is not patentable in accordance with a treaty;
- (iv) the patent application does not comply with Section 36(4)(i) or (6), or 37;
- (v) the application does not yet comply with Section 36(4)(ii), where the notification was made under Section 48<sup>septies</sup>(48-7), and where amendment to the description or the submission of the statement of arguments of applicant was made;
- (vi) the features disclosed in the description, patent claim(s) or drawing(s) attached to the request of the patent application do not remain within the scope of the features disclosed in the foreign language document, when the patent application concerned is a foreign language file application;
- (vii) the applicant for patent who is not the inventor has not succeeded to the right to obtain a patent for the invention concerned.

### **(Notification of reasons for refusal)**

**50.** — When the examiner intends to render a decision that an application is to be refused, he shall notify the applicant for the patent of the reasons for refusal and give him an opportunity to submit a statement of his arguments, designating an adequate time limit. However, in the case of Section 17<sup>bis</sup>(17-2)(1)(iii), this provision shall not apply to the case of a ruling to decline an application under Section 53(1).

### **(Examiner's decision that a patent is to be granted)**

**51.** — When the examiner finds no reasons for refusal with respect to the patent application, he shall render a decision that a patent is to be granted.

### **(Formal requirements of decision)**

**52.** — (1) The examiner's decision shall be in writing and shall state the reasons therefor.

(2) When the examiner's decision has been rendered, the Commissioner of the Patent Office shall transmit a copy of the decision to the applicant.

### **(Declining of amendments)**

**53.** — (1) In the case of Section 17<sup>bis</sup>(17-2)(1)(iii), where, prior to the transmittal of the examiner's decision that a patent is to be granted, it is found that an amendment to the description, patent claim(s) or drawing(s) attached to the request does not comply with Section 17<sup>bis</sup>(17-2)(3) to (5), 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 shall state the reasons therefor.

(3) No appeal shall lie from a ruling to decline an amendment under subsection (1). However, this provision shall not apply to the examination in an appeal trial against examiner's refusal.

### **(Relationship with litigation)**

**54.** — (1) The examination procedure may, if necessary, be suspended, until the trial decision has become final and conclusive or litigation procedure has been concluded.

(2) Where a suit or motion for provisional attachment or provisional disposal has been filed, the court may, if necessary, suspend the litigation procedure until the examiner's decision or the trial decision becomes final and conclusive.

**55.** — *Deleted (to 63.)*

## **Chapter III<sup>bis</sup> — Laying Open of Applications**

### **(Laying open of applications)**

**64.** — (1) After one year and six months from the filing date of an application, the Commissioner of the Patent Office shall lay the patent application open for public inspection, unless the Gazette containing the Patent has already been published. This provision shall also apply where the request for laying open of an application under Section 64<sup>bis</sup>(64-2)(1) is made.

(2) The laying open for public inspection of a patent application shall be effected by publishing the following particulars in the Patent Gazette. However, this provision shall not apply to the particulars referred to in paragraphs (iv) to (vi) where the Commissioner of the Patent Office recognizes that the publication of those particulars in the Patent Gazette is liable to contravene public order or morality:

- (i) the name and the domicile or residence of the applicant;
- (ii) the number and date of the application;
- (iii) the name and the domicile or residence of the inventor;

- (iv) the particulars stated in the description and patent claim(s) as well as the contents of drawing(s) attached to the request;
- (v) the particulars stated in the abstract attached to the request;
- (vi) in the case of a foreign language file application, the particulars stated in the foreign language file and foreign language abstract;
- (vii) the number and the date of the laying open;
- (viii) other necessary particulars.

(3) In the case where the Commissioner of the Patent Office recognizes that a statement of the abstract attached to the request does not comply with Section 36(7) or, in other cases where he recognizes it necessary, he may, in lieu of the particulars stated in the abstract under subsection (2)(v), publish those prepared by himself.

#### **(Request for laying open of applications)**

**64bis(64-2).** — (1) An applicant for patent may request the Commissioner of the Patent Office to lay his application for patent open for public inspection, except the following cases:

- (i) where the patent application has already been laid open for public inspection;
- (ii) where the patent application is the application which has declared the priority claim referred to in Section 43(1) or 43bis(43-2)(1) or (2), and for which the documents under Section 43(2) (including its application under Section 43bis(43-2)(3)) and the statements under Section 43(5) (including its application under Section 43bis(43-2)(3)) have not been submitted to the Commissioner of the Patent Office;
- (iii) where the patent application is the foreign language file application for which the translation into Japanese of the foreign language file under Section 36bis(36-2)(2) has not been submitted to the Commissioner of the Patent Office.

(2) The request for laying open of an application may not be withdrawn.

**64ter(64-3).** — An applicant for patent who desires to request for laying open of the application, shall submit the written request to the Commissioner of the Patent Office, stating the following matters:

- (i) the name and the domicile or residence of the person making the request;
- (ii) the patent application in respect of which the request for laying open is made.

#### **(Effects of laying open of applications)**

**65.** — (1) When an applicant for patent has, after the laying open of his patent application, given a warning with a written statement setting forth the contents of the invention claimed in the application, he may claim, against a person who has commercially worked the invention, after the warning but before the registration of the establishment of the patent right, the payment of compensation in a sum of money equivalent to what he would be entitled to receive for the working of the invention if the invention were patented. Even in the absence of the warning, the same shall apply to a person who commercially worked the invention before the registration of the establishment of the patent right, knowing that the invention was claimed in the patent application laid open for public inspection.

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

(3) The exercise of the right to claim the compensation under subsection (1) shall not preclude the exercise of the patent right.

(4) Where a patent application has been abandoned, withdrawn or dismissed after the laying open of the patent application, or where the examiner's decision or a trial decision that the patent application is to be refused has become final and conclusive, or where the patent right has been deemed never to have existed under Section 112(6) (except where, thereafter, the patent right has been deemed to have existed from the beginning under Section 112bis(112-2)(2)) or where, with exception of the cases coming within the proviso to Section 125, a trial decision that the patent is to be invalidated has become final and conclusive, the right under subsection (1) shall be deemed never to have arisen.

(5) Sections 101, 104 to 105bis(105-2), 105quater(105-4) to 105septies(105-7) and 168(3) to (6) of this Law and Sections 719 and 724(tort) of the Civil Code (Law No. 89 of 1896) shall apply mutatis mutandis to the exercise of the right to claim the compensation under subsection (1). In such a case, where a person having the right to claim the compensation has become aware, before the registration of the establishment of the patent right, of the fact that the invention claimed in the patent application was being worked and of the person working the invention, "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 IV — The Patent Right

### 1. The Patent Right

#### (Registration of establishment of patent right)

**66.** — (1) A patent right shall come into force upon registration of its establishment.

(2) The establishment of a patent right shall be registered when the annual fees for the first to the third years under Section 107(1) have been paid or exemption or deferment of such payment has been granted.

(3) Upon registration under the preceding subsection, the following particulars shall be published in the Patent Gazette. However, this provision shall not apply to the particulars listed in paragraph (v) where the patent application has already been laid open for public inspection:

- (i) the name and the domicile or residence of the patentee;
- (ii) the number and the filing date of the patent application;
- (iii) the name and the domicile or residence of the inventor;
- (iv) the features stated in the description and patent claim(s) as well as the contents of drawing(s) attached to the request of the application;
- (v) the particulars stated in the abstract attached to the request;
- (vi) the patent number and the date of registration of the establishment;
- (vii) other necessary particulars.

(4) Section 64(3) shall apply mutatis mutandis where the particulars stated in the abstract listed in Section 64(3)(v) are published in the Patent Gazette under subsection (3).

#### (Term of patent right)

**67.** — (1) The term of the patent right shall be 20 years from the filing date of the patent application.

(2) The term of the patent right may be extended, upon application for registration of an extension, by a period not exceeding five years if, because of the necessity of obtaining an approval or other disposition which is governed by provisions in laws intended to ensure safety, etc. in the working of the patented invention, and which is provided for in Cabinet Order as being such that, in view of the object of the relevant disposition, proceedings, etc., a considerable period of time is required for the proper action for the disposition, there was a period in which it was not possible to work the patented invention.

#### (Registration of extension of term of patent right)

**67bis(67-2).** — (1) A person desiring to apply for registration of an extension of the term of a patent right shall submit to the Commissioner of the Patent Office an application stating the following matters:

- (i) the name and the domicile or residence of the applicant;
- (ii) the patent number;
- (iii) the term of the extension applied for (limited to a period not exceeding five years)
- (iv) particulars of the disposition as provided for in Cabinet Order referred to in Section 67(2).

(2) The application under the preceding subsection shall be accompanied by materials which give reasons for the extension, as provided for in an ordinance of the Ministry of Economy, Trade and Industry.

(3) The application for registration of an extension of the term of a patent right shall be made within the time limit prescribed by Cabinet Order counting from the date of obtaining the disposition provided for in Cabinet Order referred to in Section 67(2). However, the application shall not be made after the expiration of the term of a patent right provided for in Section 67(1).

(4) Where a patent is owned jointly, each of the joint owners may not, except jointly with the other owners, apply for registration of an extension of the term of a patent right.

(5) Where an application for registration of an extension of the term of a patent right is filed, the term of the patent right shall be deemed to have been extended. However, this provision shall not apply when the examiner's decision that the application is to be refused has become final and conclusive or when an extension of the term of the patent right has been registered.

(6) When an application for registration of an extension of the term of a patent right is filed, the matters as set forth under each of the paragraphs in subsection (1) and the number and the filing date of the application shall be published in the Patent Gazette.

**67bis-bis(67-2-2).** — (1) When it is anticipated impossible to obtain the disposition as provided for in Cabinet order referred to in Section 67(2) by the day before six months prior to the date of expiration of the term of a patent right as provided for in Section 67(1), a person desiring to apply for registration of an extension of the term of a patent right shall submit by that day to the Commissioner of the Patent Office a document stating the following matters:

- (i) the name and the domicile or residence of the person desiring the application;
- (ii) the patent number;
- (iii) the disposition as provided for in Cabinet Order referred to in Section 67(2).

(2) Where the document required to be submitted under the preceding subsection is not submitted, application for the registration of an extension of the term of a patent right may not be

made for after six months prior to the date of expiration of the term of a patent right as provided for in Section 67(1).

(3) When the document referred to in subsection (1) is submitted, the matters set forth under each of the paragraphs in subsection (1) shall be published in the Patent Gazette.

**67ter(67-3).** — (1) The examiner shall make a decision that an application for registration of an extension of a patent right is to be refused where it falls under any of the following paragraphs:

(i) where it is not deemed that the obtaining of the disposition as provided for in Cabinet Order referred to in Section 67(2) was necessary for the working of the patented invention;

(ii) where the disposition as provided for in Cabinet Order referred to in Section 67(2) was not obtained by the patentee, or an exclusive licensee or a registered non-exclusive licensee under the patent;

(iii) where the term for which an extension is applied exceeds the period of time during which the patented invention could not be worked;

(iv) where the person applying for an extension is not the patentee concerned;

(v) where the application does not comply with Section 67<sup>bis</sup>(67-2)(4).

(2) When the examiner finds no reasons for refusing an application for registration of an extension of the term of a patent right, he shall render a decision that the registration of the extension is to be made.

(3) When the examiner's decision or the trial decision is rendered to the effect that the registration of an extension of the term of the patent right is to be made, the registration is made to the effect that the term of the patent right has been extended.

(4) When the registration under the preceding paragraph is made, the following particulars shall be published in the Patent Gazette:

(i) the name and the domicile or residence of the patentee;

(ii) the Patent Number;

(iii) the number and the filing date of the application for registration of the extension of the patent right;

(iv) the date of the registration of the extension;

(v) the term of the extension;

(vi) particulars of the disposition as provided for in Cabinet Order referred to in Section 67(2).

**67quater(67-4).** — Sections 47(1), 48, 50 and 52 shall apply mutatis mutandis to the examination of an application for registration of an extension of the term of a patent right.

#### **(Effects of patent right)**

**68.** — A patentee shall have an exclusive right to commercially work the patented invention. However, where the patent right is the subject of an exclusive license, this provision shall not apply to the extent that the exclusive licensee exclusively possesses the right to work the patented invention.

#### **(Effects of the term extended patent right)**

**68bis(68-2).** — The effects of the patent right of which the term has been extended (including cases in which the term is deemed to be extended under Section 67<sup>bis</sup>(67-2)(5)) shall not extend to acts other than the working of the patented invention concerned in respect of the product (where, in the disposition concerned, any specific use of such product to be used was specified, the product used for such specific use) which was the subject of the disposition as provided for in Cabinet Order referred to in Section 67(2) and as being the ground for the registration of the extension.

#### **(Limits of patent right)**

**69.** — (1) The effects of the patent right shall not extend to the working of the patent right for the purposes of experiment or research.

(2) The effects of the patent right shall not extend to the following:

(i) vessels or aircraft merely passing through Japan or machines, instruments, equipment or other accessories used therein;

(ii) products existing in Japan prior to the filing of the patent application.

(3) The effects of the patent right for inventions of medicines (namely, products used for the diagnosis, cure, medical treatment or prevention of human diseases — hereinafter referred to as "medicines" in this subsection) to be manufactured by mixing two or more medicines or for inventions of processes for manufacturing medicines by mixing two or more medicines shall not extend to acts of preparing medicines in accordance with the prescriptions of physicians or dentists or to medicines prepared in accordance with the prescriptions of physicians or dentists.

### **(Technical scope of patented inventions)**

**70.** — (1) The technical scope of a patented invention shall be determined on the basis of the statements of the patent claim(s) attached to the request.

(2) In the case of the preceding subsection, the meaning of a term or terms of the patent claim(s) shall be interpreted in the light of the description and drawing(s).

(3) In the case of subsections (1) and (2), no statements of the abstract attached to the request shall be taken into account for such purpose.

**71.** — (1) A request for interpretation may be made to the Patent Office with respect to the technical scope of a patented invention.

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

(3) Sections 131(1), the principal sentence of 131bis(131-2)(1), 132(1) and (2), 133, 133bis(133-2), 134(1), (3) and (4), 135, 136(1) and (2), 137(2), 138, 139 (excluding (vi)), 140 to 144, 144bis(144-2)(1) and (3) to (5), 145(2) to (5), 146, 147(1) and (2), 150(1) to (5), 151 to 154, 155(1), 157 and 169(3), (4) and (6) shall apply mutatis mutandis to the interpretation under subsection (1). In such a case, “a trial decision” in Section 135 shall read “a ruling”, “trials other than the trial under the preceding subsection” in Section 145(2) shall read “trial examination of interpretation”, “where public order or morality is liable to be injured thereby” in the proviso to Section 145(5) shall read “where the trial examiner-in-chief considers it necessary”, “Section 147” in Section 151 shall read “Section 147(1) and (2)”, “before a trial decisions becomes final and conclusive” in Section 155(1) shall read “before the written interpretation is transmitted” respectively.

(4) No appeal shall lie from the ruling under Section 135 as applied under the preceding subsection.

**71bis(71-2).** — (1) Where the Commissioner of the Patent Office is commissioned by a court to give an expert opinion with respect to the technical scope of a patented invention, he shall appoint three trial examiners to give the opinion.

(2) Sections 136(1) and (2), 137(2) and 138 shall apply mutatis mutandis to the commission therefor under the preceding subsection.

### **(Relationship with another’s patented invention, etc.)**

**72.** — When a patented invention would utilize another person’s patented invention, registered utility model or registered design or design similar thereto under an application filed prior to the filing date of the patent application concerned, or when the patent right conflicts with another person’s design right or trademark right under an application for registration of a design filed prior to the filing date of the patent application concerned, the patentee, exclusive licensee or non-exclusive licensee shall not commercially work the patented invention.

### **(Joint patent rights)**

**73.** — (1) Each of the joint owners of a patent right may neither transfer his share nor establish a pledge upon it without the consent of all the other joint owners.

(2) Each of the joint owners may, except as otherwise prescribed by contract, work the patented invention without the consent of the other joint owners.

(3) Each of the joint owners may grant neither an exclusive license nor a non-exclusive license without the consent of all the other joint owners.

**74.** — Deleted

**75.** — Deleted

### **(Extinguishment of patent right in absence of heir)**

**76.** — A patent right shall be extinguished when there is no person claiming to be an heir within the period prescribed by Section 958 of the Civil Code.

### **(Exclusive licenses)**

**77.** — (1) A patentee may grant an exclusive license on his patent right.

(2) An exclusive licensee shall have an exclusive right to commercially work the patented invention to the extent laid down in the license contract.

(3) An exclusive license may be transferred only together with the business in which it is worked, or only with the consent of the patentee or in the case of inheritance or other general succession.

(4) An exclusive licensee may establish a pledge or grant a non-exclusive license on the exclusive license only with the consent of the patentee.

(5) Section 73 shall apply mutatis mutandis to exclusive licenses.

**(Non-exclusive licenses)**

78. — (1) A patentee may grant a non-exclusive license on his patent right.

(2) A non-exclusive licensee shall have the right to commercially work the patented invention to the extent prescribed in this Law or laid down by the license contract.

**(Non-exclusive license by virtue of prior use)**

79. — Where, without knowledge of the contents of an invention claimed in a patent application, a person has made the invention by himself or, without knowledge of the invention in the patent application, has learnt the invention from another person who has made the invention, and has been commercially working the invention or has been making preparations therefor in Japan at the time of filing of the patent application, such person shall have a non-exclusive license on the patent right limited to the extent of the patent which is being worked or for which preparations for working are being made and to the purpose of such working or the preparations therefor.

**(Non-exclusive license due to working prior to registration of demand for invalidation trial)**

80. — (1) When a person who falls under any of the following paragraphs and has been commercially working an invention in Japan or has been making preparations therefor, prior to the registration of a demand for a patent invalidation trial, without knowing that the patent falls under the requirements of any of the paragraphs of Section 123(1), such person shall have a non-exclusive license on the patent right or the exclusive license existing at the time when the patent was invalidated, such non-exclusive license being limited to the invention which is being worked or for which preparations for working are being made and to the purpose of such working or the preparations therefor:

(i) where one of two or more patents granted for the same invention has been invalidated, the original patentee;

(ii) where his patent has been invalidated and a patent for the same invention has been granted to the person entitled to obtain the patent, the original patentee;

(iii) in the cases referred to in the preceding two paragraphs, a person who, at the time of the registration of the demand for a patent invalidation trial, has an exclusive license on the patent that has been invalidated or a non-exclusive license which is effective under Section 99(1).

(2) The patentee or exclusive licensee shall have a right to receive a reasonable remuneration as consideration for the non-exclusive license under the preceding subsection.

**(Non-exclusive license after expiration of design right)**

81. — Where a design right under an application for design registration filed prior to or on the filing date of a patent application conflicts with the patent right under the patent application and the term of the design right has expired, the owner of the expired design right shall, to the extent of such design right, have a non-exclusive license on the patent right or the exclusive license existing at the time when the design right expired.

82. — (1) Where a design right under an application for design registration filed prior to or on the filing date of a patent application conflicts with the patent right under the patent application and the term of the design right has expired, a person who, at the time of expiration, has an exclusive license on the expired design right or a non-exclusive license which is effective under Section 99(1), as applied under Section 28(3) of the Design Law, against the design right or the exclusive license, shall, to the extent of the expired right, have a non-exclusive license on the patent right concerned or on the exclusive license existing at the time when the design right expired.

(2) The patentee or exclusive licensee shall have a right to a reasonable remuneration as consideration for the non-exclusive license under the preceding subsection.

**(Arbitration decision on grant of non-exclusive license in case of non-working)**

83. — (1) Where a patented invention has not been sufficiently and continuously worked during a period of three years or more in Japan, a person who intends to work the patented invention may request the patentee or exclusive licensee to hold consultations on the grant of a non-exclusive license thereon. However, this provision shall not apply unless four years have elapsed since the filing date of the application corresponding to the patented invention.

(2) If no agreement is reached or no consultation is possible under the preceding subsection, a person who intends to work the patented invention may request the Commissioner of the Patent Office for an arbitration decision.

**(Submission of written reply)**

84. — Where a request has been made for arbitration under Section 83(2), the Commissioner of the Patent Office shall transmit a copy of the written request to the patentee or exclusive licensee mentioned in the request or to other persons having any registered rights relating to the patent and shall give them an opportunity to submit a written reply, designating an adequate time limit.

**(Hearing of Industrial Property Council, etc.)**

85. — (1) Before rendering an arbitration decision under Section 83(2), the Commissioner of the

Patent Office shall hear the views of the Council and the like (referring to the organ prescribed in Section 8 of National Government Organization Law (Law No. 120 of 1948)) which is to be set up by Cabinet Order.

(2) Where there is a legitimate reason for the failure to sufficiently work the patented invention, the Commissioner of the Patent Office shall not render an arbitration decision ordering a non-exclusive license to be granted.

#### **(Formal requirements of arbitration)**

**86.** — (1) The arbitration decision under Section 83(2) shall be in writing and shall state the reasons therefor.

(2) An arbitration decision ordering a non-exclusive license to be granted shall set forth the following:

- (i) the scope of the non-exclusive license;
- (ii) the consideration for the license and the method and time of payment.

#### **(Transmittal of copy of arbitration decision)**

**87.** — (1) A copy of an arbitration decision rendered under Section 83(2) shall be transmitted by the Commissioner of the Patent Office to the parties and other persons having any registered rights relating to the patent.

(2) When a copy of an arbitration decision ordering a non-exclusive license to be granted has been transmitted to the parties under the preceding subsection, an agreement in the terms of the arbitration decision shall be deemed to have been reached by the parties.

#### **(Deposit of consideration)**

**88.** — A person who is to pay a remuneration as consideration under Section 86(2)(ii) shall make a deposit of it in the following case:

- (i) where the person to receive the remuneration is unwilling or unable to receive it;
- (ii) where an action under Section 183(1) has been instituted with respect to the remuneration;
- (iii) where the patent right or the exclusive license is the subject of a pledge. However, this provision shall not apply where the consent of the pledgee has been obtained.

#### **(Lapse of arbitration decision)**

**89.** — Where a person who desires a non-exclusive license fails to pay or deposit the remuneration (or the first installment thereof where payment is to be made periodically or by installments) within the time prescribed in the arbitration decision under Section 83(2), the arbitration decision ordering the non-exclusive license to be granted shall lose its effect.

#### **(Cancellation of arbitration decision)**

**90.** — (1) After rendering an arbitration decision ordering a non-exclusive license to be granted under Section 83(2), when the reason for the arbitration decision is no longer applicable or circumstances have otherwise changed and it has become to be impossible to sufficiently support the arbitration decision or a person who has obtained a non-exclusive license under the arbitration decision fails to work the patented invention sufficiently, the Commissioner of the Patent Office may cancel the arbitration decision upon the request of the interested person or ex officio.

(2) Sections 84, 85(1), 86(1) and 87(1) shall apply mutatis mutandis to the cancellation of the arbitration decision under the preceding subsection and Section 85(2) shall apply mutatis mutandis to the cancellation of the arbitration decision under the preceding subsection when the person who has obtained a non-exclusive license under the arbitration decision fails to work the patented invention sufficiently.

**91.** — When an arbitration decision has been cancelled under Section 90(1), the non-exclusive license shall be extinguished.

#### **(Restriction on objections to arbitration decision)**

**91bis(91-2).** — Objections to the remuneration fixed in an arbitration decision under Section 83(2) may not be made on a ground for a request for reconsideration of the decision under the Administrative Appeal Law (Law No. 160 of 1962).

**(Arbitration decision on grant of non-exclusive license on one's own patented invention)**

**92.** — (1) Where a patented invention falls under any of the cases provided for in Section 72, the patentee or exclusive licensee may request the other person referred to in that section to hold consultations on the grant of a non-exclusive license to work the patented invention or of a non-exclusive license on the utility model right or the design right.

(2) The other person referred to in Section 72 who has been requested to hold the consultations under the preceding subsection may request the patentee or exclusive licensee having requested the consultations to hold consultations on the grant of a non-exclusive license within the scope of the patented invention which the patentee or exclusive licensee desires to work by obtaining the non-exclusive license on the patent right, the utility model right or the design right through the consultations requested by the patentee or exclusive licensee.

(3) If no agreement is reached or no consultation is possible under subsection (1), the patentee or exclusive licensee may request the Commissioner of the Patent Office for an arbitration decision.

(4) If no agreement is reached or no consultation is possible under subsection (2) and an arbitration under the preceding subsection is requested, the other person referred to in Section 72 may request the Commissioner of the Patent Office for an arbitration decision only within the time limit which the Commissioner of the Patent Office designates as the time limit for the other person to submit a written reply in accordance with Section 84 as applied under subsection (7).

(5) If, in the case of subsection (3) or the preceding subsection, the grant of a non-exclusive license would unduly injure the interests of the other person referred to in Section 72 or the patentee or exclusive licensee, the Commissioner of the Patent Office shall not render an arbitration decision ordering a non-exclusive license to be granted.

(6) In the case of subsection (4) in addition to the case provided for in the preceding subsection, the Commissioner of the Patent Office shall not render an arbitration decision ordering a non-exclusive license to be granted if an arbitration decision ordering a non-exclusive license to be granted is not rendered with respect to the request for the arbitration decision under subsection (3).

(7) Sections 84, 85(1) and 86 to 91<sup>bis</sup>(91-2) shall apply mutatis mutandis to the arbitration under subsection (3) or (4).

**(Arbitration decision on grant of non-exclusive license in public interest)**

**93.** — (1) Where the working of a patented invention is particularly necessary in the public interest, a person who intends to work the invention may request the patentee or exclusive licensee to hold consultations on the grant of a non-exclusive license.

(2) If no agreement is reached or no consultation is possible under the preceding subsection, a person who intends to work the patented invention may request the Minister of Economy, Trade and Industry for an arbitration decision.

(3) Sections 84, 85(1) and 86 to 91<sup>bis</sup>(91-2) shall apply mutatis mutandis to the arbitration under the preceding subsection.

**(Transfer, etc. of non-exclusive license)**

**94.** (1) A non-exclusive license, with the exception of one which results from an arbitration decision under Section 83(2), 92(3) or (4) or 93(2) of this Law, Section 22(3) of the Utility Model Law or Section 33(3) of the Design Law, may be transferred, but only together with the business in which it is worked or only with the consent of the patentee (or the patentee and exclusive licensee in the case of a non-exclusive license on an exclusive license).

(2) A non-exclusive licensee may, except in the case of a non-exclusive license resulting from an arbitration decision under Section 83(2), 92(3) or (4) or 93(2) of this Law, Section 22(3) of the Utility Model Law or Section 33(3) of the Design Law, establish a pledge on the non-exclusive license, but only with the consent of the patentee (or the patentee and exclusive licensee in the case of a non-exclusive license on an exclusive license).

(3) A non-exclusive license resulting from an arbitration decision under Section 83(2) or 93(2) may be transferred only together with the business in which it is worked.

(4) A non-exclusive license resulting from an arbitration decision under Section 92(3) of this Law, Section 22(3) of the Utility Model Law or Section 33(3) of the Design Law shall be transferred together with the patent, utility model or design right to which the non-exclusive license is entitled, and if such right has been transferred independently from the business in which it is worked or extinguished, the non-exclusive license shall be extinguished simultaneously.

(5) A non-exclusive license resulting from an arbitration decision under Section 92(4) shall be transferred together with the patent, utility model or design right to which the non-exclusive license is entitled and shall be extinguished at the same time as the patent, utility model right or design right.

(6) Section 73(1) shall apply mutatis mutandis to non-exclusive license.

**(Pledges)**

**95.** — Where a patent right or an exclusive or non-exclusive license is the subject of a pledge, the pledgee may not work the patented invention unless otherwise prescribed by contract.

**96.** — A pledge on a patent right or an exclusive or non-exclusive license may be exercised against the remuneration received as consideration for the patent right or the license or against money or

goods that the patentee or exclusive licensee would be entitled to receive for the working of the patented invention. However, an attachment order shall be obtained prior to the payment or delivery of the money or property.

**(Surrender of patent right, etc.)**

**97.** — (1) Where there is an exclusive licensee, pledgee or non-exclusive licensee under Section 35(1), 77(4) or 78(1), a patentee may surrender his patent right only with the consent of such person.

(2) Where there is a pledgee or non-exclusive licensee under Section 77(4), an exclusive licensee may surrender his license only with the consent of such person.

(3) Where there is a pledgee, a non-exclusive licensee may surrender his license only with the pledgee's consent.

**(Effects of registration)**

**98.** — (1) The following shall be of no effect unless they are registered:

(i) transfers (except those by inheritance or other general succession), extinguishment by surrender or restrictions on disposal of a patent right;

(ii) the grant, transfer (except those by inheritance or other general succession), modification or extinguishment (except those resulting from a merger or the extinguishment of the patent right) of an exclusive license, or a restriction on the disposal thereof;

(iii) the grant, transfer (except those by inheritance or other general succession), modification or extinguishment (except those resulting from a merger or the extinguishment of a secured credit) of a pledge on a patent right or exclusive license, or a restriction on the disposal thereof.

(2) Inheritance or other general succession under any of the preceding paragraphs shall be notified to the Commissioner of the Patent Office without delay.

**99.** — (1) Once a non-exclusive license has been registered, it shall also be effective against anyone subsequently acquiring the patent right or the exclusive license or an exclusive license on such a patent right.

(2) A non-exclusive license under Section 35(1), 79, 80(1), 81, 82(1) or 176 shall be effective as under the preceding subsection without registration.

(3) The transfer, modification, extinguishment or restriction on disposal of a non-exclusive license or the grant, transfer, modification, extinguishment or restriction on disposal of a pledge relating to a non-exclusive license shall not be effective against any third party unless it is registered.

*2. Infringement*

**(Injunction)**

**100.** — (1) A patentee or an exclusive licensee may require a person who is infringing or is likely to infringe the patent right or exclusive license to discontinue or refrain from such infringement.

(2) A patentee or an exclusive licensee who is acting under the preceding subsection may demand the destruction of articles by which an act of infringement was committed (including articles manufactured by an act of infringement in the case of a patented invention of a process of manufacture; the same in Section 102(1)), the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

**(Acts deemed to be infringement)**

**101.** — The following acts shall be deemed to be an infringement of a patent right or exclusive license:

(i) in the case of a patent for an invention of product, acts of manufacturing, assigning, etc., or importing or offering for assignment, etc. of, in the course of trade, things to be used exclusively for the manufacture of the product;

(ii) in the case of a patent for an invention of product, acts of manufacturing, assigning, etc., or importing or offering for assignment, etc. of, in the course of trade, articles to be used for the manufacture of the product (excluding those which are generally distributed in Japan) and indispensable for solving the problems through the invention concerned, knowing that the invention is a patented invention and that the articles are to be used for the working of the invention.

(iii) in the case of a patent for an invention of a process, acts of manufacturing, assigning, etc., or importing or offering for assignment, etc. of, in the course of trade, things to be used exclusively for the working of such invention.

(iv) in the case of a patent for an invention of a process, acts of manufacturing, assigning, etc., or importing or offering for assignment, etc. of, in the course of trade, articles to be used for the use of such process (excluding those which are generally distributed in Japan) and indispensable for solving the problems through the invention concerned, knowing that the invention is a patented invention and that the articles are to be used for the working of the invention.

**(Presumption, etc. of amount of damage)**

**102.** — (1) Where a patentee or exclusive licensee claims, from a person who has intentionally or negligently infringed the patent 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 profit per unit of such articles multiplied by the number of articles (hereinafter referred to in this paragraph as the "number of assigned articles") which the patentee or exclusive licensee could have sold in the absence of the infringement may be estimated as the amount of damage suffered by the patentee or exclusive licensee within a limit not exceeding an amount attainable depending on working capability of the patentee or exclusive licensee. Where there is any circumstance that prevents the patentee 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 circumstance shall be deducted.

(2) Where a patentee or exclusive licensee claims, from a person who has intentionally or negligently infringed the patent right or exclusive license, 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 patentee or exclusive licensee.

(3) A patentee or exclusive licensee may claim, from a person who has intentionally or negligently infringed the patent right or exclusive license, an amount of money which he would be entitled to receive for the working of the patented invention, 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 patent right or the exclusive license, the court may take this into consideration when awarding damages.

#### **(Presumption of negligence)**

**103.** — A person who has infringed a patent right or exclusive license of another person shall be presumed to have been negligent as far as the act of infringement is concerned.

#### **(Presumption of manufacture by patented process)**

**104.** — In the case of a patent for an invention of a process of manufacturing a product, where such product was not publicly known in Japan prior to the filing of the patent application concerned, any identical product shall be presumed to have been manufactured by that process.

#### **(Obligation to clarify relevant act in concrete manner)**

**104bis(104-2).** — In a litigation directed to the infringement of a patent right or exclusive license, where denying the material allegation made by a patentee or an exclusive licensee to the effect that an act of infringement is committed with reference to an article or process, the other party shall clarify his relevant act in concrete manner. However, this provision shall not apply when the other party has an adequate reason for preventing him from disclosing the same.

#### **(Restriction on exercise of right by patentee, etc.)**

**104ter(104-3).** — (1) In a litigation relating to the infringement of patent right or exclusive license, the patentee or the exclusive licensee shall not exercise the right to the other party, where the patent is considered to be invalidated on a patent invalidation trial.

(2) With respect to the means of attack or defense under the preceding subsection, the court may, upon motion or ex officio, render a ruling of dismissal, if the submission involving such measures is considered to have been made for the purpose of causing unreasonable delay in the trial.

#### **(Production of documents, etc.)**

**105.** — (1) In a litigation relating to the infringement of a patent right or exclusive license, the court may, upon the request of a party, order the other party to produce documents necessary for the proof of alleged infringement or the assessment of the damages caused by the infringement. However, this provision shall not apply when the person possessing the documents has a legitimate reason for refusing to produce them.

(2) Where deemed necessary in deciding whether there is a good reason referred to in the proviso to the preceding subsection, the court may invite the person possessing the documents to make its presentation. In such a case, no person may request the disclosure of the document presented.

(3) In the case of the preceding subsection, when it is deemed necessary to hear, by disclosing the document referred to in the second sentence of the said subsection, the opinion as to whether there is a legitimate reason referred to in the proviso to subsection (1), the court may disclose the document to the party, etc. (the party—in the case of legal entity, the officer representing it or the agent of the party excluding the advocate and assistant—servant or any other worker, hereinafter referred to as "the party, etc."), advocate or assistant.

(4) The preceding three subsections shall apply mutatis mutandis to the presentation of the subject-matter for the inspection necessary for the proof of the alleged infringement in a litigation relating to the infringement of a patent right or exclusive license.

#### **(Expert opinion for proof of damages)**

**105bis(105-2).** — In a litigation relating to the infringement of a patent right or exclusive license, where the court orders, upon the request from a party, the expert opinion to be given with respect to



the matters necessary for the proof of the damages caused by the infringement, the other party shall explain to the expert the matters necessary for the expert opinion to be given.

**(Award of reasonable damages)**

**105ter(105-3).** — Where it is recognized that the damage was caused in a litigation relating to the infringement of a patent right or exclusive license, the court may award the reasonable amount of damages, based on the entire purport of the oral argument and the result of the taking of evidence when it is extremely difficult to prove facts necessary for the proof of damages from the nature of such relevant facts.

**(Secrecy Order)**

**105quater(105-4).** — (1) In a litigation relating to the infringement of a patent right or exclusive license, where it is shown by a prima facie evidence that the trade secret as defined in Section 2(4) of the Law for Repression of Unfair Competition (Law No. 47 of 1993) kept by the party, falls under any and all items mentioned below, the court may order, upon a motion from the party, by ruling, the party, etc., advocate and assistant not to use the trade secret for the purpose other than the purpose of prosecuting the litigation or not to disclose the trade secret to the person other than those ordered under this subsection relating to the trade secret. However, this provision shall not apply where the party, etc., advocate, or assistant has been acquired by means of other than inspection of preparatory pleadings referred to in (i) below or examination of evidence or disclosure referred to in (i) below or kept the trade secret before the motion was made.

(i) the trade secret, kept by the party, described in the preliminary pleadings already produced or to be produced, or the trade secret, kept by the party, contained in the subject-matter of the evidence (including the document disclosed under Section 105(3) or paper disclosed under Section 105septies(105-7)(4)), already examined or to be examined;

(ii) the existence of necessity for restricting the use or disclosure of the trade secret referred to in (i) above for preventing the business activities of the party from being liable to be disturbed resulting from the use of the trade secret for the purpose other than the purpose of prosecuting the litigation or the disclosure of the trade secret concerned.

(2) A motion for Order under the preceding subsection (hereinafter referred to as the “Secrecy Order”) shall be in writing, stating the following:

- (i) a person to receive the Secrecy Order;
- (ii) the sufficient facts to identify the trade secret to be subject to the Secrecy Order;
- (iii) the facts falling under the preceding subsection (i) or (ii).

(3) Once the Secrecy Order has been issued, the copy of the decision shall be transmitted to a person who received the Secrecy Order.

(4) The Secrecy Order shall take effect from the time when the copy of the decision has been transmitted to a person who received the Secrecy Order.

(5) An immediate appeal may be made against the court decision which has dismissed the motion for the Secrecy Order.

**(Cancellation of Secrecy Order)**

**105quinquies(105-5).** — (1) A person who made a motion for the Secrecy Order or a person who received the Secrecy Order may present to the court keeping the record of the case (where there is no court keeping the record of the case, the court which issued the Secrecy Order) a motion for cancellation of the Secrecy Order on the ground that the requirement was not satisfied under Section 105quater(105-4)(1) or said requirement came not to be satisfied.

(2) Once the court decision with respect to the motion for cancellation of the Secrecy Order has been made, the copy of the decision shall be transmitted to a person who made the motion and the other party.

(3) An immediate appeal may be made against the court decision with respect to the motion for cancellation of the Secrecy Order.

(4) The court decision to cancel the Secrecy Order shall not take effect before it has become final and conclusive.

(5) Where the court decision was rendered for canceling the Secrecy Order, when there is the person who made the motion for canceling the Secrecy Order or the person who received the Secrecy Order pertaining to the trade secret concerned in the litigation in which the Secrecy Order was issued to the person other than the other party, the court shall immediately give such person the notice to the effect that the court decision was to be rendered for canceling the Secrecy Order.

**(Notice, etc. of request for inspection of record of case, etc.)**

**105sexies(105-6).** — (1) Where the ruling under Section 92(1) of the Code of Civil Procedure (Law No. 109 of 1996), was rendered with respect to the record of trial involving the litigation (excluding the litigation in which all the Secrecy Orders were cancelled) in which the Secrecy Order was issued, when the request was made by the party for the inspection of the part of trial record in which the secret was written or recorded (hereinafter referred to as “classified part”) referred to in Section 92(1) of said Code, a person who took the procedure therefor is the person who has not received the Secrecy Order in the litigation, the court clerk shall, immediately after the request made, notify the party who made the motion under Article 92(1) of said Code (excluding the person who made the request—the same in subsection (3)) that the request was made.

(2) In the case of the preceding subsection, during the period between the day when the request under the same subsection was made and the day when two weeks have passed thereafter (where the motion for the Secrecy Order was made to the person who took the procedure for the same request by that date, by the time when the trial decision pertaining to the motion therefor becomes final and conclusive), the court clerk shall not allow inspection, etc. by the person who took the same request pertaining to the classified part.

(3) The preceding two subsections shall not apply when all parties who took the motion under Section 92(1) of the Code of Civil Procedure give consent to the inspection, etc. of the classified part by the person who took the request under subsection (1).

**(Suspension of examination of party, etc. at open court)**

**105septies(105-7).** — (1) Where the party, etc. in the litigation involving the infringement of patent right or exclusive license, with respect to the matter which constitutes the basis for judging as to there is an infringement or non-infringement and which falls under the trade secret held by the party, is examined as the party himself, legal representative or witness, when the court unanimously considers that the party, etc. may make a sufficient statement of the matter concerned made at the open court by the party, etc. shall apparently cause a serious obstacle to business activities of the party being carried out under the trade secret and may not conduct the proper trial, by the other evidence only, of an infringement or non-infringement of patent right or exclusive license constituting the basis for judging the matter concerned for the lack of the statement concerned, the court may, by ruling, conduct the examination of the matter concerned privately.

(2) Before rendering the ruling under the preceding subsection, the court shall hear the opinions of the party, etc. in advance.

(3) In the case of the preceding subsection, the court may cause the party, etc., if deemed necessary, to present the documents stating the gist of the matters to be stated. In such case, no person may request for the disclosure of the documents presented.

(4) The court may cause the party, etc., legal representative or assistant to present the documents in the second sentence of the preceding subsection, when considering it necessary to hear the opinions thereof disclosing the documents concerned.

(5) In order to examine the matters concerned privately under subsection (1), the court shall declare to such effect together with the reason therefor before causing the public to withdraw from the courtroom. When the examination of the matters concerned is terminated, the court shall cause the public to be admitted to the courtroom again.

**(Measures for recovery of reputation)**

**106.** — Upon the request of a patentee or an exclusive licensee, the court may, in lieu of damages or in addition thereto, order a person who has injured the business reputation of the patentee or exclusive licensee by infringing the patent right or exclusive license, whether intentionally or negligently, to take the measures necessary for the recovery of the business reputation.

*3. Annual Fees*

**(Annual fees)**

**107.** — (1) A person who obtains registration of the establishment of a patent right or a patentee shall pay, as annual fees, the amount specified in the right-hand column of the following table corresponding to the relevant period in the left-hand column, for each case and for each year from the

date of the registration of the establishment of the patent right to the expiration of the term (where the term is extended by virtue of Section 67(2), the added extension term) under Section 67(1):

Division of year	Amounts
First to third year	Annually, ¥2,600 plus ¥200 per claim
Fourth to sixth year	Annually, ¥8,100 plus ¥600 per claim
Seventh to ninth year	Annually, ¥24,300 plus ¥1,900 per claim
Tenth to twenty-fifth year	Annually, ¥81,200 plus ¥6,400 per claim

(2) The preceding subsection shall not apply to patent right belonging to the State.

(3) Where the State or other person(s) including a person who has the annual fee reduced or exempted under Section 109 or other laws (hereinafter referred to as “reduction or exemption” in this subsection) jointly own a patent right and there is an agreement with respect to their shares of the right, the annual fees under subsection (1), notwithstanding said subsection, shall be the sum obtained by the aggregate addition of the sum multiplied by the ratio of their shares to the sum of annual fees under said subsection (in the case of the person who has annual fees reduced or exempted, the amount thereof after reduced or exempted) provided for each joint owner other than the State in said subsection, and such sum shall be paid by the person(s) other than the State.

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

(5) The payment of the annual fees under subsection (1) 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 annual fees)**

**108.** — (1) The annual fee for each year from the first to third year under Section 107(1) shall be paid in a lump sum within 30 days from the date of transmittal of the examiner’s decision or the trial decision that the patent is to be granted.

(2) The annual fee for each year from the fourth and subsequent years under Section 107(1) shall be paid during the preceding year or prior thereto. However, where the date of transmittal of the examiner’s decision or trial decision that the registration of an extension of the term of a patent right is to be made (hereinafter referred to in this subsection as the “date of transmittal”) is later than a date which is thirty days prior to the last day of the year in which the day of the expiration of the patent right would fall if there had been no registration of an extension, the annual fee shall be paid in lump sum, for each year from the year following that year to the year in which the date of transmittal falls (where there are less than thirty days from the date of transmittal to the last day of the year in which the day of transmittal falls, to the year following that year in which the date of transmittal falls).

(3) Upon the request of a person liable to pay an annual fee, the Commissioner of the Patent Office may extend the period prescribed in subsection (1) by a period not exceeding 30 days.

#### **(Reduction or deferment of payment of annual fees or exemption therefrom)**

**109.** — Where the Commissioner of the Patent Office recognizes that a person who is mentioned below and falls under the requirement prescribed by Cabinet Order for a person to be short of funds cannot afford to pay the annual fees, he may reduce the annual fees for each year from the first to the third year under Section 107(1), exempt him therefrom or grant him deferment of payment thereof as prescribed by Cabinet Order:

- (i) the inventor of the patented invention or the inventor’s heir;
- (ii) the employer etc., who has succeeded to the right to obtain a patent from the employee, etc., where the patent invention is an employee’s invention made by the employee, etc., as referred to in Section 35(1) and where it is provided in advance in a contractual provision, service regulation or other stipulation that the right to obtain a patent shall pass to the employer, etc.

#### **(Payment of annual fees by an interested person)**

**110.** — (1) An interested person may pay an annual fee even against the will of the person liable to pay.

(2) An interested person who has paid an annual fee in accordance with 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 annual fees)**

**111.** — (1) Annual fees shall be refunded, upon the request of the person who paid them, only in the following cases:

- (i) annual fees paid by mistake or in excess;
- (ii) the annual fees for the year following the year in which a trial decision that the patent is to be invalidated became final and conclusive and subsequent years;

(iii) The annual fee for the year following the year in which the trial decision that the registration of an extension of the term of a patent right is to be invalidated became final and conclusive, and subsequent years (limited to that for the year following the year in which the day of the expiration of the term of the patent right would fall if there had been no registration of the extension and subsequent years).

(2) No refund of annual fees under the preceding subsection may be requested after one year from the date of payment in the case of annual fees under paragraph (i) above, or after six months from the date on which a trial decision became final and conclusive in the case of annual fees under paragraphs (ii) and (iii) above.

#### **(Late payment of annual fees)**

**112.** — (1) Where a patentee is unable to pay an annual fee within the time limit prescribed in Section 108(2) or within the time limit for deferred payment under Section 109, he may pay the annual fee belatedly within six months from the expiration of that time limit.

(2) In the case of late payment of an annual fee in accordance with the preceding subsection, the patentee shall, in addition to the annual fee provided for in Section 107(1), pay a surcharge of the same amount as the annual fee.

(3) The payment of the surcharge under the preceding subsection 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.

(4) Where a patentee fails to pay within the time limit for late payment under subsection (1) an annual fee due by the time limit prescribed in the principal sentence of Section 108(2) as well as the surcharge under subsection (2), the patent right shall be deemed to have been extinguished retroactively from the time of the expiration of the time limit prescribed in the principal sentence of Section 108(2).

(5) Where a patentee fails to pay an annual fee under Section 108(2) and the surcharge under subsection (2) within the time limit for late payment under subsection (1), the patent right shall be deemed to have been extinguished retroactively from the time of the lapsing of the year in which the day of the expiration of the term of the patent right would fall if there had been no registration of the extension.

(6) Where a patentee fails to pay an annual fee whose payment has been deferred under Section 109, and the surcharge under subsection (2), within the time limit for late payment under subsection (1), the patent right shall be deemed never to have existed.

#### **(Restoration of patent right by late payment of annual fees)**

**112<sup>bis</sup>(112-2).** — (1) Where the patent right is one which was deemed to have been extinguished under Section 112(4) or (5) or which was deemed never to have existed under Section 112(6) and the owner of the extinguished patent right is unable to pay an annual fee and surcharge belatedly within the time limit for late payment under Section 112(1) due to reasons outside his control, he may pay the annual fee and surcharge referred to in Section 112(4) to (6) within 14 days (where he is a resident abroad, within 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) Where the annual fee and surcharge have been paid in accordance with the preceding subsection, the patent right shall be deemed to have been maintained retroactively from the time of the expiration of the time limit prescribed in the principal sentence of Section 108(2) or the lapse of the year in which the day of the expiration of the term of the patent right falls or existed from the beginning.

#### **(Restriction on effects of patent right restored)**

**112<sup>ter</sup>(112-3).** — (1) Where a patent right has been restored under Section 112<sup>bis</sup>(112-2)(2), if the patent has been granted for the invention of a product, the effects of the patent right shall not extend to the product which was imported into, or manufactured or acquired in Japan after the expiration of the time limit for late payment under Section 112(1) but before the registration of the restoration of the patent right.

(2) The effects of patent right restored under Section 112<sup>bis</sup>(112-2)(2) shall not extend to the following acts after the expiration of the time limit for late payment under Section 112(1) but before the registration of the restoration of the patent right:

- (i) the working of the invention;
- (ii) in the case of a patent for an invention of product, acts of manufacturing, assigning, etc., or importing or offering for assignment, etc. of, articles to be used for the manufacture of the product;
- (iii) in the case of a patent for an invention of a process, acts of manufacturing, assigning, etc., or importing or offering for assignment, etc. of, articles to be used for the working of the invention.

## Chapter V — Deleted

113. — Deleted (to 120sexies(120-6).)

## Chapter VI — Trial

### (Appeal trial against examiner's refusal)

121. — (1) A person who has received the examiner's decision that his application is to be refused and is dissatisfied may demand an appeal trial against examiner's refusal 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 an appeal trial against examiner's refusal within the time limit under the preceding subsection, 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 reasons ceased to be applicable but not later than six months, following the expiration of the said time limit.

122. — Deleted

### (Patent invalidation trial)

123. — (1) Where a patent falls under the requirements of any of the following paragraphs, a patent invalidation trial may be demanded for the invalidation of the patent. In this context, if there are two or more claims, a trial may be demanded for each claim;

(i) where the patent has been granted on a patent application (excluding a foreign language file application) with an amendment which does not comply with Section 17<sup>bis</sup>(17-2)(3);

(ii) where the patent has been granted contrary to Section 25, 29, 29<sup>bis</sup>(29-2), 32, 38 or 39(1) to (4);

(iii) where the patent has been granted contrary to the provisions of a treaty;

(iv) where the patent has been granted on a patent application which does not comply with Section 36(4)(i) or (6) (excluding paragraph (iv));

(v) where the features disclosed in the description, patent claim(s) or drawing(s) attached to the request with respect to the patent under a foreign language file application does not remain within the scope of the features disclosed in the foreign language file;

(vi) where the patent has been granted on a patent application filed by a person who is not the inventor and has not succeeded to the right to obtain a patent for the invention concerned;

(vii) where, after the grant of the patent, the patentee has become a person who can no longer enjoy a patent right under Section 25 or the patent no longer complies with a treaty;

(viii) where the correction of the description, patent claim(s) or drawing(s) attached to the request with respect to the patent has been made contrary to the proviso to Section 126(1), or Section 126(3) to (5) (including its application under Section 134<sup>bis</sup>(5)) or the proviso to Section 134<sup>bis</sup>(1).

(2) Any person may demand a patent invalidation trial. However, a demand for the trial on the ground that a patent falls under the preceding subsection (ii) (limited to a patent granted contrary to Section 38) or said subsection (vi) may be demanded only by an interested person.

(3) Even after the extinguishment of a patent right, a patent invalidation trial may be demanded.

(4) Where a patent invalidation trial has been demanded, the trial examiner-in-chief shall notify the exclusive licensee with respect to the patent right and other persons who have any registered rights relating to the patent accordingly.

124. — Deleted

125. — Where a trial decision that a patent is to be invalidated has become final and conclusive, the patent right shall be deemed never to have existed. However, where a patent falls under Section 123(1)(vii) and a trial decision that the patent is to be invalidated has become final and conclusive, the patent right shall be deemed not to have existed from the time when the patent first fell under that paragraph.

### (Extended registration invalidation trial)

125<sup>bis</sup>(125-2). — (1) An extended registration invalidation trial may be demanded if the registration falls under any of the following paragraphs:

(i) where the registration of an extension has been effected in respect of an application filed in the case when it is not deemed that the obtaining of the disposition as provided for in Cabinet Order referred to in Section 67(2) was necessary for the working of the patented invention;

(ii) where the registration of an extension has been effected in respect of an application filed in the case when the disposition as provided for in Cabinet Order referred to in Section 67(2) was not obtained by the patentee, or an exclusive licensee or a registered non-exclusive licensee relating to the patent;

(iii) where the term of an extension through the registration of the extension exceeds the period of time during which the patented invention could not be worked;

(iv) where the registration of an extension has been effected on an application by a person who is not the patentee concerned;

(v) where the registration of an extension has been effected on an application which did not comply with Section 67<sup>bis</sup>(67-2)(4).

(2) Section 123(3) and (4) shall apply mutatis mutandis to the demand for an extended registration invalidation trial.

(3) Where a trial decision that the registration of an extension is to be invalidated has become final and conclusive, the extension of the term through the registration of the extension shall be deemed never to have existed. However, where the registration of the extension falls under of subsection (1)(iii) and the trial decision that the registration of the extension of the term exceeding the period of time during which the patented invention could not be worked has become final and conclusive, the extension of the term exceeding the said period of time shall be deemed not to have existed.

### **(Correction trial)**

**126.** — (1) The patentee may demand a correction trial for making a correction of the description, patent claim(s) or drawing(s) attached to the request. However, such correction shall be limited to the following:

- (i) the restriction of claim(s);
- (ii) the correction of errors in the description or of incorrect translations;
- (iii) the clarification of an ambiguous description.

(2) A correction trial may not be demanded during the period between the time when the patent invalidation trial has come to be pending before the Patent Office and the time when the trial decision has become final and conclusive. However, this provision shall not apply during the period of 90 days from the date when an action against the trial decision was instituted with respect to a patent invalidation trial (excluding the period after a court's decision annulling a trial decision under Section 181(1) or (2) has been final and conclusive).

(3) The correction of the description, patent claim(s) or drawing(s) under subsection (1) shall remain within the scope of the features disclosed in the description, patent claim(s) or drawing(s) attached to the request [in the case of those intended for the object referred to in paragraph (ii) of the proviso to the subsection (1), the description, patent claim(s) or drawing(s) originally attached to the request (in the case of a patent granted on a foreign language file application, the foreign file language file)].

(4) The correction of the description, patent claim(s) or drawing(s) under subsection (1) may not be such as to substantially enlarge or modify the claim(s).

(5) In the case of correction intended for the object referred to in paragraph (i) or (ii) of the proviso to the subsection (1), an invention defined by the features stated in the patent claim(s) corrected must be one which could have been patented independently at the time of filing of the patent application.

(6) A correction trial may be demanded even after the extinguishment of the patent right. However, this provision shall not apply after the patent has been invalidated on a patent invalidation trial.

**127.** — Where there is an exclusive licensee, a pledgee or a non-exclusive licensee under Section 35(1), 77(4) or 78(1), the patentee may demand a correction trial only with the consent of such person.

**128.** — Where a trial decision that the description, patent claim(s) or drawing(s) attached to the request are to be corrected has become final and conclusive, the patent application, the laying open of the application, the examiner's decision or the trial decision that the patent is to be granted, or the registration of establishment of the patent right shall be deemed to have been made on the basis of the corrected description, patent claim(s) or drawing(s).

**129.** — *Deleted*

**130.** — *Deleted*

### **(Formal requirements of demands for trial)**

**131.** — (1) A person demanding a trial shall submit a written demand to the Commissioner of the Patent Office stating the following:

- (i) the name and the domicile or residence of the demandant and his representative;
- (ii) an identification of the trial case;
- (iii) the relief sought in the demand and the grounds therefor.

(2) In the case where a demand for the patent invalidation trial is made, the grounds for the demand under the paragraph (iii) of the preceding subsection shall concretely specify the fact constituting the grounds for invalidating the patent and state its relationship with the evidence for each fact required to be proven.

(3) When a correction trial is demanded, the corrected description, patent claim(s) or drawing(s) shall be attached to the written demand.

### **(Amendment to written demand)**

**131bis.(131-2)** — (1) An amendment to the written demand submitted under Section 131 (1) shall not change the gist thereof. However, this provision shall not apply to the amendment made to the grounds for the demand under Section 131(I)(iii) except in the case where a demand is made for the trial other than the patent invalidation trial or when a permission was granted by the trial examiner-in-chief under the following subsection.

(2) Where an amendment made to the grounds for the demand under Section 131(1)(iii) changes the gist thereof, the trial examiner-in-chief may permit the amendment by a ruling, when there is clearly no apprehension that the amendment does not cause unreasonable delay in the trial and the amendment is recognized by him to fall under any of the following paragraphs;

(i) where the demand for correction under Section 134<sup>bis</sup>(1) is made in the patent invalidation trial, it is necessitated thereby to make an amendment to the ground for the demand.

(ii) where there are the justifiable reasons for omitting the statement with respect to the grounds for the demand relating to relevant amendment in the written demand at the time when the demand was filed, in addition to the case referred to in the preceding paragraph, and when the defendant has agreed to the amendment concerned.

(3) The permission of the amendment under preceding subsection shall not be granted when the written amendment was filed prior to the transmission of the written demand under Section 134(1).

(4) No appeal shall lie from a ruling under subsection (2).

### **(Joint trial)**

**132.** — (1) Where two or more persons demand a patent invalidation trial or an extended registration invalidation trial concerning to the same patent right, the demand may be made jointly.

(2) Where a trial is demanded against any of the joint owners of a patent right, all the joint owners shall be made defendants.

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

(4) Where there is a ground for interruption or suspension of the trial proceedings on the part of one of the demandants under subsection (1) or the preceding subsection or one of the defendants under subsection (2), the interruption or suspension shall have effect on all of them.

### **(Dismissal by ruling in the case of non-compliance with formal requirements)**

**133.** — (1) Where a demand for a trial does not comply with Section 131, the trial examiner-in-chief shall invite the demandant to make an amendment the demand, designating an adequate time limit.

(2) Subject to preceding subsection, the trial examiner-in-chief may invite an amendment to a procedure relating to a trial, designating an adequate time limit, in the filing case:

(i) when the requirements of Section 7(1) to (3) or 9 have not been complied with;

(ii) when the formal requirements specified in this Law or in an order or ordinance thereunder have not been complied with;

(iii) when the fees to be paid under Section 195(1) or (2) has not been paid with respect to a procedure.

(3) The trial examiner-in-chief may dismiss a procedure relating to a trial by a ruling when a person whom he has invited to make an amendment in accordance with the preceding two subsections, fails to do within the time limit designated in accordance with said subsections or the amendment does not comply with Section 131<sup>bis</sup>(131-2)(1).

(4) A ruling under the preceding subsection shall be in writing and shall state the reasons therefor.

### **(Dismissal of irregular procedure)**

**133bis(133-2).** — (1) The trial examiner-in-chief may dismiss a irregular procedure relating to a trial (excluding a demand for a trial) by a ruling which cannot be amended.

(2) When the trial examiner-in-chief intends to dismiss the procedure in accordance with the preceding subsection, he shall notify the person who is proceeding of the reasons for dismissal and give him an opportunity to submit a statement of explanation, designating an adequate time limit.

(3) A ruling under subsection (1) shall be in writing and state the reasons therefor.

**(Submission of written reply, etc.)**

**134.** — (1) When a trial has been demanded, the trial examiner-in-chief shall transmit to the defendant a copy of the written demand and shall give him an opportunity to submit a written reply by designating an adequate time limit.

(2) When a trial examiner-in-chief permits an amendment to be made to the written demand under Section 131<sup>bis</sup>(2), he shall transmit to the defendant a copy of the written amendment relating to relevant amendment and shall give the defendant an opportunity to submit a written reply. However, this provision shall not apply in case where there are special circumstances recognized unnecessary for giving the defendant an opportunity to submit a written reply.

(3) When a trial examiner-in-chief receives a written reply referred to in subsection (1) or the principal sentence of the preceding subsection, he shall transmit to the defendant a copy of said written reply.

(4) The trial examiner-in-chief may examine the parties and intervenors with respect to the trial.

**(Demand for correction in patent invalidation trial)**

**134<sup>bis</sup> (134-2).** — (1) A defendant in the patent invalidation trial may demand a correction of the description, patent claim(s) or drawing(s) attached to the request only within the time limit designated in accordance with Section 134(1) or (2), Section 134<sup>ter</sup>(1) or (2) or Section 153(2). However, such correction shall be limited to the following:

- (i) the restriction of a patent claim or claims,
- (ii) the correction of errors or incorrect translation therein,
- (iii) the clarification of an ambiguous statement therein.

(2) When a trial examiner-in-chief receives a written demand for correction under the preceding subsection or a corrected description, patent claim(s) or drawing(s) attached to said written demand, he shall transmit to the defendant a copy thereof.

(3) A trial examiner-in-chief may examine even the grounds not pleaded by a party or an intervenor with respect to the fact that the demand for a correction under subsection (1) is not intended for any of the matters in the proviso of said subsection or it does not comply with Section 126(3) to (5) as applied under this Section (5). In this case, when not allowing said demand for correction on the relevant ground, the examiner-in-chief shall notify the parties and intervenors of the result of the trial examination and give them an opportunity to state their opinion thereon, designating an adequate time limit.

(4) Where a demand for correction under subsection (1) has been made, and when, with respect to the trial thereof, there is a demand for correction previously made in the trial thereof, the relevant previous demand shall be deemed withdrawn.

(5) Sections 126(3) to (6), 127, 128, 131(1) and (3), 131<sup>bis</sup>(1) and 132(3) and (4) shall apply *mutatis mutandis* to the case under subsection (1). In such a case, “in the case of paragraphs (i) and (ii) of the proviso to subsection (1)” in Section 126(5) shall read “paragraphs (i) and (ii) the proviso to subsection (1) with respect to the claim(s) for which a patent invalidation trial is not demanded”.

**(Demand for correction in case where annulling court decision, etc. rendered)**

**134<sup>ter</sup> (134-3).** — (1) Where a court decision annulling a trial decision (limited to the decision not allowable) in a patent invalidation trial under Section 181(1) has become final and conclusive, and when a trial examination is to be commenced under said Section (5), a trial examiner-in-chief may designate, only when a motion has been made by the defendant within a week from date for which that court decision has become final and conclusive, an adequate time limit to make a demand for correction of a description, patent claim(s) or drawing(s) attached to the request for the defendant.

(2) Where a court decision annulling under Section 181(2) has become final and conclusive, and when a trial examination is to be commenced under said Section (5), a trial examiner-in-chief shall designate an adequate time limit to make a demand for correction of a description, patent claim(s) or drawing(s) attached to the request for the defendant. However, this provision shall not apply in the case where, at the time when the trial examination commenced, the trial decision with respect to the correction trial which was demanded within the time limit referred to in the proviso to Section 126(2) in the trial concerned has become final and conclusive.

(3) Where a defendant of patent invalidation trial has been made a demand for a correction trial within the time limit referred to in proviso to Section 126(2), and when he makes the demand for correction under Section 134<sup>bis</sup>(134-2)(1) within the time limit designated in accordance with the preceding two subsections, he may cite the corrected description, patent claim(s) or drawing(s) attached to the written demand for the correction trial.

(4) Where a demand for a correction trial was made within the time limit referred to in the proviso to Section 126(2), and when the demand for correction under Section 134<sup>bis</sup>(1) is made within the time limit designated in accordance with subsection (1) or (2), that demand for the correction trial shall be deemed to have been withdrawn. However, this provision shall not apply in the case where the trial decision with respect to the correction trial has become final and conclusive at the time when the correction trial was made.

(5) Where a demand for a correction trial was made within the time limit referred to in the proviso to Section 126(2), and when a demand for correction under Section 134<sup>bis</sup>(1) failed to make the demand for correction within the time limit designated in accordance with subsection (1) or (2), the demand for correction under Section 134<sup>bis</sup>(1) cited for the corrected description, patent claim(s) or drawing(s) attached to the written demand for the correction trial shall be deemed to have been made.



at the time on the last day of the time limit. However, this provisions shall not apply in the case where the trial decision with respect to the correction trial has become final and conclusive at the time on the last day of the time limit.

**(Dismissal of irregular demand by trial decision)**

**135.** — An irregular demand for a trial which cannot be amended may be dismissed by a trial decision without giving the defendant an opportunity to submit a written reply.

**(Collegial system in trial)**

- 136.** — (1) A trial shall be conducted by a collegial body of three or five trial examiners.  
(2) The collegial body referred to in subsection (1) shall take its decisions by a majority vote.  
(3) The qualification of trial examiners shall be prescribed by Cabinet Order.

**(Designation of trial examiners)**

**137.** — (1) For each trial (but in the case of a trial where the examiner examines a demand in accordance with Section 162, only when a report under Section 164(3) has been made), the Commissioner of the Patent Office shall designate the trial examiners constituting the collegial body under Section 136(1).

(2) When any trial examiner designated in accordance with the preceding subsection is unable to participate in the trial, the Commissioner of the Patent Office shall relieve him of such designation and appoint another trial examiner to take his place.

**(Trial examiner-in-chief)**

**138.** — (1) The Commissioner of the Patent Office shall designate one of the trial examiners designated under Section 137(1) as the trial examiner-in-chief.

- (2) The trial examiner-in-chief shall preside over matters relating to the trial.

**(Exclusion of trial examiners)**

**139.** — In any of the following cases, trial examiners shall be precluded from performing their functions:

- (i) where the trial examiner or his spouse or former spouse is or was a party or an intervenor;
- (ii) where the trial examiner is or was a relative by blood within the fourth degree, a relative by affinity within the third degree or a relative cohabiting with a party or an intervenor;
- (iii) where the trial examiner is a guardian, a supervisor of the guardian, a curator, a supervisor of the curator, an assistant or a supervisor of the assistant of a party or an intervenor;
- (iv) where the trial examiner has become a witness or an expert witness in the case;
- (v) where the trial examiner is or was a representative of a party or an intervenor;
- (vi) where the trial examiner participated as an examiner in the examiner's decision which is challenged in the case;
- (vii) where the trial examiner has a direct interest in the case.

**140.** — Where there is a ground for exclusion under Section 139, a party or an intervenor may present a motion of exclusion.

**(Challenge of trial examiner)**

**141.** — (1) Where there are circumstances preventing a fair trial on the part of a trial examiner, a party or an intervenor may challenge him.

(2) After he has made a written or oral statement to a trial examiner with regard to the case, a party or an intervenor may not challenge him. However, this provision shall not apply where the party or intervenor did not know that there was a ground for challenge or where a ground for challenge arose subsequently.

**(Formal requirements of motion of exclusion or challenge)**

**142.** — (1) A person who presents a motion of exclusion or challenge shall submit a document to the Commissioner of the Patent Office setting forth the grounds therefor. However, in the oral trial examination, this procedure may be carried out orally.

(2) The ground for exclusion or challenge shall be substantiated within three days from the date on which the motion under the preceding subsection was presented. This provision shall also apply in the case of the proviso to Section 141(2).

**(Ruling on motion of exclusion or challenge)**

**143.** — (1) When a motion of exclusion or challenge has been made, the trial examiners other than the trial examiner concerned in the motion shall render a ruling thereon through a trial. However, the trial examiner concerned in the motion may state his opinion.

- (2) The ruling under the preceding subsection shall be in writing and state the reasons therefor.

(3) No appeal shall lie from the ruling under subsection (1).

**144.** — When a motion of exclusion or challenge has been presented, the trial proceedings shall be suspended until a ruling thereon. However, this provision shall not apply to matters requiring urgent attention.

**(Trial clerk)**

**144bis(144-2).** — (1) For each trial (but in the case of a trial where the examiner examines a demand in accordance with Section 162, only when a report under Section 164(3) has been made), the Commissioner of the Patent Office shall designate the trial clerk.

(2) The qualification of trial clerk shall be prescribed by Cabinet Order.

(3) When the trial clerk designated in accordance with subsection (1) is unable to participate in the trial, the Commissioner of the Patent Office shall relieve him of such designation and designate another trial clerk to take his place.

(4) The trial clerk will do the office for preparing records and their transmittal as well as the other office under the direction of the trial examiner-in-chief with respect to the trial.

(5) Sections 139 (excluding paragraph (vi)) and 140 to 144 shall apply mutatis mutandis to the trial clerk. In such a case, the trial clerk who is concerned in the motion of exclusion or challenge, may not participate in the trial with respect to the exclusion or challenge.

**(Conduct of trial examination)**

**145.** —(1) The patent invalidation trial and extended registration invalidation trial shall be conducted by oral trial examination. However, the trial examiner-in-chief may decide to conduct the trial by documentary examination on a motion by a party or an intervenor or ex officio.

(2) Trials other than the trial under the preceding subsection shall be conducted by documentary examination. However, the trial examiner-in-chief may decide to conduct the trials by oral examination on a motion by a party or ex officio.

(3) Where a trial is conducted by oral examination in accordance with subsection (1) or the proviso to the preceding subsection, the trial examiner-in-chief shall fix the date and place thereof and summon the party and the intervenor.

(4) Section 94 of the Code of Civil Procedure (summon on a fixed date) shall apply mutatis mutandis to a summon on a fixed date as prescribed in the preceding paragraph.

(5) The oral examination under subsection (1) or the proviso to subsection (2) shall be conducted in public. However, this provision shall not apply where public order or morality is liable to be injured thereby.

**146.** — Section 154 (attendance of an interpreter, etc.) of the Code of Civil Procedure shall apply mutatis mutandis to the trial.

**(Records)**

**147.** — (1) With respect to a trial by oral examination under Section 145(1) or the proviso to Section 145(2), the trial clerk shall prepare the record setting forth the gist of the trial examination and other necessary matters whenever a trial take place.

(2) Where the trial clerk is ordered by the trial examiner-in-chief with respect to the preparation of the record or the change in the record, if he recognizes that the preparation or the change is not legitimate, he may add his opinion.

(3) Section 160(2) and (3) (record of oral argument) of the Code of Civil Procedure shall apply mutatis mutandis to the record under subsection (1).

**(Intervention)**

**148.** — (1) Any person who may demand a trial under Section 132(1) may intervene in the trial as a demandant until the conclusion of the trial.

(2) An intervenor under the preceding subsection may continue the trial proceedings even after the demand for the trial has been withdrawn by the original party.

(3) Any person who has an interest in the result of the trial may intervene in the trial, in order to assist one of the parties, until the conclusion of the trial.

(4) An intervenor under the preceding subsection may initiate and take part in any procedure relating to the trial.

(5) Where there is a ground for interruption or suspension of the trial proceedings on behalf of the intervenor under subsection (1) or (3), the interruption or suspension shall also be effective against the original party.

**149.** — (1) A person desiring to intervene shall submit a written demand to intervene to the trial examiner-in-chief.

(2) Where a demand to intervene is made, the trial examiner-in-chief shall transmit the demand to intervene to the parties and the intervenors and give them an opportunity to express their opinions, designating an adequate time limit.

(3) Where a demand to intervene is made, the trial examiner in the trial concerned shall render a ruling thereon through a trial.

(4) The ruling under the preceding subsection shall be in writing and state the reasons therefor.

(5) No appeal shall lie from the ruling under subsection (3).

#### **(Taking of evidence and preservation thereof)**

**150.** — (1) With respect to a trial, evidence may be taken on a motion by a party or an intervenor, or ex officio.

(2) With respect to a trial, evidence may be preserved on a motion by an interested person, before the demand for the trial is made, and on a motion by any party or intervenor, or ex officio, during the pendency of the trial.

(3) The motion before the demand for a trial under the preceding subsection shall be presented to the Commissioner of the Patent Office.

(4) Where a motion has been presented under subsection (2) before the demand for a trial, the Commissioner of the Patent Office shall designate the trial examiner and the trial clerk in charge of preserving the evidence.

(5) Where evidence has been taken or preserved ex officio under subsection (1) or (2), the trial examiner-in-chief shall notify the parties and the intervenors of the result thereof and shall give them an opportunity to state their opinion, designating an adequate time limit.

(6) The taking or preservation of evidence under subsection (1) or (2) may be entrusted to a local court or a court with summary jurisdiction in the place where the case is to be handled.

**151.** — Section 147 of this Law and Sections 93(1) (designation of a date), 94 (summon on a fixed date), 179 to 181, 183 to 186, 188, 190, 191, 195 to 198, 199(1), 201 to 204, 206, 207, 210 to 213, 214(1) to (3), 215 to 222, 223(1) to (3), 226 to 228, 229(1) to (3), 231, 232(1), 233, 234, 236 to 238, 240 to 242 (evidence) and 278 (production of a written statement in place of a hearing) of the Code of Civil Procedure shall apply mutatis mutandis to the taking of evidence and preservation thereof as prescribed in Section 150. In such a case, the “facts that the party admitted in court and the obvious facts therein” in Section 179 and the “Supreme Court Rules” in Sections 204 and 215ter(215-3) of the said Code shall read, respectively, “obvious facts” and “an ordinance of the Ministry of Economy, Trade and Industry”.

#### **(Trial examination ex officio)**

**152.** — Even where a party or an intervenor fails to initiate a procedure within the time limit prescribed by law or designated in accordance with the law or fails to appear in accordance with Section 145(3), the trial examiner-in-chief may proceed with the trial proceedings.

**153.** — (1) In a trial, even grounds that have not been pleaded by a party or an intervenor may be examined.

(2) Where in the trial examination grounds that have not been pleaded by a party or an intervenor are being examined in accordance with the preceding subsection, the trial examiner-in-chief shall notify the parties and the intervenors of the result of the trial examination and give them an opportunity to state their opinion thereon, designating an adequate time limit.

(3) In a trial, only the relief sought by the demandant may be considered in the trial examination.

#### **(Combination or separation of trials)**

**154.** — (1) When one or both of the parties to two or more trials are the same, the trial examinations may be combined.

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

#### **(Withdrawal of demand for trial)**

**155.** — (1) A demand for a trial may be withdrawn before a trial decision becomes final and conclusive.

(2) A demand for a trial may not be withdrawn, without the consent of the adverse party, after the written reply under Section 134(1) has been submitted.

(3) When a demand for a patent invalidation trial has been made with regard to two or more claims covered by a patent which has two or more claims, the demand may be withdrawn for any of the claims.

#### **(Notification of conclusion of trial examination)**

**156.** — (1) When a case is ready for the rendering of a trial decision, the trial examiner-in-chief shall notify the parties and the intervenors of the conclusion of the trial examination.

(2) The trial examiner-in-chief may, if necessary, reopen a trial examination, upon a motion by a party or an intervenor, or ex officio, even after the notification under the preceding subsection.

(3) The trial decision shall be rendered within 20 days from the notification under subsection (1). However, this provision shall not apply where the case is complicated or where there are unavoidable circumstances.

**(Trial decision)**

**157.** — (1) When a trial decision has been rendered, the trial shall be closed.

(2) The trial decision shall be in writing and state the particulars mentioned below:

- (i) the number of the trial;
- (ii) the name and the domicile or residence of the parties and the intervenors as well as of their representatives;
- (iii) an identification of the trial case;
- (iv) the conclusions of the trial decision and the reasons therefor;
- (v) the date of the trial decision.

(3) Once it has been rendered, the Commissioner of the Patent Office shall transmit the trial decision to the parties, the intervenors and persons whose demand to intervene has been refused.

**(Special provisions for appeal trials against examiner's refusal)**

**158.** — Any action taken during the examination procedure shall also be relevant in the appeal trial against examiner's refusal.

**159.** — (1) Section 53 shall apply mutatis mutandis to the appeal trial against examiner's refusal. In such a case, "Section 17<sup>bis</sup>(17-2)(1)(iii)" in Section 53(1) shall read "Section 17<sup>bis</sup>(17-2)(1)(iii) or (iv)," and "an amendment" in Section 53(1) shall read "an amendment (in the case of Section 17<sup>bis</sup>(17-2)(1)(iii), excluding the amendment made prior to the demand for the appeal trial against examiner's refusal)".

(2) Section 50 shall apply mutatis mutandis where a reason for refusal which was not contained in the examiner's decision is found in the appeal trial against examiner's refusal. In such a case, "in the case of Section 17<sup>bis</sup>(17-2)(1)(iii)" in the proviso to Section 50 shall read "in the case of Section 17<sup>bis</sup>(17-2)(1)(iii) or (iv) (in the case of Section 17<sup>bis</sup>(17-2)(1)(iii), excluding the amendment made prior to the demand for the appeal trial against examiner's refusal)".

(3) Sections 51 and 67<sup>ter</sup>(67-3)(2) shall apply mutatis mutandis where a demand for an appeal trial for examiner's refusal is to be allowed.

**160.** — (1) Where an examiner's decision has been cancelled in an appeal trial against examiner's refusal, a trial decision may be made to order a further examination to be carried out.

(2) The adjudication in the trial decision under the preceding subsection shall be binding on the examiner with respect to the case concerned.

(3) Section 159(3) shall not apply where a trial decision under subsection (1) is rendered.

**161.** — Sections 134(1) to (3), 134<sup>bis</sup>(134-2), 134<sup>ter</sup>(134-3), 148 and 149 shall not apply to an appeal trial against examiner's refusal.

**162.** — Where, in the case of a demand for an appeal trial against examiner's refusal, an amendment has been made to the description, patent claim(s) or drawing(s) attached to the request in the patent application concerned within 30 days of such demand, the Commissioner of the Patent Office shall cause the examiner to examine the demand.

**163.** — (1) Sections 48, 53, and 54 shall apply mutatis mutandis to the examination under Section 162. In such a case, "Section 17<sup>bis</sup>(17-2)(1)(iii)" in Section 53(1) shall read "Section 17<sup>bis</sup>(17-2)(1)(iii) or (iv)," and "an amendment" in Section 53(1) shall read "an amendment (in the case of Section 17<sup>bis</sup>(17-2)(1)(iii), excluding the amendment made prior to the demand for the appeal trial against examiner's refusal)".

(2) Section 50 shall apply mutatis mutandis where a reason for refusal which was not contained in the examiner's decision concerned in the demand for a trial is found in the examination under Section 162. In such a case, "in the case of Section 17<sup>bis</sup>(17-2)(1)(iii)" in the proviso to Section 50 shall read "in the case of Section 17<sup>bis</sup>(17-2)(1)(iii) or (iv) (in the case of Section 17<sup>bis</sup>(17-2)(1)(iii), excluding the amendment made prior to the demand for the appeal trial against examiner's refusal)".

(3) Sections 51 and 52 shall apply mutatis mutandis where a demand for a trial is to be allowed in the examination under Section 162.

**164.** — (1) When the examiner renders a decision that a patent is to be granted in the examination under Section 162, he shall cancel his decision of refusal concerned in the demand for the trial.

(2) Except in the case provided for in the preceding subsection, the examiner shall not render a ruling to decline an amendment under Section 53(1) as applied under Section 163(1).

(3) Except in the case provided for in subsection (1), the examiner shall make a report to the

Commissioner of the Patent Office on the result of the examination without rendering a decision with respect to the demand for a trial.

#### **(Special provisions for correction trial)**

**165.** — Where a demand for a correction trial does not relate to any of the matters under each paragraph of the proviso to Section 126(1) or does not comply with Section 126(3) to (5), the trial examiner-in-chief shall notify the demandant of the reasons therefor and shall designate an adequate time limit and give him an opportunity to submit his views in writing, designating an adequate time limit.

**166.** — Sections 134(1) to (3), 134<sup>bis</sup>(134-2), 134<sup>ter</sup>(134-3), 148 and 149 shall not apply to the correction trial.

#### **(Effects of trial decision)**

**167.** — When a final and conclusive trial decision in a patent invalidation trial or an extended registration invalidation trial has been registered, no one may demand a trial on the basis of the same facts and the same evidence.

#### **(Relationship with litigation)**

**168.** — (1) The trial proceedings may, if it is deemed necessary in the trial, be suspended until the trial decision in another trial has become final and conclusive or litigation proceedings have been concluded.

(2) Where a suit or an application for provisional attachment or provisional disposal has been filed, if the court deems it necessary, it may suspend the proceedings until a trial decision has become final and conclusive.

(3) Where an action with respect to infringement of a patent right or an exclusive license has been instituted, the court shall accordingly notify the Commissioner of the Patent Office. The same shall apply where the litigation proceedings have been concluded.

(4) Where the Commissioner of the Patent Office receives the notification under the preceding subsection, he shall notify the court of a demand or nondemand for the trial with respect to the patent right. The same shall apply where the written demand for a trial is ruled to be dismissed, the trial decision is rendered or the demand for the trial is withdrawn.

(5) Where the court received under the preceding subsection the notification to the effect that the demand for trial was made for the patent right, when the document stating the means of attack or defense was submitted before the said notification or first submitted after the said notification under Section 104<sup>ter</sup>(104-3)(1) in the litigation, the court shall accordingly notify the Commissioner of Patents.

(6) Where the Commissioner of the Patent Office received the notification under the preceding subsection, he may request the court to transmit a copy of the document which the trial examiner deems necessary for the trial amongst the judicial record pertaining to the litigation.

#### **(Costs of trial)**

**169.** — (1) The bearing of the costs in connection with a patent invalidation trial or an extended registration invalidation trial shall be decided ex officio by way of the trial decision where the trial is terminated by a trial decision or by a ruling in the trial where the trial is terminated otherwise by a trial decision.

(2) Sections 61 to 66, 69(1) and (2), 70 and 71(2) (bearing of litigation costs) of the Code of Civil Procedure shall apply mutatis mutandis to the costs in connection with the trial under the preceding subsection. In such a case, the “Supreme Court Rules” in Section 71(2) of the said Code shall read an “ordinance of the Ministry of Economy, Trade and Industry”.

(3) The costs in connection with an appeal trial against examiner’s refusal and a correction trial shall be borne by the demandant or the opponent.

(4) Section 65 (costs of joint litigation) of the Code of Civil Procedure shall apply mutatis mutandis to the costs borne by the demandant or the opponent under the preceding subsection.

(5) The amount of costs in connection with a trial shall be decided by the Commissioner of the Patent Office, upon request, after the trial decision or the ruling has become final and conclusive.

(6) The extent, amount and payment of the costs of a trial as well as the payment necessary for procedural acts for the trial to be effected shall be governed by the provisions in the Law on Civil Procedure Costs, etc. (Law No. 40 of 1971) which relate to these matters, unless they are incompatible with their nature (with the exception of the proportions laid down in Chapter II, Parts 1 and 3 of that Law).

#### **(Executory force of ruling on amount of costs)**

**170.** — A final and conclusive ruling on the amount of costs in connection with a trial shall have the same effect as an enforceable title of liability.

### **Chapter VII — Retrial**

**(Demand for retrial)**

**171.** — (1) Against a final and conclusive trial 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 shall apply mutatis mutandis to the demand for a retrial under the preceding subsection.

**172.** — (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 interests 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.

**(Time limit for demand for retrial)**

**173.** — (1) A retrial must be demanded within 30 days from the date on which the demandant became aware of the grounds for the retrial after the trial decision became final and conclusive.

(2) Where, due to reasons outside his control, a person is unable to demand a retrial within the time limit prescribed in the preceding subsection, 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 reasons ceased to be applicable but not later than six months following the expiration of the said time limit.

(3) Where a retrial is demanded on the ground that the demandant was not represented in accordance with the legal provisions applicable, the time limit provided for in subsection (1) shall be counted from the day following the date on which the demandant or his legal representative became aware that the trial decision had been rendered due to the transmittal of a copy thereof.

(4) No demand for a retrial may be made after the expiration of three years from the date on which the trial decision became final and conclusive.

(5) Where a ground for a retrial has arisen after the trial decision became final and conclusive, the time limit prescribed in the preceding subsection shall be counted from the day following the date on which the ground first arose.

(6) Subsections (1) and (4) shall not apply to a demand for a retrial made on the ground that the trial decision conflicts with a final and conclusive trial decision previously rendered.

**(Application mutatis mutandis of provisions on trial, etc.)**

**174.** — (1) Sections 131(1), the principal sentence of 131bis(131-2)(1), 132(3) and (4), 133, 133bis(133-2), 134(4), 135 to 147, 150 to 152, 155(1), 156 to 160, 168, 169(3) to (6), and 170 shall apply mutatis mutandis to a retrial against a final and conclusive trial decision in an appeal trial against examiner's refusal.

(2) Sections 131(1), the principal sentence of 131bis(131-2)(1), 132(1), (2) and (4), 133, 133bis(133-2), 134(1), (3) and (4), 135 to 152, 154 to 157, 167, 168, 169(1), (2), (5) and (6), and 170 shall apply mutatis mutandis to a retrial against a final and conclusive trial decision in a patent invalidation trial or an extended registration invalidation trial.

(3) Sections 131(1) and (3), the principal sentence of 131bis(131-2)(1), 132(3) and (4), 133, 133bis(133-2), 134(4), 135 to 147, 150 to 152, 155(1), 156, 157, 165, 168, 169(3) to (6), and 170 shall apply mutatis mutandis to a retrial against a final and conclusive trial decision in a correction trial.

(4) Section 348(1) (scope of examination) of the Code of Civil Procedure shall apply mutatis mutandis to retrials.

**(Restriction on effects of patent right restored by retrial)**

**175.** — (1) Where a patent right relating to an invalidated patent or a patent right relating to the invalidated registration of an extension of the term thereof has been restored through a retrial or where the establishment of a patent right or the extension of the term of a patent right with respect to a patent application or an application for registration of an extension of the term of a patent right which was refused by a trial decision has been registered through a retrial, and where the patent has been granted for the invention of a product, the effects of the patent right shall not extend to any product imported into, or manufactured or acquired in Japan, in good faith after the time when the trial decision became final and conclusive but before the demand for a retrial was registered.

(2) Where a patent right relating to an invalidated patent or a patent right relating to the invalidated registration of an extension of the term thereof has been restored through a retrial or where the establishment of a patent right or the extension of the term of a patent right with respect to a patent application or an application for registration of an extension of the term of a patent right which was refused by a trial decision has been registered through a retrial, the effects of the patent right shall not extend to the following acts:

- (i) the working of the invention in good faith;
- (ii) in the case of a patent for an invention of product, acts of manufacturing, assigning, etc., or importing or offering for assignment, etc. of, in good faith, articles to be used for the manufacture of the product;
- (iii) in the case of a patent for an invention of a process, acts of manufacturing, assigning, etc., or importing or offering for assignment, etc. of, in good faith, articles to be used for the working of such invention.

**176.** — Where a patent right relating to an invalidated patent or a patent right relating to the invalidated registration of an extension of the term thereof has been restored through a retrial or where the establishment of a patent right or the extension of the term of a patent right with respect to a patent application or an application for registration of an extension of the term of a patent right which was refused by a trial decision has been registered through a retrial, and where a person has, in good faith, been commercially working the invention in Japan or has, in good faith, been making preparations therefor, after the trial decision became final and conclusive but before the registration of the demand for a retrial, such person shall have a non-exclusive license on the patent right, the license being limited to the invention which is being worked or for which preparations for working are being made and to the purpose of such working or the preparations therefor.

**177.** — *Deleted*

**Chapter VIII — Litigation**

**(Actions against trial decisions, etc.)**

**178.** — (1) An action against a trial decision and an action against a ruling to dismiss a written demand for a trial or retrial shall come under the exclusive jurisdiction of the Tokyo High Court.

(2) An action under subsection (1) may be instituted only by a party, an intervenor, or a person whose application for intervention in the trial or in the retrial has been refused.

(3) An action under subsection (1) may not be instituted after 30 days from the date of transmittal of the trial decision or the ruling.

(4) The time limit prescribed in the preceding subsection shall be invariable.

(5) The trial examiner-in-chief may ex officio designate a period additional to the invariable period under the preceding subsection for the benefit of a person residing in a place that is remote or difficult of access.

(6) An action with regard to the matters on which a trial may be demanded may be instituted only against a trial decision.

**(Defendant in the action)**

**179.** — In an action under Section 178(1), the Commissioner of the Patent Office shall be the defendant. Provided, however, that in the case of an action against a trial decision in a patent invalidation trial or an extended registration invalidation trial, or in a retrial under Section 171(1) against a final and conclusive trial decision in such trial, the demandant or the defendant in the trial or retrial shall be the defendant.

**(Notification of institution of action)**

**180.** — When an action referred to in the proviso to Section 179 has been instituted, the court shall, without delay, notify the Commissioner of the Patent Office accordingly.

**(Views of Commissioner of Patent Office in litigation with respect to trial decision annulling)**

**180bis(180-2).** — (1) Where an action referred to in the proviso to Section 179 has been instituted, the court may hear the views of the Commissioner of the Patent Office as to the matters relating to the application of this law and other necessary matters with respect to the case thereof.

(2) Where an action referred to in the proviso to Section 179 has been instituted, the Commissioner of the Patent Office may state, with approval of the court, his views as to the matters relating to the application of this law and other necessary matters with respect to the case thereof.

(3) The Commissioner of Patent Office may cause the official designated by him to state the views referred to in the preceding two subsections.

**(Annulment of the trial decision or ruling)**

**181.** — (1) Where the court finds for the plaintiff in an action instituted under Section 178(1), it shall annul the trial decision or ruling.

(2) Where the court recognizes that it is reasonable to order a further examination to be carried out in an action instituted against the trial decision with respect to the patent invalidation trial under Section 178(1) for invalidating that patent, and when the patentee has made a demand for a correction trial or intended to do so, it may annul the trial decision by the ruling for remitting the cause to the trial examiner.

(3) Before rendering a ruling under the preceding subsection, the court shall hear the opinion of the party.

(4) The adjudication in the court decision under subsection (2) shall be binding on the trial examiner as well as other third party.

(5) When the court decision annulling a trial decision or ruling under the subsection (1) or the court's ruling annulling a trial decision under the subsection (2) has become final and conclusive, the trial examiner shall carry out a further trial examination and render a trial decision or ruling.

**(Sending of certified copy of the judgment)**

**182.** — At the end of the proceedings initiated by the action referred to in the proviso to Section 179, the court shall send a certified copy of the judgment of the court concerned to the Commissioner of the Patent Office without delay.

**(Constitution of collegial body)**

**182bis(182-2).** — A collegial body of five judges may render a ruling that an examination and judgment shall be conducted by a collegial body with respect to the case involving an action instituted under Section 178(1).

**(Action on amount of remuneration)**

**183.** — (1) Where a person who is concerned in an arbitration decision under Section 83(2), 92(3) or (4) or 93(2) is dissatisfied with the amount of remuneration fixed in the decision, he may institute an action for the increase or decrease of the remuneration.

(2) An action under the preceding subsection shall not be instituted after six months from the transmittal of the arbitration decision.

**(Defendant in the action)**

**184.** — In an action under Section 183(1), the following persons shall be made the defendant:

(i) in the case of an arbitration under Section 83(2), 92(4) or 93(2), the non-exclusive licensee, patentee or exclusive licensee;

(ii) in the case of an arbitration under Section 92(3), the non-exclusive licensee or the other person referred to in Section 72.

**(Relationship between administrative appeal and litigation)**

**184bis(184-2).** — An action for the annulment of measures (with the exception of measures referred to in Section 195quater(195-4)) taken under this Law or an order or ordinance thereunder may be instituted only after a request for reconsideration or a request for administrative appeal or an arbitration decision against the measure has been dealt with by a decision or a ruling.

**Chapter IX — Special Provisions Concerning International Applications under the Patent Cooperation Treaty**

**(Patent application based on international application)**

**184ter(184-3).** — (1) An international application (a patent application only) for which the international filing date has been accorded in accordance with Article 11(1) or (2)(b) or Article 14(2) of the Patent Cooperation Treaty done at Washington on June 19, 1970 (hereinafter referred to as "Treaty" in this Chapter) and which contains the designation of Japan as a designated State referred to



in Article 4(1)(ii) of the Treaty shall be considered to be a patent application having been filed on its international filing date.

(2) Section 43 (including its application under Section 43<sup>bis</sup>(43-2)(3)) shall not apply to the international application considered to be a patent application by virtue of the provision of the preceding subsection (hereinafter referred to as “international patent application”).

#### **(Translation of international patent application in foreign language)**

**184<sup>quater</sup>(184-4).** — (1) The applicant of an international patent application made in a foreign language (hereinafter referred to as “foreign language patent application”) shall furnish to the Commissioner of the Patent Office a translation into Japanese of the description, patent claim(s), drawing(s) (limited to any text matter of the drawing(s)) and abstract referred to in Article 3(2) of the Treaty as of the international filing date referred to in Section 184<sup>ter</sup>(184-3)(1) (hereinafter referred to as “international filing date”), within two years and six months (hereinafter referred to as “time limit for the submission of the national form paper”) from the priority date referred to in Article 2(xi) of the Treaty (hereinafter referred to as “priority date”). However, in the case of a foreign language patent application in respect of which the applicant has submitted the national form paper referred to in Section 184<sup>quinquies</sup>(184-5)(1) within the period of 2 months before the expiry of the time limit for the submission of the national form paper to the date of expiry of the said time limit, the applicant may furnish a translation into Japanese within 2 months from the date of the submission of the said paper (hereinafter referred to as “grace period for furnishing the translation”), unless the relevant translation was submitted on or before the submission of the said paper.

(2) In the case of preceding subsection, the applicant of a foreign language patent application may, where he has made an amendment under Article 19(1) of the Treaty, furnish a translation of the amended claim(s) in lieu of the translation of the claim(s) referred to in the preceding subsection.

(3) When the translation of the description referred to in subsection (1) and the translation of the claim(s) referred to in the preceding two subsections have not been furnished within the time limit for the submission of the national form paper (in the case of the foreign language patent application for which the translation may be furnished under the proviso of subsection (1), the grace period for furnishing the translation – hereinafter referred to in the following subsection as “the time limit for the submission of the national form paper”), the international patent application shall be deemed withdrawn.

(4) The applicant who has furnished the translation referred to in subsection (1) may, where he has made an amendment under Article 19(1) of the Treaty, further furnish a translation into Japanese of the amended claim(s) not only later than the date on which the expiration of the time limit for the submission of the national form paper [or where the applicant has made a request for examination within the time limit for the submission of the national form paper, the time when the said request was made (hereinafter referred to as “relevant time for the national processing”)] occurs.

(5) The principal sentence of Section 184<sup>septies</sup>(184-7)(3) shall apply mutatis mutandis where the translation referred to in subsection (2) or (4) has not been furnished.

#### **(Submission of paper and invitation to correction)**

**184<sup>quinquies</sup>(184-5).** — (1) The applicant of an international patent application shall, within the time limit for the submission of the national form paper, submit to the Commissioner of the Patent Office a paper stating the following:

- (i) the name and the domicile or residence of the applicant;
- (ii) the name and the domicile or residence of the inventor;
- (iii) the international application number and other matters provided for in an ordinance of the Ministry of Economy, Trade and Industry.

(2) The Commissioner of the Patent Office may invite correction, designating an adequate time limit, in the following cases:

- (i) when the national form paper to be submitted under the preceding subsection has not been filed within the time limit for the submission of the national form paper;
- (ii) when any proceeding under the preceding subsection does not comply with Section 7(1) to (3) and 9;
- (iii) when any proceeding under the preceding subsection does not comply with the formality requirements provided for in an ordinance of the Ministry of Economy, Trade and Industry;
- (iv) when the translation of the abstract to be submitted under Section 184<sup>quater</sup>(184-4)(1) has not been filed within the time limit for the submission of the national form paper (in the case of the foreign language patent application referred to in the proviso of Section 184<sup>quater</sup>(184-4)(1), the grace period for furnishing the translation);
- (v) when the fee to be paid under Section 195(2) has not been paid within the time limit for the submission of the national form paper.

(3) Where a person who was invited to make an amendment under the preceding subsection fails to do so within the time limit designated under that subsection, the Commissioner of the Patent Office may dismiss the international patent application concerned.

**(Effect, etc. of request, description, etc., of international application)**

**184sexies(184-6).** — (1) The request of an international patent application as of the international filing date shall be deemed to be the request submitted under Section 36(1).

(2) The description of an international patent application made in the Japanese language (hereinafter referred to as “a Japanese language patent application”) as of the international filing date and the translation of the description of a foreign language patent application as of the international filing date shall be deemed to be the description as attached to the request under Section 36(2); patent claim(s) of Japanese language patent application as of the international filing date and the translation of patent claim(s) of a foreign language patent application as of the international filing date shall be deemed to be patent claim(s) as attached to the request under Section 36(2); drawing(s) in a Japanese language patent application as of the international filing date and drawing(s) (excluding any text matter of drawing(s)) and the translation of the text matter of drawing(s) in a foreign language patent application as of the international filing date shall be deemed to be drawing(s) as attached to the request under Section 36(2); and the abstract of a Japanese language patent application and the translation of the abstract of a foreign language patent application shall be deemed to be the abstract as attached to the request under Section 36(2).

(3) Where the translation of the amended claim(s) under Article 19(1) of the Treaty has been furnished in accordance with Section 184quater(184-4)(2) or (4), notwithstanding subsection (2), the translation of the amended claim(s) shall be deemed to be the patent claim(s) as attached to the request under Section 36(2).

**(Amendment under Article 19 of the Treaty of the Japanese language patent application)**

**184septies(184-7).** — (1) The applicant of a Japanese language patent application shall, where he has made an amendment under Article 19(1) of the Treaty, furnish to the Commissioner of the Patent Office, no later than date on which the relevant time limit for the national processing occurs, a copy of the amendment furnished under Article 19(1) of the Treaty.

(2) Where a copy of the amendment has been furnished under the preceding subsection, patent claim(s) attached to the request shall be deemed to have been amended under Section 17<sup>bis</sup>(17-2)(1) by virtue of the copy of the amendment. However, where the amendment has been communicated to the Patent Office under Article 20 of the Treaty within the time limit prescribed in the preceding subsection, patent claim(s) to the request shall be deemed to have been amended under Section 17<sup>bis</sup>(17-2)(1) by virtue of that amendment.

(3) When the proceeding under subsection (1) has not been taken by the applicant of a Japanese language patent application within the time limit prescribed in the said subsection, no amendment under Article 19(1) of the Treaty shall be deemed to have been made. However, this shall not apply to the case in the proviso to the preceding subsection.

**(Amendment under Article 34 of the Treaty)**

**184octies(184-8).** — (1) The applicant of an international patent application shall, where he has made an amendment under Article 34(2)(b) of the Treaty, furnish to the Commissioner of the Patent Office, no later than the date on which the relevant time for the national processing occurs, a copy of the amendment furnished under Article 34(2)(b) of the Treaty in the case of the amendment in respect of a Japanese language patent application or a translation into Japanese of the amendment in the case of the amendment in respect of a foreign language patent application.

(2) Where a copy of the amendment or a translation of the amendment has been furnished under the preceding subsection, the description, patent claim(s) or drawing(s) attached to the request shall be deemed to have been amended under Section 17<sup>bis</sup>(17-2)(1) by virtue of the copy of the amendment or the translation of the amendment. However, if, in respect of the amendment concerning a Japanese language patent application, the amendment has been communicated to the Patent Office under Article 36(3)(a) of the Treaty within the time limit prescribed in the preceding subsection, the description, patent claim(s) or drawing(s) attached to the request shall be deemed to have been amended by virtue of that amendment.

(3) When the proceeding under subsection (1) has not been taken by the applicant of an international patent application within the time limit prescribed in the said subsection, no amendment under Article 34(2)(b) of the Treaty shall be deemed to have been made. However, this shall not apply to the case in the proviso to the preceding subsection.

(4) Where the description, patent claim(s) or drawing(s) attached to the request of the foreign language patent application are deemed to have been amended under Section 17<sup>bis</sup>(17-2)(1) in the case of subsection (2), the amendment shall be deemed to have been made by virtue of the submission of a written correction of incorrect translation under Section 17<sup>bis</sup>(17-2)(2).

**(National publication, etc.)**

**184novies(184-9).** — (1) In respect of a foreign language patent application for which a translation has been furnished under Section 184quater(184-4)(1), the Commissioner of the Patent Office shall, except where the Gazette containing the Patent has already been published, effect the national publication of the translation as soon as possible after the expiration of the time limit for the submission of the national form paper (in the case of the foreign language patent application referred to in the proviso of Section 184quater(184-4)(1), the grace period for furnishing the translation – hereinafter referred to as “the time limit for the submission of the national form paper” in this subsection) (where the application is an international patent application for which a request for examination by the applicant has been made within the time limit for the submission of the national

form paper and for which the international publication referred to in Article 21 of the Treaty (hereinafter referred to as "international publication") has been effected, after making a request for examination).

(2) The national publication of the translation shall be effected by publishing the following in the Patent Gazette:

- (i) the name and the domicile or residence of the applicant;
- (ii) the number of the patent application;
- (iii) the international filing date;
- (iv) the name and the domicile or residence of the inventor;
- (v) the matters appearing in the translation of the description and the text matter of the drawing(s) referred to in Section 184<sup>quater</sup>(184-4)(1), the matters appearing in the translation of the claim(s) prescribed therein (in the case where a translation has been submitted under Section 184<sup>quater</sup>(184-4)(2), the said translation) and the matters appearing in the translation referred to in Section 184<sup>quater</sup>(184-4)(4), the contents of the drawing(s) (excluding the text matter of the drawing(s)) as well as the matters appearing in the translation of the abstract (with the exception of those matters the publication of which in the Patent Gazette is, in the view of the Commissioner of the Patent Office, liable to contravene public order or morality);
- (vi) the number and the date of the national publication of the translation;
- (vii) other necessary particulars.

(3) Section 64(3) shall apply mutatis mutandis to the publication of the matters appearing in the translation of the abstract under subsection (2)(v), in the Patent Gazette in accordance with subsection (2).

(4) Section 64 shall not apply to an international patent application.

(5) For the purpose of an international patent application, "laying open" or "laid open" in Sections 48<sup>quinquies</sup>(48-5)(1), 48<sup>sexies</sup>(48-6), the proviso to Section 66(3), 128, 186(1)(i) and (ii), and 193(2)(i), (ii), (vi) and (ix) shall be considered to have been replaced by "the international publication under Section 184<sup>novies</sup>(184-9)(1)" in the case of a Japanese language patent application and shall be considered to have been replaced by "the national publication of a translation under Section 184<sup>novies</sup>(184-9)(1)" in the case of a foreign language patent application.

(6) For the purposes of a request for a certificate, etc. concerning a foreign language patent application, "or the materials referred to in Section 67<sup>bis</sup>(67-2)(2)" in Section 186(1)(i) shall be considered to have been replaced by "a request, a description, claim(s), drawing(s) or an abstract of the international application referred to in Article 3(2) of the Patent Cooperation Treaty done at Washington, June 19, 1970 (excluding such documents concerning an international patent application for which the establishment of the patent has been registered or such documents for which the international publication has been effected)".

(7) In respect of the matters to be published in the Patent Gazette concerning the international patent application, "attached to a request after the application has been laid open" in Section 193(2)(iii) shall be considered to have been replaced by "... attached to a request of an international application for which the international publication has been effected".

### **(Effects, etc. of international publication and national publication)**

**184<sup>decies</sup>(184-10).** — (1) The applicant of an international patent application may, after the international publication in the case of a Japanese language patent application and after the national publication of the translation in the case of a foreign language patent application, and following a warning by the applicant in the form of a document describing the contents of the invention claimed in the international patent application, demand of a person who has commercially worked the invention, after the warning but before the registration of the establishment of the patent right, the payment of compensation in a sum of money equivalent to what he would be entitled to receive for the working of the invention if it were a patented invention. Even in the absence of the warning, in the case of a Japanese language patent application, the same shall apply to a person who commercially worked the invention before the registration of the establishment of the patent right, knowing that the invention was the one claimed in the international patent application for which the international publication has been effected, and in the case of a foreign language patent application, the same shall apply to a person who commercially worked the invention before the registration of the establishment of the patent right, knowing that the invention was the one claimed in the international patent application for which the national publication of the translation has been effected.

(2) Section 65(2) to (5) shall apply mutatis mutandis to the exercise of the right to demand compensation under the preceding subsection.

### **(Special provisions concerning patent administrator for residents abroad)**

**184<sup>undecies</sup>(184-11).** — (1) Notwithstanding Section 8(1), an applicant of an international patent application who is a resident abroad may proceed before the Patent Office without being represented by a patent administrator until the relevant time for the national processing.

(2) The person under the preceding subsection shall appoint a patent administrator and notify the Commissioner of the Patent Office after the date on which the relevant time for the national processing occurs and within the time limit prescribed in an ordinance of the Ministry of Economy, Trade and Industry.

(3) Where the notification of the appointment of a patent administrator has not been made within the time limit under the preceding subsection, the international patent application shall be considered to have been withdrawn.

### **(Special provisions concerning amendment)**

**184duodecies(184-12).** — (1) Notwithstanding the principal sentence of Section 17(1), no amendment (except the amendment under Sections 184septies(184-7)(2) and 184octies(184-8)(2)) may be made until, in respect of a Japanese language patent application, after the proceeding has been taken under Section 184quinquies(184-5)(1) and the fee to be paid under Section 195(2) has been paid, and, in the case of a foreign language patent application, after the proceeding under Sections 184quater(184-4)(1) and 184quinquies(184-5)(1) and the fee to be paid under Section 195(2) and after the relevant time for the national processing has occurred.

(2) For the purposes of the scope of amendments of the description, patent claim(s) or drawing(s) concerning a foreign language patent application, “foreign language file application under Section 36bis(36-2)(2)” in Section 17bis(17-2)(2) shall be considered to have been replaced by “foreign language patent application referred to in Section 184quater(184-4)(1)”; “the description, claim(s) or drawing(s) originally attached to the request [in the case of a foreign language file application under Section 36bis(36-2)(2), the translation of the foreign language file referred to in Section 36bis(36-2)(2) considered to be the description, patent claim(s) and drawing(s) by virtue of Section 36bis(36-2)(4) (in the case where the description, patent claim(s) or drawing(s) were amended by virtue of the submission of a written correction of incorrect translation, the said translation or the description, patent claim(s) or drawing(s) as amended)]” in Section 17bis(17-2)(3) shall be considered to have been replaced by “the translation referred to in Section 184quater(184-4)(1) of the description, patent claim(s) or drawing(s) (limited to any text matter of the drawing(s)) of the international patent application referred to in Section 184ter(184-3)(2) (hereinafter referred to as “international patent application” in this subsection) as of the international filing date referred to in Section 184quater(184-4)(1) (hereinafter referred to as the “international filing date” in this subsection), the translation referred to in Section 184quater(184-4)(1) of the claim(s) of the international patent application as of the international filing date (in the case where a translation of the amended claim(s) under Article 19(1) of the Patent Cooperation Treaty done at Washington on June 19, 1970 has been furnished under Section 184quater(184-4)(2) or (4), such translation), or the drawing(s) (excluding the text matter of the drawing(s)) of the international patent application as of the international filing date (hereinafter referred to as “translation, etc.” in this subsection) (in the case where the description, patent claim(s) or drawing(s) were amended by virtue of the submission of the written correction of incorrect translation, the translation, etc. or such description, patent claim(s) or drawing(s) as amended).

(3) The applicant of an international patent application may, notwithstanding Section 17ter(17-3), amend the abstract attached to the request only within one year and three months from the priority date (with respect to the foreign language patent application being one of such applications as their translations were furnished in accordance with Section 184quater(184-4)(1), for which, within the time limit for the submission of the national form paper, the request was made by the applicant for examination of the application and of which the international publication was effected, the period after the request was made for examination of the application, is excluded).

### **(Special provisions concerning patentability)**

**184terdecies(184-13).** — For the purposes of Section 29bis(29-2) of this Law, where an international patent application referred to in Section 184ter(184-3)(2) of this Law or an international utility model application referred to in Section 48ter(48-3)(2) of the Utility Model Law is another application for patent or an application for utility model registration as referred to in Section 29bis(29-2) of this Law, the passage reading “the description, claim(s) for patent or utility model registration or drawing(s), originally attached to the request” in Section 29bis(29-2) of this Law shall be considered to have been replaced by “the description, claim(s) or drawing(s) of the international application as of the international filing date referred to in Section 184quater(184-4)(1) of this Law or Section 48quater(48-4)(4) of the Utility Model Law,”; the passage reading “another application for patent or of an application for utility model registration which was” shall be considered to have been replaced by “another application for patent or of an application for utility model registration (excluding the foreign patent application referred to in Section 184quater(184-4)(1) of the Patent Law which was deemed to have been withdrawn under the said Section (3) or the foreign language utility model application referred to in Section 48quater(48-4)(1) of the Utility Model Law which was deemed to have been withdrawn under the said Section (3)),”; the passage reading “the laying open for public inspection (Kôkai) was effected or” in Section 29bis(29-2) of this Law shall be considered to have been replaced by “the laying open for public inspection (Kôkai) was effected,” and the passage reading “was published under the said subsection after the filing of the patent application” in Section 29bis(29-2) of this Law shall be considered to have been replaced by “was published under the said subsection or the international publication referred to in Article 21 of the Patent Cooperation Treaty done at Washington on June 19, 1970 was effected after the filing of the patent application”.

**(Special provisions concerning exceptions to lack of novelty of invention)**

**184quater decies(184-14).** — Notwithstanding Section 30(4), any applicant of an international patent application who desires the application of Section 30(1) or (3) may submit to the Commissioner of the Patent Office a written statement to that effect and a document proving that the invention which has fallen under one of the paragraphs of Section 29(1) is the invention to which Section 30(1) or (3) may be applied, after the date on which the relevant time for the national processing occurs and within the time limit prescribed in an ordinance of the Ministry of Economy, Trade and Industry.

**(Special provisions concerning priority claim based on patent applications, etc.)**

**184quindecies(184-15).** — (1) Sections 41(4) and 42(2) shall not apply to an international patent application.

(2) For the purposes of Section 41(3) for a Japanese language patent application, “or the laying open for public inspection” in the said Section shall be considered to have been replaced by “or the international publication referred to in Article 21 of the Patent Cooperation Treaty done at Washington on June 19, 1970”.

(3) For the purposes of Section 41(3) for a foreign language patent application, in the said Section, “the description, patent claim(s) or drawing(s) originally attached to the request of a patent application” shall be considered to have been replaced by “the description, claim(s) or drawing(s) of an international application as of the international filing date referred to in Section 184quater(184-4)(1)” and “or the laying open for public inspection” shall be considered to have been replaced by “or the international publication referred to in Article 21 of the Patent Cooperation Treaty done at Washington on June 19, 1970”.

(4) For the purposes of Sections 41(1) to (3) and 42(1) of this Law in the case where the earlier application under Section 41(1) of this Law is an international patent application or an international utility model application referred to in Section 48ter(48-3)(2) of the Utility Model Law, “the description, claim(s) for patent or utility model registration or drawing(s) originally attached to the request” in Section 41(1) and (2) shall be considered to have been replaced by “the description, claim(s) or drawing(s) of an international application as of the international filing date referred to in Section 184quater(184-4)(1) of this Law or Section 48quater(48-4)(1) of the Utility Model Law,” “the description, claim(s) for patent or utility model registration or drawing(s) originally attached to the request of the earlier application” and “the laying open for public inspection” in Section 41(3) shall be considered to have been replaced by “the description, claim(s) or drawing(s) of an international application as of the international filing date referred to in Section 184quater(184-4)(1) of this Law or Section 48quater(48-4)(1) of the Utility Model Law of the earlier application” and “the international publication referred to in Article 21 of the Patent Cooperation Treaty done at Washington on June 19, 1970,” and “at the expiration of one year and three months from the filing date” in Section 42(1) shall be considered to have been replaced by “at the expiration of the time limit for the national processing under Section 184quater(184-4)(4) of this Law or Section 48quater(48-4)(4) of the Utility Model Law or one year and three months from the international filing date referred to in Section 184quater(184-4)(1) of this Law or Section 48quater(48-4)(1) of the Utility Model Law, whichever is later”.

**(Special provisions concerning conversion of applications)**

**184sedecies(184-16).** — Conversion into a patent application of an international application having been considered or recognized to be a utility model application under Section 48ter(48-3)(1) or 48sedecies(48-16)(4) of the Utility Model Law may not be made until, in respect of a Japanese language utility model application referred to in Section 48quinquies(48-5)(4) of the Utility Model Law, after the proceedings under Section 48quinquies(48-5)(1) of the Utility Model Law has been taken, and in respect of a foreign language utility model application referred to in Section 48quater(48-4)(1) of the Utility Model Law, after the proceedings under Sections 48quater(48-4)(1) and 48quinquies(48-5)(1) of the Utility Model Law have been taken and, further, after the fee to be paid under Section 54(2) of the Utility Model Law has been paid (or — in respect of an international application having been recognized as a utility model application under Section 48sedecies(48-16)(4) of the Utility Model Law — after the decision referred to in the said subsection has been made).

**(Time limit for making request for examination)**

**184septies decies(184-17).** — The applicant of an international patent application may not make a request for examination for his international patent application until, in respect of a Japanese language patent application, after the proceeding under Section 184quinquies(184-5)(1) has been taken, and in respect of a foreign language patent application, after the proceedings under Sections 184quater(184-4)(1) and 184quinquies(184-5)(1) and have been taken and, further, after the fee to be paid under Section 195(2) has been paid, whereas, a person other than the applicant of the international patent application may not make a request for examination of the international patent application until after the expiration of the time limit for the submission of the national form paper (in the case of a foreign language patent application under the proviso of Section 184quater(184-4)(1), the grace period for furnishing the translation).

**(Special provisions for reasons for refusal, etc.)**

**184duodevicies(184-18).** — For the purpose of the examiner’s decision of refusal and a patent invalidation trial with respect to the foreign language patent application, “foreign language file

application” in Sections 49(vi), and 123(1)(i) and (v), shall be replaced by “foreign language patent application referred to in Section 184quater(184-4)(1),” and “foreign language file” in Section 49(vi), and 123(1)(v) shall be replaced by “the description, claim(s) or drawing(s) of the international application as of the international filing date referred to in Section 184quater(184-4)(1)”.

#### **(Special provisions concerning correction)**

**184undevicies(184-19).** — For the purpose of the demand for the correction under Section 134bis(134-2)(1) and the demand for a correction trial with respect to a foreign language patent application, “foreign language file application” in Section 126(3) shall be replaced by “foreign language patent application referred to in Section 184quater(184-4)(1)” and “foreign language file” in that Section (3) shall be replaced by “the description, claim(s) or drawing(s) of the international application as of the international filing date referred to in Section 184quater(184-4)(1)”.

#### **(International application recognized as patent application by decision)**

**184vicies(184-20).** — (1) The applicant of an international application defined in Article 2(vii) of the Treaty may, where the receiving Office defined in Article 2(xv) of the Treaty has made a refusal referred to in Article 25(1)(a) of the Treaty or has made a declaration referred to in Article 25(1)(a) or (b) of the Treaty or the International Bureau defined in Article 2(xix) of the Treaty has made a finding referred to in Article 25(1)(a) of the Treaty in respect of the international application (only a patent application) which contains the designation of Japan as a designated State referred to in Article 4(1)(ii) of the Treaty, request the Commissioner of the Patent Office as provided for in an ordinance of the Ministry of Economy, Trade and Industry to make a decision referred to in Article 25(2)(a) of the Treaty within the time limit prescribed in an ordinance of the Ministry of Economy, Trade and Industry.

(2) A person who makes a request under the preceding subsection in respect of the international application made in a foreign language shall furnish to the Commissioner of the Patent Office at the time of making such a request a translation into Japanese of the description, claim(s) or drawing(s) (limited to any text matter of the drawing(s)) and the abstract as well as other documents relating to the international application provided for in an ordinance of the Ministry of Economy, Trade and Industry.

(3) Where the request under subsection (1) has been made, the Commissioner of the Patent Office shall decide whether the refusal, declaration, or finding referred to therein was justified under the Treaty and the Regulations under the Patent Cooperation Treaty.

(4) Where the Commissioner of the Patent Office has made a decision under the preceding subsection to the effect that the refusal, declaration, or finding referred to in the said subsection was not justified under the Treaty and the Regulations under the Patent Cooperation Treaty, the international application concerned shall be recognized as a patent application filed on the date which would be accorded as the international filing date if the said refusal, declaration, or finding were not made in respect of the said international application.

(5) For the purpose of the laying open for public inspection of an international application recognized as a patent application under the preceding subsection, “date of the application” in Section 64(1) shall be replaced by “priority date referred to in Section 184quater(184-4)(1),” “foreign language file application” in Section 64(2)(vi) shall be replaced by “international application made in the foreign language,” and “foreign language file and foreign language abstract” in Section 64(2)(vi) shall be replaced by “the description, claim(s) or drawing(s) and abstract of the international application as of the date which would be accorded as the international filing date referred to in Section 184vicies(184-20)(4)”.

(6) Sections 184ter(184-3)(2), 184sexies(184-6)(1) and (2), 184novies(184-9)(6), 184duodécies(184-12) to 184quater décies(184-14), 184quindécies(184-15)(1), (3) and (4), and 184septies décies(184-17) to 184undevicies(184-19) shall apply mutatis mutandis to the international application deemed as a patent application under subsection (4). In such a case, the details necessary for the application of those provisions shall be prescribed by Cabinet Order.

### **Chapter X — Miscellaneous Provisions**

#### **(Special provisions for patent or patent right covering two or more claims)**

**185.** — For the purposes of Section 27(1)(i) or 65(4) (including its application under Section 184décies(184-10)(2)), 80(1), 97(1), 98(1)(i), 111(1)(ii), 123(3), 125, 126(6) (including its application under Section 134bis(134-2)(5)), Section 132(1) (including its application under Section 174(2)) or Section 175, 176 or 193(2)(iv) of this Law, or of Section 20(1) of the Utility Model Law, relating to the patent or patent right covering two or more claims, the patent shall be deemed to have been granted, or the patent right shall be deemed to exist, for each claim.

**(Request for certification, etc.)**

**186.** — (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 Patent Register prepared by magnetic tapes, where such documents relate to patents. However, this provision shall not apply in the case of the following documents if the Commissioner of the Patent Office considers it necessary to keep them secret:

(i) a request or the description, patent claim(s) or drawing(s) or abstract attached to a request, or a foreign language file or foreign language abstract or documents concerning the examination of the patent application (except where the establishment of the patent right has been registered or where the patent application has been laid open), or the materials referred to in Section 67<sup>bis</sup>(67-2)(2);

(ii) documents concerning an appeal trial against examiner's refusal (except where the establishment of the patent right has been registered or where the patent application concerned has been laid open);

(iii) documents concerning a patent invalidation trial or an extended registration invalidation trial 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 owned by the parties or intervenors concerned;

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

(v) documents 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 (i) to (iv) is accepted, 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 to the documents concerning patents and the part of the Patent Register which have been prepared by magnetic tapes.

(4) Chapter 4 of the Law concerning the Protection of Private Information Held by Administrative Organs (Law No. 58 of 2003) shall not apply to the held private information (meaning the held private information defined in Section 2 (3) of the said Law) recorded in the documents concerning patents and the part of the Patent Register, which have been prepared by magnetic tapes.

**(Indication of existence of patent)**

**187.** — A patentee or an exclusive or non-exclusive licensee shall take steps, as prescribed in an ordinance of the Ministry of Economy, Trade and Industry, to mark the patented product or a product produced by the patented process (hereinafter referred to as a "patented product"), or the packaging thereof, with a statement to the effect that the invention of the product or the process has been patented (hereinafter referred to as an "indication of a patent").

**(Prohibition of false marking)**

**188.** — The following acts shall be unlawful:

(i) the marking of anything other than a patented product or its packaging with an indication of a patent or confusingly similar indication;

(ii) the assignment, etc. or display for the purpose of assignment, etc. of a product other than a patented product, where such product or its packaging is marked with an indication of a patent or confusingly similar indication;

(iii) the inclusion in an advertisement of an indication that an invention of a product has been patented or a confusingly similar indication, for the purpose of causing others to manufacture or use the product or of assigning, etc. the product, where it is not a patented product;

(iv) the inclusion in an advertisement of an indication that an invention of a process has been patented or a confusingly similar indication, for the purpose of causing others to use the process or of assigning or leasing the process, where it is not a patented process.

**(Transmittal of documents)**

**189.** — An ordinance of the Ministry of Economy, Trade and Industry shall prescribe the documents to be transmitted in addition to those provided for in this Law.

**190.** — Sections 98(2), 99 to 103, 105, 106, 107(1) (excluding paragraphs (ii) and (iii)) and (3) and 109 (transmittal) of the Code of Civil Procedure shall apply mutatis mutandis to the transmittal of documents provided for in this Law or in an ordinance of the Ministry of Economy, Trade and Industry under Section 189. In such a case, "a court clerk" in Sections 98(2) and 100 of the said Code shall read "an official or a trial clerk" designated by the Commissioner of the Patent Office, "by mail or an execution officer" in Section 99(1) of the said Code shall read "by mail", and "in the case...and in the case where documents relating to an examination are to be transmitted, an official or a trial clerk designated by the Commissioner of the Patent Office".

**191.** — (1) Where the domicile or residence of a person to whom transmittal is to be made or any other place to which transmittal is to be made is unknown or transmittal in accordance with Section 107(1) (excluding paragraphs (ii) and (iii)) of the Code of Civil Procedure applied under Section 190 of this Law is not possible, transmittal may instead be effected by public notice.

(2) The transmittal by public notice shall be made by publishing a notice in the Official Gazette and the Patent Gazette to the effect that the documents to be transmitted are ready to be delivered at any time to the person entitled to receive them and by posting such notice on the bulletin board of the

Patent Office.

(3) The transmittal by public notice shall take effect after the expiration of 20 days from the date on which the notice was published in the Official Gazette.

**192.** — (1) Where a resident abroad has a patent administrator, the transmittal shall be made to the patent administrator.

(2) Where a resident abroad has no patent administrator, the documents may be dispatched by registered airmail, etc. (meaning the registered airmail and those being, as provided for in an ordinance of the Ministry of Economy, Trade and Industry, equivalent to the registered airmail from among the mail Correspondence Delivery items listed in Article 2(2) of the Law concerning Correspondence Delivery provided by Private-Sector Operators (Law No. 99 of 2002) provided by the General Correspondence Delivery Operators referred to in said Article 2(6) or Special Correspondence Delivery Operators referred to in said Article 2(9) — hereinafter referred to as “registered airmail, etc.” in the following subsection).

(3) Where documents have been sent by registered airmail, etc. under the preceding subsection, the transmittal shall be deemed to have been made at the time of dispatch.

### (Patent Gazette)

**193.** — (1) The Patent Office shall publish the Patent Gazette (Tokkyo Kôhô).

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

(i) decisions of refusal, or abandonment, withdrawal or dismissal of a patent application after its laying open or withdrawal of an application for the registration of an extension of the term of a patent right;

(ii) successions to the right to obtain a patent after the laying open;

(iii) amendments of the description, patent claim(s) or drawing(s) attached to the request under Section 17<sup>bis</sup>(17-2)(1) after the application has been laid open (in the case of an amendment under each paragraph of the proviso to Section 17<sup>bis</sup>(17-2)(1), limited to one by submitting a written correction of mistranslation);

(iv) extinguishment of patent rights (excluding that due to the expiration of a term and that under Section 112(4) or (5)) or the restoration (limited to that under Section 112<sup>bis</sup>(112-2)(2));

(v) demands for a trial or retrial or withdrawals thereof;

(vi) final and conclusive trial decision or retrial decisions (limited to patent applications with respect to which the establishment of a patent right has been registered or which have been laid open);

(vii) particulars stated in the corrected description and patent claim(s) as well as the contents of drawing(s) (limited to those which a final and conclusive ruling or trial decision to correct has been rendered);

(viii) requests for an arbitration decision or withdrawals thereof and arbitration decisions;

(ix) final judgments in an action under Section 178(1) (limited to patent applications with respect to which the establishment of a patent right has been registered or which have been laid open).

### (Production of documents, etc.)

**194.** — (1) The Commissioner of the Patent Office or the examiner may require a party to produce documents or other evidence necessary for a procedure other than one relating to a trial or a retrial.

(2) The Commissioner of the Patent Office or the examiner may entrust a related administrative organization or an educational establishment or other body with the search necessary for an examination.

### (Fees)

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

(i) person requesting an extension of the time limit under Section 4, 5(1) or 108(3), or change of date under Section 5(2);

(ii) person requesting re-issuance of Letters Patent;

(iii) person making notification of succession in accordance with Section 34(4);

(iv) person requesting issuance of certificate in accordance with Section 186(1);

(v) person requesting issuance of copy or extract of documents in accordance with Section 186(1);

(vi) person requesting inspection or copying of documents in accordance with Section 186(1);

(vii) person requesting issuance of documents containing matters recorded in that part of the Patent Register as prepared on magnetic tapes, in accordance with Section 186(1).

(2) The persons specified in the left-hand column of the attached table shall pay the fees 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) Where, after a person other than the applicant has made a request for examination, the number of claims is increased because of an amendment with respect to the patent claim(s) attached to the request, the fees for the request for examination to be paid under the preceding subsection shall be paid by the applicant for the increased number of claims, notwithstanding the preceding subsection.

(4) The preceding three subsections shall not apply where the person to pay the fee in accordance with the subsections is the State.



(5) Where the State and person(s) other than the State jointly own a patent right or a right to obtain a patent and there is an agreement with respect to their shares of the right, the fees under subsection (1) or (2) (limited to the fees prescribed by Cabinet Order) shall be a sum with prescribed fees under these subsections multiplied by the ratios of the shares of the person(s) other than the State, and person(s) other than the State shall pay such sum, notwithstanding the provisions of these subsections.

(6) Where the State or other person(s) including a person who has the fees for the request for examination reduced or exempted under Section 195bis(195-2) or other laws (hereinafter referred to as "reduction or exemption" in this subsection) jointly own a right to obtain a patent and there is an agreement with respect to their shares of the right, the fees to be paid for the request for examination under subsection (2), notwithstanding said subsection, shall be the sum obtained by the aggregate addition of the sum multiplied by the ratio of their shares to the sum of the fees under said subsection (in the case of the person who has the fees reduced or exempted, the amount thereof after reduced or exempted) provided for each joint owner other than the State in said subsection, and such sum shall be paid by the person other than the State.

(7) Where the amount of the fees calculated in accordance with the preceding two subsections has a fractional figure less than 10 yen, that fractional figure shall be discarded.

(8) The payment of the fees under subsections (1) to (3) 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.

(9) Where the patent application was abandoned or withdrawn, between the time when the request for examination has been made and the time when any of the following order, notification or transmittal of a copy of the examiner's decision was made, the fees paid for the request for examination to be paid shall be refunded under subsection (2) to the extent as prescribed by Cabinet Order, upon the request of the person who paid them;

- (i) the order under Section 39(7);
- (ii) the notification under Section 48septies(48-7);
- (iii) the notification under Section 50;
- (iv) the transmittal of the copy of the examiner's decision under Section 52(2).

(10) No refund of the fees under the preceding subsection may be requested after six months from the date on which a patent application is abandoned or withdrawn.

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

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

#### **(Reduction of fee for request for examination, or exemption therefrom)**

**195bis(195-2).** — Where the Commissioner of the Patent Office recognizes that a person who is mentioned below and falls under the requirement prescribed by Cabinet Order for a person to be short of funds, cannot afford to pay a fee for request for examination, he may reduce the fee for request for examination under Section 195(2) with respect to his patent application, exempt him therefrom or grant him deferment of payment thereof as prescribed by Cabinet Order:

- (i) the inventor of the patented invention or the inventor's heir;
- (ii) the employer etc., who has succeeded to the right to obtain a patent from the employee, etc., where the patent invention is an employee's invention made by the employee, etc. as referred to in Section 35(1) and where it is provided in advance in a contractual provision, service regulation or other stipulation that the right to obtain a patent shall pass to the employer, etc.

#### **(Exemption of application of Administrative Procedure Law)**

**195ter(195-3).** — The second and third chapters of the Administrative Procedure Law (Law No. 88 in 1993) shall not apply to the measures under this Law or an order or ordinance thereunder.

#### **(Restriction on appeals under Administrative Appeal Law)**

**195quater(195-4).** — No appeal under the Administrative Appeal Law shall lie from an examiner's decision or a ruling to revoke a patent, a trial decision, and a ruling to dismiss a written opposition to the patent, or a demand for a trial or retrial nor from measures against which no appeal lies in accordance with this Law.

## Chapter XI — Penal Provisions

### (Offense of infringement)

**196.** — Any person who has infringed a patent right or an exclusive license shall be liable to imprisonment with labor not exceeding five years or to a fine not exceeding 5,000,000 yen.

### (Offense of fraud)

**197.** — Any person who has obtained a patent, a registration of an extension of the term of a patent right, a ruling on the opposition to the patent, 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)

**198.** — Any person infringing Section 188 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.)

**199.** — (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 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 the certified copy of the interpretation is transmitted or the ruling on the opposition to the patent or trial decision concerning the case has become final and conclusive, his sentence may be reduced or suppressed.

### (Offense of divulging secrets)

**200.** — Where any present or former official of the Patent Office has divulged or made surreptitious use of the secrets relating to an invention in a patent application to which he had access in the course of his duties, he shall be liable to imprisonment with labor not exceeding one year or a fine not exceeding 500,000 yen.

### (Offense of Secrecy Order violation)

**200bis(200-2).** — (1) Any person violating the Secrecy Order shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 3,000,000 yen.

(2) The offence under the preceding subsection shall be prosecuted upon complaint.

### (Dual liability)

**201.** — 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 196, a fine not exceeding 150 million yen;
- (ii) Section 197, 198 or 200bis(200-2)(1), a fine not exceeding 100 million yen.

(2) In the case of subsection (1), a complaint lodged against an offender under Section 200bis(200-2)(2) shall be effective also with respect to the legal entity or the natural person concerned, and a complaint lodged against a legal entity or a natural person shall be effective also with respect to the offender concerned.

### (Administrative penalties)

**202.** — Where a person who has taken an oath under Section 207(1) of the Code of Civil Procedure as applied under Section 151 (including its application under Sections 71(3) and 174(1) to (3) 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.

**203.** — 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.

**204.** — 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. 121 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.

**(Application of Patent Law before revision)**

2. — A patent application which is pending in the Patent Office at the time of entry into force of this Law shall, unless otherwise provided for, be dealt with as heretofore until the examiner's decision or trial decision with respect to the application has become final and conclusive.

**(Annual fees)**

3. — An annual fee which has been paid or should have been paid before the entry into force of this Law shall be as heretofore, notwithstanding Section 107(1) of the Patent Law after its revision (hereinafter referred to as the "amended Patent Law").

**(Grounds for invalidation of patents)**

4. — 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, notwithstanding Section 29<sup>bis</sup> and 123(1)(i) of the amended Patent Law.

**(Application fees)**

5. — Section 195(1) of the amended Patent Law shall apply with respect to a fee to be paid after the entry into force of this Law. However, this provision shall not apply to the fee prescribed in point 4 of the table attached to the said Law with respect to a patent application filed before the entry into force of this Law.

.....

**(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) the amended table under Section 107(1) of the Patent Law and the amended table attached to the Patent Law, and Section 2(2) of these Supplementary Provisions shall enter into force on the day of promulgation of this Law;

(ii) the amended proviso to Section 17(1) of the Patent Law (with the exception of the portion amending "and Section 64" to "Sections 17<sup>ter</sup> and 64") 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.

**(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 has become final and conclusive.

(2) An annual fee which has been paid or should have been paid before the day of promulgation of this Law shall be as heretofore, notwithstanding Section 107(1) of the Patent Law after its revision.

(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.

*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.

**(Transitory measures)**

2. — The following fees shall be as heretofore:

(iii) An annual fee which has been paid or should have been paid before the entry into force of the amended provisions of Section 107(1) of the Patent Law.

*Supplementary Provision*  
(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....

**(Transitory measures)**

1. — For the purposes of a patent of addition application filed before the entry into force of this Law and pending in the Patent Office at the time of entry into force of this Law or a patent right of addition in existence at the time of entry into force of this Law, the provisions of the Patent Law before the revision by this Law shall still have effect after the entry into force of this Law.

2. — For the purposes of an amendment which was made before the entry into force of this Law with respect to the specification or drawings attached to the request of a patent application or a utility model application (limited to an amendment made before the transmittal of the ruling that the application is to be published) and which was declined by a ruling that the amendment would change the gist of the specification or drawings attached to the said request, the provisions of the Patent Law and the Utility Model Law before the revision by this Law shall still have effect after the entry into force of this Law.

*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 provisions indicated in the following paragraphs shall enter into force on the dates specified respectively in said paragraphs:

(i) ... Section 107 and “Attached Table” (Related to Section 195) — June 1, 1987;  
(ii) Section 184quater, Section 184quinques, Section 184sexies, Section 184septies, Section 184octies, Section 184novies, Section 184decies-bis, Section 184undecies-ter, Section 184duodecies, Section 184terdecies and Section 184sedecies — December 8, 1987.

**(Transitory measures)**

3. — (1) Section 36(4) and (5), Section 37, section 49(iii), the proviso to Section 55(1), the portion other than the paragraphs of Section 123(1) except paragraph (iii) thereof, Section 155(3), Section 185 and Section 195(3) of the Patent Law after amendment (hereinafter referred to as “New Patent Law”) shall apply to a patent application filed after the entry into force of this Law while a patent application filed before the entry into force of this Law shall be dealt with as heretofore.

(2) The principal sentence of Section 55 of the New Patent Law (including its application under Section 13 of the Utility Model Law) shall apply to a patent application or a utility model application published (*Kôkoku*) after the entry into force of this Law while a patent application or a utility model application published (*Kôkoku*) before the entry into force of this Law shall be dealt with as heretofore.

*Supplementary Provisions*  
(Extract from Law No. 91 of 1988)

**(Entry into force)**

1. — This Law shall enter into force on January 1, 1989.

*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. 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. 89 of 1993)

**(Entry into force)**

1. — This Law shall enter into force on the date (October 1, 1994) on which the Administrative Procedure Law (Law No. 88 in 1993) is to enter into force.

*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 dates specified respectively in the said paragraphs.

(i) The amended provisions of Section 30(3) of the Patent Law prescribed in Section 1; the provisions prescribed in Section 5 (excluding the amended provisions of Sections 10(3), 13(1), 44(2) and 63<sup>bis</sup> 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 Sections 3<sup>bis</sup>(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<sup>bis</sup> (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 (limited to the part amending “Section 174(2)” into “Section 174(3)”), 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.

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*Supplementary Provisions*  
(Extract from Law No. 51 of 1998)

**(Entry into force)**

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

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*Supplementary Provisions*  
(Extract from Law No. 41 of 1999)

**(Entry into force)**

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

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

**(Entry into force)**

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

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*Supplementary Provisions*  
(Extract from Law No. 151 of 1999)

**(Entry into force)**

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

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

**(Entry into force)**

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

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

**(Entry into force)**

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

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

**(Entry into force)**

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

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

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(ii) the amended provisions of Sections 107 and 195 of the Patent Law, and the paragraphs (i) to (iv) and (vi) of “Attached Table” (Related to Section 195) thereof ..... — April 1, 2004.

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*Supplementary Provisions*  
(Extract from Law No. 79 of 2004)

**(Entry into force)**

1. — This Law shall enter into force on April 1, 2005.

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**Attached Table**  
(Related to Section 195)

Person liable to pay	Amounts
1. Person filing patent application (except those in the following paragraph)	¥16,000 per case
2. Person filing foreign language file application	¥26,000 per case
3. Person taking proceeding under Section 184 <sup>quinquies</sup> (184-5)(1)	¥16,000 per case
4. Person making request under Section 184 <sup>vicies</sup> (184-20)(1)	¥16,000 per case
5. Person making request for extension of term of patent right	¥74,000 per case
6. Person making request for examination	¥168,600 per case plus ¥4,000 per claim
7. Person amending description, patent claim(s) or drawing(s) by submitting written correction of incorrect translation	¥19,000 per case
8. Person requesting interpretation in accordance with Section 71(1)	¥40,000 per case
9. Person requesting arbitration decision	¥55,000 per case
10. Person requesting cancellation of arbitration decision	¥27,500 per case
11. Person demanding trial or retrial (except those listed below)	¥49,500 per case plus ¥5,500 per claim
12. Person demanding trial against examiner's decision of refusal of, or trial for invalidation of, registration of extension of term of patent right or retrial against any of these final and conclusive trial decisions	¥55,000 per case
13. Person demanding correction of description, patent claim(s) or drawing(s) (excluding case where the demand for the correction trial deemed to have been withdrawn under Section 134 <sup>ter</sup> (134-3)(4) resulting from demanding thereof)	¥49,500 per case plus ¥5,500 per claim
14. Person demanding intervention in trial or retrial	¥55,000 per case

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