

JAPAN

Patent Act

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(Law No. 121)

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Chapter I General Provisions

1. Purpose

The purpose of this Law is, through promoting the protection and the use of inventions, to encourage inventions, and thereby to contribute to the development of industry.

2. Definitions

- (1) “Invention” in this Law means the highly advanced creation of technical ideas utilizing the laws of nature.
- (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 computer program, etc., hereinafter the same), manufacturing, using, assigning, etc. (assigning and leasing and, in the case where the product is a computer program, etc., including providing through a telecommunications line, hereinafter the same), importing or offering for assignment, etc. (including displaying for the purpose of assignment, etc., hereinafter the same) thereof;
 - (ii) in the case of an invention of a process, the use thereof; and
 - (iii) in the case of an invention of a process for manufacturing a product, in addition to the action as provided in the preceding paragraph, acts of using, assigning, etc., importing or offering for assignment, etc. the product manufactured by the process.
- (4) A “Computer program, etc.” in this Law means a computer program (a set of instructions given to an electronic computer which are combined in order to produce a specific result, hereinafter the same in this subsection) and any other data that is to be processed by an electronic computer equivalent to a computer program.

3. Calculation of Time Periods

- (1) The calculation of time periods under this Law or any order issued under this Law shall be made in accordance with the following provisions.
 - (i) The first day of the period shall not be included in the calculation. Notwithstanding the foregoing, this provision shall not apply where the period commences at 00:00 hours.
 - (ii) Where the period is indicated by months or years, such months or years shall refer to calendar months or calendar years. Where the period is not calculated from the beginning of a month or a year, the period shall expire on the preceding day of the day corresponding to the first day of the calculation in the last month or year. Notwithstanding the foregoing, where there is no corresponding day in the last month, the period shall expire on the last day of the last month.
- (2) Where the last day of the prescribed period for any procedures relating to a patent (hereinafter referred to as “procedures”) including filing a patent application and a request, is any of the days provided for in Article 1(1) of the Law concerning Holidays of Administrative Organizations (Law No.91 of 1988), the day following such day shall be the last day of the period.

4. Extension of Time Limits , etc.

The Commissioner of the Patent Office may, upon request or ex officio, extend the period provided for in Sections 46-2(1)(iii), 108(1), 121(1) and 173(1), for a person in a remote area or an area with transportation difficulty.

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(1) Where the Commissioner of the Patent Office, the presiding judicial examiner, or the examiner has designated a time limit by which procedures are to be undertaken under this Law, said official may, upon request or ex officio, extend the time limit.

(2) Where the presiding judicial examiner has designated a specific date under this Law, said official may, upon request or ex officio, change such date.

6. Capacity of non-legal entities such as associations, etc. to undertake procedures

(1) An association or foundation which is not a legal entity but for which a representative or an administrator has been designated may, in its name:

(i) file a request for examination of an application;

(ii) file a petition for a hearing for patent invalidation or a hearing for invalidation of the registration of extension of term; and

(iii) file a petition for a rehearing in accordance with Section 171(1), against a final and conclusive ruling in a hearing for patent invalidation or a hearing for invalidation of the registration of extension of term.

(2) An association or foundation which is not a legal entity but for which a representative or an administrator has been designated may be named as a respondent in a petition filed for a rehearing against a final and conclusive ruling in a hearing for patent invalidation or a hearing for invalidation of the registration of extension of term.

7. Capacity of minors or incompetent adults under guardianship etc. to undertake procedures

(1) Minors or incompetent adults under guardianship shall not undertake procedures except through their legal representatives. Notwithstanding the foregoing, this provision shall not apply where a minor is capable of independently performing a legal act.

(2) Where a quasi-incompetent person under guardianship undertakes procedures, the consent of a guardian of the said quasi-incompetent person is required.

(3) Where a legal representative undertakes procedures, the consent of a supervisor of the guardian, if any, is required.

(4) Where an adverse party files a petition for a hearing or rehearing involving a quasi-incompetent person under guardianship or a legal representative, the preceding two subsections shall not apply.

8. Patent administrators for nonresidents

(1) Unless otherwise provided for by Cabinet Order, no person domiciled or resident (or, in the case of a legal entity, with a place of business) outside Japan (hereinafter referred to as a "nonresident") may undertake procedures or institute litigation against measures taken by a relevant administrative agency in accordance with the provisions of this Law or an order issued under this Law, except through a representative domiciled or resident in Japan, who is acting for such person in handling matters related to the person's patent (hereinafter referred to as a "patent administrator").

(2) The patent administrator shall represent the principal in all procedures and litigation against measures taken by any relevant administrative agency in accordance with the provisions of this Law or an order issued under this Law. Notwithstanding the foregoing, this provision shall not apply where the nonresident limits the scope of power of representation of the patent administrator.

9. Scope of powers of attorney

A representative of a person domiciled or resident in Japan (or, in the case of a legal entity, with a place of business) and who is proceeding before the Patent Office shall not, unless expressly so empowered, convert, abandon or withdraw a patent application, withdraw an application for extension of the registration term of a patent right, withdraw a petition, application or motion, make or withdraw a priority claim under Section 41(1), file a petition for publication of an application, file a petition for a hearing against an examiner's decision of refusal, abandon a patent right or appoint a sub-representative.

10. (Deleted)

11. No revocation of power of attorney

The power of attorney of an authorized representative acting for a person undertaking procedures shall not be revoked upon the death of the principal, or in the case of a legal entity, merger of the principal, termination of trust duties of a trustee who is the principal, the death of a legal representative, or change or revocation of the legal representative's power of representation.

12. Independent representation by representatives

Where there are two or more representatives acting for a person who undertakes procedures, each representative may represent the principal before the Patent Office.

13. Replacement of representatives, etc.

(1) Where the Commissioner of the Patent Office or the presiding judicial examiner considers that a person undertaking procedures is not competent or suitable for undertaking such procedures, the official may order the person to undertake the procedures through a representative.

(2) Where the Commissioner of the Patent Office or the presiding judicial examiner considers that a representative acting for a person undertaking procedures is not competent or suitable for undertaking such procedures, the official may order that the representative be replaced.

(3) In the case of the preceding two sub-sections, the Commissioner of the Patent Office or the presiding judicial examiner may order that a patent attorney be the representative.

(4) The Commissioner of the Patent Office or the presiding judicial examiner may, after the issuance of an order under subsection (1) or (2), dismiss the procedures before the Patent Office undertaken by the person undertaking procedures under sub-section (1) or the representative under subsection (2).

14. Mutual representation of multiple parties in the case

Where two or more persons are jointly proceeding before the Patent Office, each of them shall represent the other or others with respect to procedures other than the conversion, abandonment and withdrawal of a patent application, the withdrawal of an application for extension of the registration term of a patent right, the withdrawal of a petition, application, or motion, the making and withdrawal of a priority claim under Section 41(1), the petition for publication of an application, and the petition for a hearing against an examiner's decision of refusal. Notwithstanding the foregoing, this provision shall not apply where the said persons have appointed a representative for both/all of them and have notified the Patent Office accordingly.

15. Jurisdiction over nonresidents

Regarding a patent right or other right relating to the patent of a nonresident, the location of the property under Article 5(4) of the Code of Civil Procedure (Law No.109 of 1996) shall be the domicile or residence of the nonresident's patent administrator, or if there is no such patent administrator, the address of the Patent Office.

16. Ratification of acts of persons lacking legal capacity

(1) Any procedures undertaken by a minor (excluding one who has a legal capacity to act independently) or an incompetent adult under guardianship may be ratified by the person's legal representative (or by the said incompetent adult under guardianship, if the person later acquires a legal capacity to undertake the procedures).

(2) Any procedures undertaken by a person with no power of representation may be ratified by the principal holding legal capacity to undertake the procedures or the principal's legal representative.

(3) Any procedures undertaken by a quasi-incompetent person under guardianship without the consent of his guardian may be ratified if the quasi-incompetent person under guardianship obtains the approval of his guardian.

(4) Any procedures undertaken by a legal representative without the consent of a supervisor of a guardian may be ratified by the legal representative if the approval of the supervisor of the guardian is obtained, or by the principal if the principal acquires a legal capacity to undertake the procedures.

17. Amendment of proceedings

(1) A person undertaking a procedure before the Patent Office may make amendments only while the case is pending. Notwithstanding the foregoing, subject to the subsequent section to Section 17-4, the person may not amend the description, scope of claims, drawing(s) or the abstract attached to the request, and under Section 134-2(1) or for a hearing for correction may not amend the corrected description, scope of claims or drawing(s) attached to the petition for correction.

(2) Notwithstanding the principal sentence of the preceding subsection, an applicant of a Foreign Language Document Application as provided in Section 36-2(2) may not amend the Foreign Language Document and the foreign language abstract as provided in Section 36-2(1).

(3) The Commissioner of the Patent Office may require an applicant to amend a procedure, designating an adequate time limit, in the following cases:

(i) where the procedures do not comply with Sections 7(1) to (3) or Section 9;

(ii) where the procedures do not comply with the formal requirements prescribed by this Law or an order thereunder; and

(iii) where the fees relating to the procedures payable under Sections 195(1) to (3) are not paid.

(4) For any amendment of procedures (except in the case of the payment of fees) said amendment shall be submitted in writing, except for cases prescribed by Section 17-2(2).

17-2. Amendment of Description, Claim or Drawing attached to the Request

(1) An applicant for a patent may amend the description, scope of claims, or drawings attached to the request, before the service of the certified copy of the examiner's decision notifying that a patent is to be granted. Notwithstanding the foregoing, following the receipt of a notification provided under Section 50, an amendment may only be made in the following cases:

(i) where the applicant has received the first notification (hereinafter referred to in this section as the “Notification of Reasons for Refusal”) under Section 50 [including its application under Section 159(2) (and including its application under Section 163(3) and Section 174(1)), hereinafter the same in this subsection] and said amendment is made within the designated time limit under Section 50;]

(ii) where, following the receipt of the Notification of Reasons for Refusal, the applicant has received a notification under Section 48-7 and the said amendment is made within the designated time limit under the said section;

(iii) where, following the receipt of the Notification of Reasons for Refusal, the applicant has received a further Notification of Reasons for Refusal and the said amendment is made within the designated time limit under Section 50 with regard to the final Notification of Reasons for Refusal; and

(iv) where the applicant files a petition for a hearing against an examiner’s decision of refusal and said amendment is made within 30 days of said petition for said hearing.

(2) Where an applicant of a Foreign Language Document Application as provided in Section 36-2(2) amends the Description, Claims or Drawings under the preceding subsection for the purpose of correcting an incorrect translation, the applicant shall submit the statement of correction of the incorrect translation, stating the grounds thereof.

(3) Except in the case where the said amendment is made through the submission of a statement of correction of an incorrect translation, any amendment of the Description, Claims or Drawings under Subsection (1) shall be made within the scope of the matters described in the Description, Claims or Drawings originally attached to the Request [in the case of a Foreign Language Document Application under Section 36-2(2), the translation of the Foreign Language Document as provided in Section 36-2(2) that is deemed to be the Description, Claims and Drawings under Section 36-2(4) (in the case where the amendment to the Description, Claims or Drawings has been made through the submission of the statement of correction of an incorrect translation, the said translation or the amended Description, Claims or Drawings)] .

(4) In addition to the requirements provided in the preceding subsection, in the cases of Paragraphs (iii) and (iv) of Subsection (1), the amendment of the Claims shall be limited to those for the following purposes:

(i) the cancellation of a claim or claims as provided in Section 36(5);

(ii) restriction of the scope of claims (limited to the cases where the restriction is to restrict matters required to identify the invention stated in a claim or claims under Section 36(5), and the industrial applicability and the problem to be solved of the invention stated in the said claim or claims prior to the amendment are identical with those after the amendment.);

(iii) the correction of errors; and

(iv) the clarification of an ambiguous statement (limited to the matters stated in the reasons for refusal in the Notification of Reasons for Refusal).

(5) Section 126(5) shall apply mutatis mutandis to cases under Paragraph (ii) of the preceding subsection.

17-3. Amendment of abstract

An applicant for a patent may amend the abstract attached to the request within one year and three months (excluding the period after a petition for publication is filed) from the filing date of the patent application (or in the case of a patent application containing a priority claim under Section 41(1), the filing date of the earlier application provided for in the said section, in the case of a patent application containing a priority claim under Section 43(1), 43-2(1) or 43-2(2), the filing date of the earliest application, a patent application that is deemed to be the earliest application under Article 4.C(4) of the Paris Convention (refers to 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 the same) or a patent application that is

recognized as the earliest application under Article 4.A(2) of the Paris Convention, and in the case of a patent application containing two or more priority claims under Section 41(1), 43(1), 43-2(1) or 43-2(2), the earliest day of the filing dates on which the said priority claims are based, the same shall apply to Section 64(1)).

17-4. Amendment of corrected description, scope of claims or drawings

(1) The respondent of a hearing for patent invalidation may amend the corrected description, scope of claims or drawings attached to the petition for correction under Section 134-2(1) only within the time limit designated under Section 134(1), 134(2), 134-2(3), 134-3(1), 134-3(2) or 153(2).

(2) The petitioner of a hearing for correction may amend the corrected description, scope of claims or drawing(s) attached to the petition for a hearing for correction, only prior to notification under Section 156(1) (in the case where the hearing has been reopened under Section 156(2), prior to further notification under Section 156(1)).

18. Dismissal of procedures

(1) The Commissioner of the Patent Office may dismiss the procedures where a person ordered to make an amendment to the procedures under Section 17(3) fails to make such amendment within the designated time limit under the said provision, or where a person obtaining the registration establishing a patent right fails to pay maintenance fees within the designated time limit under Section 108(1).

(2) The Commissioner of the Patent Office may dismiss a patent application where the applicant ordered under Section 17(3) to pay maintenance fees provided for in Section 195(3) fails to pay such maintenance fees within the designated time limit under Section 17(3).

18-2. Dismissal of inadequate procedure

(1) The Commissioner of the Patent Office shall dismiss a procedure where the procedure is inadequate and not amendable.

(2) Where the Commissioner of the Patent Office intends to dismiss a procedure under the preceding subsection, he shall notify the person who undertook the procedures of the reasons therefor and give the said person an opportunity to submit a document stating a defense (hereinafter referred to as a "statement of defense"), designating an adequate time limit.

19. Effective time of submission of request

A request, a document or any other item submitted by mail to the Patent Office under this Law, or any order rendered under this Law, that is subject to a time limit, shall be deemed to have arrived at the Office at the date and time when such request or item is presented to the post office if such date and time are proven by the receipt of the mail, at the date and time of the date stamp on the mail if such date and time are clearly legible, or at noon of the day of the date stamp on the mail if only the day, but not the time, of the date stamp is clearly legible.

20. Succession of effects of procedures

The effects of the procedures relating to a patent right or any right relating to a patent shall extend to a successor in title.

21. Continuation of procedures

Where a patent right or any right relating to a patent is transferred while a case is pending before the Patent Office, the Commissioner of the Patent Office or the presiding judicial examiner may proceed with the procedures relating to the case to which the successor in title shall be the party.

22. Suspension or termination of procedures

(1) Where a petition for the resumption of suspended procedures is filed after a certified copy of a ruling, an examiner's decision or a hearing decision has been served, the Commissioner of the Patent Office or the judicial examiner shall render a ruling on whether the resumption shall be accepted.

(2) The ruling under the preceding sub-section shall be made in writing and state the grounds therefor.

23.

(1) Where a procedure for an examination, hearing or rehearing has been suspended and the person responsible for resuming the procedure fails to do so, the Commissioner of the Patent Office or the judicial examiner shall, upon a motion or ex officio, order the said person to resume the procedure and designate an adequate time limit for this purpose.

(2) Where the resumption does not occur within the time limit designated under the preceding subsection, the resumption may be deemed by the Commissioner of the Patent Office or the judicial examiner to have commenced on the date the time limit lapsed.

(3) When the resumption is deemed to have commenced under the preceding subsection, the Commissioner of the Patent Office or the presiding judicial examiner shall notify the parties in the case thereof.

24.

The Code of Civil Procedure, Sections 124 (excluding Subsection (1)(vi), 125 to 127, 128(1), 130, 131 and 132(2) (suspension or termination of litigation) shall apply mutatis mutandis to a procedure for an examination, a hearing or rehearing. In such case, "attorney" in Section 124(2) shall read, "representative entrusted with the examination, hearing or rehearing", "court" in Section 127 shall read, "Commissioner of the Patent Office or the presiding judicial examiner", "court" in Sections 128(1) and 131 shall read, "Commissioner of the Patent Office or the judicial examiner", and "court" in Section 130 of the said Code shall read, "Patent Office".

25. Enjoyment of rights by aliens

An alien not domiciled or resident (or, in the case of a legal entity, with a place of business) in Japan may not enjoy a patent right or other rights relating to a patent, except in the following cases:

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

(ii) where the country of the alien allows Japanese nationals to enjoy a patent right or other rights relating to a patent under the same conditions as for its own nationals in the case where Japan allows nationals of that country to enjoy a patent right or others right relating to a patent; and

(iii) where specifically provided by treaty .

26. Effect of treaties

Where specific provisions relating to a patent are provided by treaty, such provisions shall prevail.

27. Registration in the Patent Register

(1) The following matters shall be registered in the Patent Register maintained in the Patent Office:

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

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

(iii) the establishment, transfer, modification, lapse or restriction on disposal, of a right of pledge on a patent right or exclusive or non-exclusive license.

(2) The Patent Register may be prepared, in whole or in part, in the form of magnetic tapes (including other storage media using a similar method that may record and reliably store certain matters, hereinafter the same).

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

28. Issuance of Certificate of Patent

(1) The Commissioner of the Patent Office shall issue the certificate of patent to the patentee when the establishment of a patent right has been registered, or when a hearing decision to the effect that the Description, Claims or Drawings attached to the Request are to be corrected has become final and conclusive and the establishment of the said hearing decision has been registered.

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

Chapter II Patents and applications for patent

29. Conditions for Patentability

(1) An inventor of an invention that is industrially applicable shall be entitled to obtain a patent for the said invention, except for the following:

(i) inventions that were publicly known in Japan or a foreign country, prior to the filing of the patent application;

(ii) inventions that were publicly worked in Japan or a foreign country, prior to the filing of the patent application; or

(iii) inventions that were described in a distributed publication, or inventions that were made publicly available through a telecommunications line in Japan or a foreign country, prior to the filing of the patent application.

(2) Where, prior to the filing of the patent application, a person ordinarily skilled in the art of the invention would have been able to easily make the invention based on an invention prescribed in any of the paragraphs of the preceding subsection, a patent shall not be granted for such an invention notwithstanding the preceding subsection.

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 inventor of the invention claimed in the said patent application) disclosed in the Description, Claims or Drawings (in the case of the Foreign Language Document Application under Section 36-2(2), the Foreign Language Document as provided in Section 36-2(1)) originally attached to the Request of another application for a patent or for a registration of a utility model which has been filed prior to the date of filing of the said patent application and published after the filing of the said patent application in the Patent Gazette under Section 66(3) of the Patent Law (hereinafter referred to as the "Patent Gazette") or in the Utility Model Gazette under Section 14(3) of the Utility Model Law (Law No.123 of 1959) (hereinafter referred to as the "Utility Model Gazette") describing matters provided for in each of the paragraphs of the respective section or for which the publication of the patent application has been effected, a patent shall not be granted for such an invention notwithstanding Section 29(1). Notwithstanding the foregoing, this provision shall not apply where, at the time of the filing of the said application for a patent, the applicant of the said application for a patent and the applicant of the other application for a patent or for registration of a utility model are the same person.

30. Exception to lack of novelty of invention

(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 a test, has made a presentation in a printed publication, has made a presentation through electric telecommunications lines, or has made a presentation in writing at a study meeting held by an academic group 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) for the invention claimed in a patent application which has been filed by the said person within six months from the date on which the invention first fell under any of 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 the said 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 a local public entity (hereinafter referred to as the "Government, etc."), an exhibition held by those who are not the Government, etc. where such exhibition has been designated by the Commissioner of the Patent Office, an international exhibition held in the territory of a country of the Union of the Paris Convention or a member of the World Trade Organization by its Government, etc. or those who are authorized thereby to hold such an exhibition, or an international exhibition held in the territory of a state which is neither of a country of the Union of the Paris Convention nor a member of the World Trade Organization by its Government, etc. or those who are 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 the said person within six months from the date on which the invention first fell under any of those paragraphs.

(4) Any person seeking the application of Subsection (1) or (3) shall submit to the Commissioner of the Patent Office, at the time of filing of the patent application, a document stating thereof and, within thirty days from the date of filing of the patent application, a document proving the fact that the invention which has otherwise fallen under any of the paragraphs of Section 29(1) is an invention to which Subsection (1) or (3) of this Section may be applicable.

31. (Deleted)

32. Unpatentable inventions

Notwithstanding Section 29, any invention that is liable to injure public order, morality or public health shall not be patented.

33. Right to obtain patent

(1) The right to obtain a patent shall be transferable .

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

(3) Where the right to obtain a patent is jointly owned, no joint owner may assign his respective share without the consent of all the other joint owners.

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(1) The succession of the right to obtain a patent prior to the filing of the patent application shall have no effect on any third party unless the successor in title files the patent application.

(2) Where two or more patent applications are filed on the same date based on the same right to obtain a patent based on succession from the same person, any succession(s) by a person(s) other than those selected by consultations between the applicants shall have no effect on any third party.

(3) The preceding subsection shall apply where applications for a patent and a utility model registration are filed on the same date based on the right to obtain a patent and the right to obtain a utility model registration for the same invention and device based on succession from the same person.

(4) Any succession to the right to obtain a patent after the filing of the patent application shall have no effect, except in the case of general successions including inheritance, without notification to the Commissioner of the Patent Office.

(5) Where a general succession to the right to obtain a patent including inheritance thereof occurs, the successor in title shall notify the Commissioner of the Patent Office thereof without delay.

(6) Where two or more notifications are submitted on the same date regarding successions to the right to obtain the same patent based on succession from the same person, upon consultation between the persons submitting the notifications any notification(s) by a person(s) other than the person selected through said consultation shall have no effect.

(7) Sections 39(7) and 39(8) shall apply mutatis mutandis to the cases prescribed in Subsections (2), (3) and (6).

35. Inventions by Employees

(1) In the case of an employer, a legal entity or a national or local government (hereinafter referred to as an "Employer, etc."), where an employee, an officer of the legal entity, or a national or local government employee (hereinafter referred to as an "Employee, etc.") has obtained a patent for an invention which, by the nature of the said invention, falls within the scope of the business of the said Employer, etc. and was achieved by an act(s) categorized as a present or past duty of the said Employee, etc. performed for the Employer, etc. (hereinafter referred to as an "Employee Invention") or where a successor to the right to obtain a patent for the Employee Invention has obtained a patent therefor, the said Employer, etc. shall have a non-exclusive license on the said patent right.

(2) In the case of an invention by an Employee, etc., any provision in any agreement, employment regulation or any other stipulation providing in advance that the right to obtain a patent or that the patent rights for any invention made by an Employee, etc. shall vest in the Employer, etc., or that an exclusive license for the said invention shall be granted to the Employer, etc., shall be null and void unless the said invention is an Employee Invention.

(3) Where the Employee, etc., in accordance with any agreement, employment regulation or any other stipulation, permits the right to a patent for an Employee Invention or the right to obtain the patent right for an Employee Invention, to vest with the Employer, etc., or grants an exclusive license therefor to the Employer, etc., the said Employee, etc. shall have the right to receive fair compensation.

(4) Where an agreement, employment regulation or any other stipulation provides for the compensation provided in the preceding paragraph, the payment of compensation in accordance with the said provision(s) shall not be considered unreasonable in light of circumstances where a negotiation between the Employer, etc. and the Employee, etc. had taken place in order to set standards for the determination of the said compensation, the set standards had been disclosed, the opinions of the Employee, etc. on the calculation of the amount of the compensation had been received and any other relevant circumstances.

(5) Where no provision setting forth the compensation as provided in the preceding paragraph exists, or where it is recognized under the preceding paragraph that the amount of the compensation to be paid in accordance with the relevant provision(s) is unreasonable, the amount of the compensation under Paragraph 3 shall be determined by taking into consideration the amount of profit to be received by the Employer, etc. from the invention, the Employer, etc.'s burden, contribution, and treatment of the Employee, etc. and any other circumstances relating to the invention.

36. Applications for patent

(1) A person requesting the grant of a patent shall submit a request to the Commissioner of the Patent Office stating the following:

- (i) the name and domicile or residence of the applicant(s) for the patent; and
- (ii) the name and domicile or residence of the inventor(s).

(2) The Description, Claims, Drawings (where required), and Abstract shall be attached to the Request.

(3) The Description as provided in the preceding subsection shall state the following:

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

(4) The statement of the detailed explanation of the invention as provided in Paragraph (iii) of the preceding subsection shall comply with each of the following paragraphs:

(i) in accordance with the relevant ordinance of the Ministry of Economy, Trade and Industry, the statement shall be clear and sufficient as to enable any person ordinarily skilled in the art to which the invention pertains to work the invention; and

(ii) where the person requesting the grant of a patent has knowledge of any invention(s) (inventions as provided in Section 29(1)(iii), in this paragraph hereinafter the same) related to the said invention, that has been known to the public through publication at the time of filing of the patent application, the statement shall provide the source of the information concerning the invention(s) known to the public through publication such as the name of the publication and others.

(5) The Claims as provided in Subsection (2) shall state a claim or claims and state for each claim all matters necessary to specify the invention for which the applicant for the patent requests the grant of a patent. In such case, an invention specified by a statement in one claim may be the same invention specified by a statement in another claim.

(6) The statement of the Claims as provided in Subsection (2) shall comply with each of the following paragraphs:

- (i) the invention for which a patent is sought is stated in the detailed explanation of the invention.
- (ii) the invention for which a patent is sought is clear;
- (iii) the statement for each claim is concise; and

(iv) the statement is composed in accordance with the relevant ordinance of the Ministry of Economy, Trade and Industry.

(7) The Abstract as provided in Subsection (2) shall state a summary of the invention disclosed in the Description, Claims or Drawings, and any other matters as provided by a relevant ordinance of the Ministry of Economy, Trade and Industry.

36-2.

(1) A person requesting the grant of a patent may, in lieu of the Description, Claims, Drawings (where required) and Abstract as provided in Subsection (2) of the preceding section, attach to the Request a document in a foreign language as provided by a relevant ordinance of the Ministry of Economy, Trade and Industry, stating matters required to be stated in the Description or the Claims under Subsections (3) to (6) of the said section, and drawing(s) (where required) which contain any descriptive text in the said foreign language (hereinafter a "Foreign Language Document"), and a document in the said foreign language stating matters required to be stated in the Abstract under Subsection (7) of the said Section (hereinafter a "Foreign Language Abstract").

(2) The applicant for a patent application in which a Foreign Language Document and a Foreign Language Abstract are attached to the Request under the preceding subsection (hereinafter a "Foreign Language Document Application") shall submit to the Commissioner of the Patent Office Japanese translations of the Foreign Language Document and the Foreign Language Abstract within two months from the date of filing of the patent application.

(3) Where the translation of the Foreign Language Document (excluding drawings) as provided in the preceding subsection is not submitted within the time limit as provided in the preceding subsection, the patent application shall be deemed to have been withdrawn.

(4) The translation of the Foreign Language Document as provided in Subsection (2) shall be deemed to be the Description, Claims and Drawings submitted with the Request under Subsection (2) of the preceding section and the translation of the Foreign Language Abstract as provided in Subsection (2) shall be deemed to be the Abstract submitted with the Request under Subsection (2) of the preceding section.

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Two or more inventions may be the subject of a single patent application in the same request provided that, by the relevant ordinance of the Ministry of Economy, Trade and Industry, these inventions are of a group of inventions recognized as fulfilling the requirements of unity of invention based on their technical relationship.

38. Joint applications

Where the right to obtain a patent is jointly owned, a patent application may only be filed by all the joint owners.

39. Prior application

(1) Where two or more patent applications claiming identical inventions have been filed on different dates, only the applicant who filed the patent application on the earliest date shall be entitled to obtain a patent for the invention claimed.

(2) Where two or more patent applications claiming identical inventions have been filed on the same date, only one applicant, who was selected by consultations between the applicants who filed the said applications, shall be entitled to obtain a patent for the invention claimed. Where no agreement is reached by consultations or consultations are unable to be held, none of the applicants shall be entitled to obtain a patent for the invention claimed.

(3) Where an invention and a device claimed in applications for a patent and a utility model registration are identical and the applications for a patent and a utility model registration are filed on different dates, the applicant for a patent may obtain a patent for the invention claimed therein, only if the application for a patent is filed prior to the application for a utility model registration.

(4) Where an invention and a device claimed in applications for a patent and a utility model registration are identical (excluding the case where an invention claimed in an application for a patent based on a utility model registration under Section 46bis(1) (including a patent application that is deemed to have been filed at the time of filing of the said patent application under Section 44(2) (including its mutatis mutandis application under Section 46(5)) and a device relating to the said utility model registration are identical) and the applications for a patent and a utility model registration are

filed on the same date, only one of the applicants, selected by consultations between the applicants, shall be entitled to obtain a patent or a utility model registration. Where no agreement is reached by consultations or no consultations are able to be held, the applicant for a patent shall not be entitled to obtain a patent for the invention claimed therein.

(5) Where an application for a patent or a utility model registration has been abandoned, withdrawn or dismissed, or where the examiner's decision or hearing decision to the effect that a patent application is to be refused has become final and conclusive, the application for a patent or a utility model registration shall, for the purpose of Subsections (1) to (4), be deemed never to have been filed. Notwithstanding the foregoing, this provision shall not apply to the case where the examiner's decision or hearing decision to the effect that the patent application is to be refused has become final and conclusive on the basis that the latter sentence of Subsection (2) or (4) is applicable to the said patent application.

(6) An application for a patent or a utility model registration filed by a person who is neither the inventor nor designer nor the successor in title to the right to obtain a patent or a utility model registration shall, for the purpose of application of Subsections (1) to (4), be deemed to be neither an application for a patent nor an application for a utility model registration.

(7) The Commissioner of the Patent Office shall, in the case of Subsection (2) or (4), order the applicant to hold consultations as specified under Subsection (2) or (4) and to report the result thereof, designating an adequate time limit.

(8) Where no report under the preceding subsection is submitted within the time limited designated under the said subsection, the Commissioner of the Patent Office may deem that no agreement under Subsection (2) or (4) has been reached.

40. (Deleted)

41. Priority claim based on patent application, etc.

(1) A person requesting the grant of a patent may make a priority claim for an invention claimed in the patent application, based on an earlier application filed for a patent or utility model registration which the said person has the right to obtain (hereinafter referred to as an "Earlier Application"), for an invention disclosed in the Description or Claims for a patent or utility model registration, or Drawings (in the case where the earlier Application was a Foreign Language Document Application, the Foreign Language Document) originally attached to the Request of the Earlier Application, except in the following cases:

(i) where the said patent application is not filed within one year from the date of the filing of the Earlier Application;

(ii) where the Earlier Application is a new divisional patent application extracted from a patent application under Section 44(1), a patent application converted from a patent application under Section 46(1) or 46(2), a patent application based on a utility model registration under Section 46-2(1), a new divisional utility model registration application extracted from a utility model registration application under Section 44(1) of the Patent Law as applied mutatis mutandis under Section 11(1) of the Utility Model Law, or a utility model registration application converted from a utility model registration application under Section 10(1) or 10(2) of the Utility Model Law;

(iii) where at the time of the filing of the said patent application, the Earlier Application had been abandoned, withdrawn or dismissed;

(iv) where, at the time of the filing of the said patent application, the examiner's decision or the hearing decision on the Earlier Application had become final and conclusive; and

(v) where, at the time of the filing of the said patent application, the registration establishing a utility model right under Section 14(2) of the Utility Model Law with respect to the Earlier Application had been effected.

(2) For inventions among those claimed in a patent application containing a priority claim under Subsection (1), for those that are stated in the Description, Claims for a patent or utility model registration or Drawings (in the case where the Earlier Application was a Foreign Language Document Application, the Foreign Language Document) originally attached to the Request of the Earlier Application on which the priority claim is based, [in the case where the Earlier Application contains a priority claim under that subsection, Section 8(1) of the Utility Model Law or Section 43(1) or

43-2(1) or (2) of the Patent Law (including its mutatis mutandis application under Section 11(1) of the Utility Model Law), excluding any inventions disclosed in any documents (limited to those equivalent to the Description, Claims for a patent or utility model registration or Drawings) submitted at the time of the filing of the application on which the priority claim in the Earlier Application is based], the said patent application shall be deemed to have been filed at the time when the Earlier Application was filed, in the case of the application of Section 29, the principal sentence of Section 29-2 and Sections 30(1) to (3), 39(1) to (4), 69(2)(ii), 72, 79, 81, 82(1), 104 [including its mutatis mutandis application under Section 65(5) (including its mutatis mutandis application under Section 184-10(2))], and 126(5) (including its mutatis mutandis application under Sections 17-2(5) and 134-2(5)) of the Patent Law, Sections 7(3) and 17 of the Utility Model Law, Sections 26, 31(2), and 32(2) of the Design Law (Law No. 125 of 1959) and Section 29, 33-2(1) and 33-3(1) (including its mutatis mutandis application under Section 68(3) of the Trademark Law) of the Trademark Law (Law No. 127 of 1959).

(3) Among inventions disclosed in the Description, Claims or Drawings (in the case of a Foreign Language Document Application, the Foreign Language Document) originally attached to the request in a patent application containing a priority claim under Subsection (1), for those that are stated in the Description, Claims for a patent or utility model registration or Drawings (in the case where the Earlier Application was a Foreign Language Document Application, the Foreign Language Document) originally attached to the request of the Earlier Application on which the priority claim is based [in the case where the Earlier Application contains a priority claim under the said subsection, Section 8(1) of the Utility Model Law or Section 43(1) or 43-2(1) or (2) of the Patent Law (including its mutatis mutandis application under Section 11(1) of the Utility Model Law), excluding any inventions disclosed in any documents (limited to those equivalent to the Description, Claim for a patent or utility model registration or Drawing) submitted at the time of the filing of the application on which the priority claim in the Earlier Application is based], the publication of patent application or the Gazette containing the Utility Model relating to the Earlier Application shall be deemed to have been effected or issued at the time when the Patent Gazette Containing Registered Patent or the publication of patent application relating to the said patent application was issued or effected, and the principal sentence of Section 29bis or Section 3bis of the Utility Model Law shall apply.

(4) A person requesting to make a priority claim under Subsection (1) shall submit to the Commissioner of the Patent Office a document stating thereof and the indication of the Earlier Application along with the patent application.

42. Withdrawal, etc. of earlier application

(1) The Earlier Application on which a priority claim is based under Section 41(1) shall be deemed to have been withdrawn when one year and three months has lapsed from the filing date of the Earlier Application. Notwithstanding the foregoing, this provision shall not apply to the case where the Earlier Application has been abandoned, withdrawn or dismissed, where the examiner's decision or judicial ruling on the Earlier Application has become final and conclusive, where the registration establishing a utility model right under Section 14(2) of the Utility Model Law with respect to the Earlier Application has been effected or where all priority claims based on the Earlier Application have been withdrawn.

(2) The applicant of a patent application containing a priority claim under Section 41(1) may not withdraw the priority claim after the period of one year and three months has passed 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 said priority claim shall be deemed withdrawn simultaneously.

43. Procedures for a priority claim under the Paris Convention

(1) A person desiring to take advantage of the priority under Article 4.D(1) of the Paris Convention regarding a patent application shall, along with the patent application, submit to the Commissioner of the Patent Office a document stating thereof, and specify the country of the Union of the Paris Convention in which the application was first filed, deemed to have been first filed under C(4) of the said Article, or recognized to have been first filed under A(2) of the said Article, and the date of filing of the said application.

(2) A person who has made a declaration of priority under the preceding subsection shall submit to the Commissioner of the Patent Office a certificate showing the date of filing from the country of the Union of the Paris Convention in which the application was first made, or deemed to have been first made under Article 4., C(4) of the Paris Convention, or recognized to have been first made under A(2) of the said Article, as well as certified copies of stating matters

required to be stated in the Description, Claims for patent or utility model registration and Drawings of the invention or any official gazette or certificate equivalent thereto issued by the government of the said country, within one year and four months from the earliest of the following dates:

(i) the date of filing which was first made, deemed to have been first made under Article 4., C(4) of the Paris Convention, or recognized to have been first made under A(2) of the said Article;

(ii) where such patent application contains a priority claim or priority claims under Section 41(1), the date of filing of the application on which the said priority claim is based; or

(iii) where such patent application contains other priority claims under 43(1) or 43-2 (1) or (2) , the filing date of the application on which the said priority claim is based.

(3) A person who has made a declaration of priority under Subsection (1) shall, in addition to the documents as provided in the preceding subsection, submit to the Commissioner of the Patent Office a document specifying the filing number of the application which was first filed, deemed to have been first filed under Article 4., C(4) of the Paris Convention, or recognized to have been first filed under A(2) of the said Article. Notwithstanding the foregoing, where such filing number is not available to the person prior to the submission of the documents as provided in the said subsection, in lieu of the said document, a document specifying the reason thereof shall be submitted and the document specifying such filing number shall be submitted as soon as such number becomes available to the said person.

(4) Where a person who has made a declaration of priority under Subsection (1) fails to submit the documents specified in Subsection (2) within the time limit prescribed therein, the said priority claim shall lose its effect.

(5) In relation to the application of the preceding two subsections, where a person, having made a declaration of priority under Subsection (1) based on an application filed in a country designated in an ordinance of the Ministry of Economy, Trade and Industry in which a conversion of matters stated in the documents as provided in Subsection (2) through an electromagnetic means (means that are not perceivable by senses including electronic and magnetic means) by identifying such matters by its filing number is allowed, submits to the Commissioner of the Patent Office the document stating the said filing number of the application within the designated time limit under Subsection (2), the documents as provided in Subsection (2) shall be deemed to have been submitted.

43-2. Priority claims recognized under the Paris Convention

(1) A priority claim may be declared in a patent application under Article 4 of the Paris Convention, where the priority claim is based on an application filed by a person specified in the left-hand column of the following table in a country specified in the corresponding right-hand column.

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 national of a country that is neither a country of the Union of the Paris Convention nor a member of the World Trade Organization (limited to the country that allows Japanese nationals to declare a priority under the same conditions as in Japan, hereinafter referred to as a “Specified Country” in this subsection), a Japanese national, a national of a country of the Union of the Paris Convention or a national of a member of the World Trade Organization may declare a priority claim in the patent application based on the application filed in the Specified Country under Article 4 of the Paris Convention.

(3) Section 43 shall apply mutatis mutandis to the case where a priority claim is declared under Subsection (1) or (2).

44. Division of patent applications

(1) An applicant for a patent may extract one or more new patent applications out of a patent application containing two or more inventions only within the allowable time limit for amendments of the Description, Claims or Drawings attached to the Request.

(2) In the case referred to in the preceding subsection, the new patent application shall be deemed to have been filed at the time of filing of the original patent application. Notwithstanding the foregoing, this provision shall not apply for the purposes of applications of: Section 29-2 of the Patent Law where the new patent application falls under another patent application in the said section; Section 3bis of the Utility Model Law where the new patent application(s) falls under a patent application in the said section; and Sections 30(4), 36-2(2), 41(4) and 43(1) of the Patent Law (including its mutatis mutandis application under Subsection (3) of the preceding section).

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

(4) Where a new patent application is filed under Subsection (1), any statements or documents which have been submitted in relation to the original patent application and are required to be submitted in relation to the new patent application under Section 30(4), 41(4), or Sections 43(1) and 43(2) (including its mutatis mutandis application under Subsection (3) of the preceding section) shall be deemed to have been submitted to the Commissioner of the Patent Office along with the new patent application.

45. (Deleted)

46. Conversion of application

(1) An applicant of a utility model registration may convert the application into a patent application. Notwithstanding the foregoing, this provision shall not apply after the expiration of 3 years from the date of filing of the utility model registration application.

(2) An applicant of a design registration may convert the application into a patent application. Notwithstanding the foregoing, this provision shall not apply after the expiration of 30 days from the date the certified copy of the examiner’s initial decision to the effect that the application for a design registration is to be refused has been served or after the expiration of 3 years from the date of filing of the design registration application (excluding the period of a maximum of 30 days after the date the certified copy of the examiner’s initial decision to the effect that the application for a design registration is to be refused).

(3) Where the period as provided in Section 46(1) of the Design Law is extended under Section 4 of the Patent Law as applied mutatis mutandis under Section 68(1) of the Design Law, the 30-day period as provided in the proviso to the preceding subsection shall be deemed to have been extended only for that period as extended.

(4) Where an application is converted under Subsection (1) or (2), the original application shall be deemed to have been withdrawn.

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

46-2. Patent applications based on utility model registration

(1) Except for the following cases, a utility model right holder may file a patent application based on his own utility model registration as provided by an ordinance of the Ministry of Economy, Trade and Industry. In such a case, the right to utility model registration shall be abandoned:

(i) where 3 years have lapsed from the date of filing of an application for the said utility model registration;

(ii) where a petition requesting the examiner's technical opinion as to the registerability of the utility model claimed in the utility model registration application or of the utility model registration, (in the following paragraph simply referred to as "Utility Model Technical Opinion"), is filed by the applicant of the utility model registration or the utility model right holder;

(iii) where 30 days have lapsed from the date of receipt of initial notification under Section 13(2) of the Utility Model Law relating to a petition requesting the Utility Model Technical Opinion on the application for the utility model registration, or on the utility model registration filed by a person who is neither the applicant of the said utility model registration nor the said utility model right holder; and

(iv) where the time limit initially designated under Section 39(1) of the Utility Model Law for a utility model registration invalidation trial filed against the said utility model registration under Section 37(1) of the Utility Model Law has expired.

(2) A patent application under the preceding subsection shall be deemed to have been filed at the time of filing of the application for the said utility model registration, provided that matters stated in the Description, Claims or Drawings attached to the Request in the said patent application are within the scope of the matters stated in the Description, Claims or Drawings attached to the Request in the said utility model registration application. Notwithstanding the foregoing, this provision shall not apply for the purpose of application of Section 29-2 of the Patent Law or Section 3bis of the Utility Model Law, where the patent application falls under another patent application under the said section of the Patent Law or the patent application under the said section of the Utility Model Law, or for the purpose of application of Sections 30(4), 36-2(2), 41(4), 43(1) (including its mutatis mutandis application under Section 43-2(3)) and 48-3(2).

(3) Notwithstanding Paragraph (iii) of Subsection (1), where, due to reasons beyond the control of the applicant for a patent under Subsection (1), the applicant is unable to file an application for a patent within the time limit as provided in the said paragraph, the applicant may file an application for a patent within 14 days (where 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.

(4) Where there is an exclusive licensee, a pledge or, in the case where Section 35(1) of the Patent Law as applied under Section 11(3) of the Utility Model Law or Section 77(4) of the Patent Law as applied under Section 18(3) of the Utility Model Law or Section 19(1) of the Utility Model law is applicable, a non-exclusive licensee, the right holder of a utility model may file an application for a patent under Subsection (1), provided that the consent of the said exclusive licensee, pledgee or non-exclusive licensee is obtained.

(5) Sections 44(3) and 44(4) shall apply mutatis mutandis to the case where a patent application is filed under Subsection (1).

Chapter III Examination

47. Examination by examiner

(1) The Commissioner of the Patent Office shall direct the examination of patent applications by an examiner.

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

48. Exclusion of examiners

Sections 139(i) to 139(v) and 139(vii) shall apply mutatis mutandis to examiners.

48-2. Examination of patent applications

The examination of a patent application shall be initiated after the filing of a request for examination.

48-3 Request for examination of application

(1) Where a patent application is filed, any person may, within 3 years from the filing date thereof, file with the Commissioner of the Patent Office a request for the examination of the said application.

(2) Notwithstanding the foregoing, in the case of a new patent application arising from the division of a patent application under Section 44(1), or a patent application arising from the conversion of an application under Section 46(1) or 46(2), or a patent application based on a utility model registration under Section 46bis(1), a request for the examination of the said patent application may be filed even after the lapse of the time limit prescribed in the preceding subsection, but not later than 30 days following the division of a patent application, conversion of application or filing of patent application based on a utility model registration.

(3) A request for the examination of a patent application may not be withdrawn.

(4) Where a request for the examination of an application is not filed within the time limit as provided in Subsection (1) or (2), the said patent application shall be deemed to have been withdrawn.

48-4.

A person(s) filing a request for the examination of an application shall submit a written petition to the Commissioner of the Patent Office stating the following :

- (i) the name and domicile or residence of the petitioner; and
- (ii) the identification of the patent application for which the examination is requested.

48-5.

(1) Where a request for the examination of an application is filed, in the case where such request is filed prior to the publication of the application, the Commissioner of the Patent Office shall publish the fact thereof in the Patent Gazette either at the time of publication of the application or thereafter without delay, and in the case where such a request is filed after publication of the application, without delay after publication.

(2) Where a request for the examination of an application is filed by a person other than the applicant for a patent, the Commissioner of the Patent Office shall notify the applicant thereof.

48-6. Preferential examination

Where it is recognized that a person other than the applicant is commercially working the invention claimed in a patent application after the publication of the application, the Commissioner of the Patent Office may, where deemed necessary, cause the examiner to examine the patent application in preference to other patent applications.

48-7. Notification of statement of information concerning invention known to the public through publication

Where the examiner recognizes that a patent application does not comply with the requirements as provided in Section 36(4)(ii), the examiner may notify the applicant of the patent thereof and give the said applicant an opportunity to submit a written opinion, designating an adequate time limit for such purpose.

49. Examiner's decision of refusal

The examiner shall render an examiner's decision to the effect that a patent application is to be refused where the patent application falls under any of the following:

- (i) an amendment made to the Description, Claims or Drawings attached to the Request in a patent application does not comply with the requirements as provided in Section 17-2(3);
- (ii) the invention claimed in the patent application is not patentable under Section 25, 29, 29-2, 32, 38 or 39(1) to 39(4);
- (iii) the invention claimed in the patent application is not patentable under the provisions of any relevant treaty;
- (iv) the patent application does not comply with the requirements under Section 36(4)(i), 36(6), or 37;
- (v) where notification under the preceding section has been given, following the amendment of the Description or submission of the written opinion, the patent application does not comply with the requirements under Section 36(4)(ii);
- (vi) where the patent application is a Foreign Language Document Application, matters stated in the Description, Claims or Drawings attached to the Request in the said patent application do not remain within the scope of matters stated in the Foreign Language Document; and
- (vii) where the applicant for the patent is not the inventor, the applicant has not succeeded to the right to obtain a patent for the said invention.

50. Notification of reasons for refusal

Where the examiner intends to render an examiner's decision to the effect that an application is to be refused, the examiner shall notify the applicant for the patent of the reasons therefor and give the said applicant an opportunity to submit a written opinion, designating an adequate time limit for such purpose. Notwithstanding the foregoing, in cases referred to in Section 17-2(1)(iii), this provision shall not apply where a ruling rejecting an amendment under Section 53(1) is rendered.

51. Examiner's decision to the effect that a patent is to be granted

Where no reasons for refusal are found for a patent application, the examiner shall render a decision to the effect that a patent is to be granted.

52. Formal requirements for examination

- (1) The examiner's decision shall be in writing and specify the reasons therefor.
- (2) Where the examiner's decision is rendered, the Commissioner of the Patent Office shall serve to the applicant of a patent a certified copy of the examiner's decision.

53. Rejection of amendments

- (1) In the case of Section 17-2(1)(iii), where, prior to the service of the certified copy of the examiner's decision notifying to the effect that a patent is to be granted, an amendment made to the Description, Claims or Drawings attached to the Request is found not to comply with Sections 17-2(3) to (5), the examiner shall reject the amendment by a ruling.
- (2) The ruling rejecting an amendment under the preceding subsection shall be made in writing and state the reasons therefor.
- (3) The ruling rejecting an amendment under Subsection (1) shall not be subject to appeal. Notwithstanding the foregoing, where a petition for a hearing against an examiner's decision of refusal has been filed, this provision shall not apply to the appeal made in the proceeding in the said hearing.

54. In relation to litigation

- (1) Where deemed necessary during a hearing, the examination procedure may be suspended until a hearing decision has become final and conclusive or litigation procedure has been concluded.
- (2) Where an action is instituted or a motion for an order of provisional seizure or provisional disposition is filed, the court may, if it considers it necessary, suspend the litigation procedures until the examiner's decision becomes final and conclusive.

55. through 63. (Deleted)**Chapter III-2 Publication of Patent Applications****64. Publication of patent applications**

(1) After a lapse of one year and six months from the date of the filing of a patent application, the Commissioner of the Patent Office shall publish the patent application, except in the case where the Patent Gazette containing the patent has already been published. The same shall apply where a request for the publication of the patent application under Subsection (1) of the following section is filed.

(2) The publication of a patent application shall be effected by stating the following matters in the Patent Gazette. Notwithstanding the foregoing, this provision shall not apply to the matters prescribed in Paragraphs (iv) to (vi) where the Commissioner of the Patent Office recognizes that public order or morality is liable to be injured by stating such matters in the Patent Gazette.

- (i) the name, and the domicile or residence of the applicant(s) for the patent;
- (ii) the number and the filing date of the patent application;
- (iii) the name, and the domicile or residence of the inventor(s);
- (iv) the matters stated in the Description, Claims attached to the Request and the contents of the Drawings attached to the said Request;
- (v) the matters stated in the Abstract attached to the Request;
- (vi) in the case of a Foreign Language Document Application, the matters stated in the Foreign Language Document and the Foreign Language Abstract;
- (vii) the number and the date of publication of the patent application; and
- (viii) other necessary matters.

(3) Where anything stated in the abstract attached to the Request does not comply with Section 36(7), or in cases where the Commissioner of the Patent Office considers it otherwise necessary, the Commissioner of the Patent Office may publish in the Patent Gazette, in lieu of the matters stated in the Abstract under Paragraph (v) of the preceding subsection, matters prepared by the Commissioner of the Patent Office.

64-2. Request for publication of a patent application

- (1) An applicant for a patent may file a request for the publication of the patent application with the Commissioner of the Patent Office except in the following cases:
 - (i) where the patent application has already been published;

(ii) where the patent application contains a priority claim under Section 43(1), 43-2(1) or 43-2(2), and documents relating thereto under Sections 43(2), (including its mutatis mutandis application under Section 43-2(3)) and 43(5) (including its mutatis mutandis application under Section 43-2(3)), have not been submitted to the Commissioner of the Patent Office; and

(iii) where the patent application is a Foreign Language Document Application and translations of the Foreign Language Documents under Section 36-2(2) have not been submitted to the Commissioner of the Patent Office.

(2) A request for the publication of a patent application may not be withdrawn.

64-3.

An applicant filing a request for the publication of a patent application shall submit a written request to the Commissioner of the Patent Office stating the following:

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

(ii) the identification of the patent application for which the publication is requested.

65. Effect of the publication of patent applications

(1) After the publication of a patent application, where the applicant for the patent has given warning with documents stating the contents of the invention claimed in the patent application, the applicant may claim compensation against a person who has commercially worked the invention after the warning and prior to the registration establishing a patent right, and the amount of compensation shall be equivalent to the amount the applicant would be entitled to receive for the working of the invention if the invention were patented. Even where the said warning has not been given, the same shall apply to a person who knowingly commercially worked, prior to the registration establishing a patent right, an invention claimed in a published patent application.

(2) The right to claim compensation under the preceding subsection may not be exercised until the registration establishing a patent right has been effected.

(3) The exercise of the right to claim 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 publication of the patent application, or where the examiner's decision or a hearing decision refusing the patent application has become final and conclusive, or where the patent right has been deemed never to have existed under Section 112(6) (except in the case where it is further found that the patent right is deemed to have existed from the beginning under Section 112-2(2)), or where, with exception of cases coming under the proviso to Section 125, a hearing decision to the effect that the patent is to be invalidated has become final and conclusive, the right to claim under Subsection (1) shall be deemed never to have been established.

(5) Sections 101, 104 to 105-2, 105-4 to 105-7 and 168(3) to 168(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 compensation under Subsection (1). In such case, where a person having the right to claim compensation has become aware of the fact that the invention claimed in the patent application had been worked and of the person who had worked the invention prior to the registration establishing a patent right, "the time when the injured party or the legal representative thereof became aware of such damages and the responsible person(s) therefor" in Section 724 of the Civil Code shall read "the date of the registration establishing a patent right."

Chapter IV Patent Rights

Part 1 Patent Rights

66. Registration of establishment of a patent right

- (1) A patent right shall become effective upon registration of its establishment.
- (2) The establishment of a patent right shall be registered where maintenance fees for each year during the period from the first year to the third year under Section 107(1) have been paid or an exemption or deferment thereof has been granted.
- (3) Where the registration under the preceding subsection has been effected, the following matters shall be published in the Patent Gazette. Notwithstanding the foregoing, this provision shall not apply to the matters prescribed in Paragraph (v) where the patent application has already been published:
 - (i) the name, and the domicile or residence of the patentee(s);
 - (ii) the number and the filing date of the patent application;
 - (iii) the name, and the domicile or residence of the inventor(s);
 - (iv) the matters stated in the Description and Claims attached to the Request and the contents of the Drawings attached to the said Request;
 - (v) the matters stated in the Abstract attached to the Request;
 - (vi) the patent number and the date of registration of establishment; and
 - (vii) other necessary matters.
- (4) Section 64(3) shall apply mutatis mutandis where the matters stated in the abstract as provided in the preceding subsection Paragraph (v) are published in the Patent Gazette under the preceding subsection.

67. Term of patent rights

- (1) The term of a patent right shall expire after a period of 20 years from the filing date of the patent application.
- (2) Where there is a period during which the patented invention is unable to be worked due to approvals or any other disposition designated by Cabinet Order and prescribed by relevant laws that are intended to ensure the safety, etc., of the patented invention, requiring, in light of the purpose, procedures, etc., of such a disposition, considerable time for the proper execution of the disposition, the term of the patent right may be extended, upon the filing of a request for the registration of extension of the term, by a period not exceeding 5 years.

67-2. Registration of extension of term

- (1) A person(s) filing a request for the registration of extension of the term of a patent right shall submit a written petition to the Commissioner of the Patent Office stating the following:
 - (i) the name, and the domicile or residence of the applicant;
 - (ii) the patent number;
 - (iii) the period for which the extension is requested (not exceeding 5 years); and
 - (iv) the description of the disposition designated by Cabinet Order as provided in Section 67(2).

(2) The written petition under the preceding subsection shall be accompanied by materials specifying the reason(s) for the extension, as provided by an ordinance of the Ministry of Economy, Trade and Industry.

(3) The written petition requesting the registration of extension of the term of a patent right shall be filed within the time limit prescribed by the Cabinet Order after the disposition prescribed by the Cabinet Order under Section 67(2) is obtained. Notwithstanding the foregoing, the said written petition may not be filed after the expiration of the term of a patent right as provided in Section 67(1).

(4) Where a patent right is jointly owned, none of the joint owners may file a request for the registration of extension of the term of a patent right unless jointly with all the other joint owners.

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

(6) Where a request for the registration of extension of the term of a patent right is filed, matters stated in Subsection (1) and the number and the filing date of the application shall be published in the Patent Gazette.

67-2-2.

(1) Where the disposition designated by the Cabinet Order under Section 67(2) is unlikely to be obtained prior to 6 months before the expiration of the term of a patent right under Section 67(1), a person filing a request for the registration of extension of the term of a patent right shall submit to the Commissioner of the Patent Office, on or before the time limit, a document stating the following:

(i) the name, and domicile or residence of the person filing the request;

(ii) the patent number; and

(iii) the disposition designated by the Cabinet Order under Section 67(2).

(2) Unless the document required to be submitted under the preceding subparagraph is submitted, a request for the registration of extension of the term of a patent right may not be filed after 6 months before the expiration of the term of the patent right under Section 67(1).

(3) Where the document as provided in Subsection (1) is submitted, the matters prescribed in the said subsection shall be published in the Patent Gazette.

67-3.

(1) Where a request for the registration of extension of the term of a patent right falls under any of the following paragraphs, the examiner shall render the examiner's decision to the effect that the request is to be refused:

(i) where the disposition designated by the Cabinet Order under Section 67(2) is not deemed to have been necessary to obtain for the working of the patented invention;

(ii) where the patentee, the exclusive licensee(s) or registered non-exclusive licensee(s) of the patent have not obtained the disposition designated by the Cabinet Order under Section 67(2);

(iii) where the period for which the extension is requested exceeds the period during which the patented invention was unable to be worked;

(iv) where the person filing the request is not the patentee; and

(v) where the request does not meet the requirements under Section 67-2(4).

(2) Where no reasons for refusal are found for the request for the registration of extension of the term of a patent right, the examiner shall render an examiner's decision to the effect that the extension is to be registered.

(3) Where the examiner's decision or hearing decision to the effect that the extension of the term of the patent right is to be registered is rendered, the extension of the term of the patent right shall be registered.

(4) Where the registration under the preceding subsection is made, the following matters shall be published in the Patent Gazette:

- (i) the name and domicile or residence of the patentee;
- (ii) the patent number;
- (iii) the number and filing date of the request for the extension of the term of the patent right;
- (iv) the date of the registration of extension;
- (v) the period of extension; and
- (vi) the description of the disposition designated by an Cabinet Order under Section 67(2).

67-4.

Sections 47(1), 48, 51 and 52 shall apply mutatis mutandis to the examination of the request for registration of extension of the term of a patent right.

68. Effect of patent right

A patentee shall have the exclusive right to work the patented invention on a commercial basis. Notwithstanding the foregoing, where an exclusive license regarding the patent right is granted to a licensee, this provision shall not apply to the extent that the exclusive licensee is licensed to exclusively work the patented invention.

68-2. Effect of patent right in the case of term extension

Where the term of a patent right is extended (including the case where the term is deemed to have been extended under Section 67-2(5)), such patent right shall not be effective against any act other than the working of the patented invention for the product which constituted the reason for the registration of extension and was the subject of the disposition designated by Cabinet Order under Section 67(2) (where the specific purpose of use of the product is prescribed by the disposition, the product used for that purpose).

69. Limitations of patent right

(1) A patent right shall not be effective against the working of the patented invention for experimental or research purposes.

(2) A patent right shall not be effective against the following products:

- (i) vessels or aircrafts merely passing through Japan or machines, apparatus, equipment or other products used therefor; and
- (ii) products existing in Japan prior to the filing of the patent application.

(3) A patent right for the invention of a medicine (refers to a product used for the diagnosis, therapy, treatment or prevention of human diseases, hereinafter the same in this subsection) to be manufactured by mixing two or more medicines or for the invention of a process to manufacture a medicine by mixing two or more medicines shall not be effective against the act of preparation of a medicine as is written in a prescription from a physician or a dentist or the medicine prepared as is written in a prescription from a physician or a dentist.

70. Technical scope of patented invention

- (1) The technical scope of a patented invention shall be determined based upon the statements in the claims attached to the request.
- (2) In the case of the preceding subsection, the meaning of each term used in the claims shall be interpreted in consideration of the statements in the description and drawings attached to the request.
- (3) In the case of the preceding two subsections, statements in the abstract attached to the request shall not be taken into consideration.

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- (1) A request may be made to the Patent Office for its advisory opinion on the technical scope of a patented invention.
- (2) Where a request under the preceding subsection is made, the Commissioner of the Patent Office shall designate three judicial examiners to make an advisory opinion on the requested matter.
- (3) Sections 131(1), the principal sentence of 131-2(1), 132(1) and (2), 133, 133-2, 134(1), (3) and (4), 135, 136(1) and (2), 137(2), 138, 139 (excluding (vi)), 140 to 144, 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 advisory opinion under Subsection (1). In such a case, a "hearing decision" in Section 135 shall read "ruling", "hearing other than the hearing under the preceding subsection" in Section 145(2) shall read "hearing examination for advisory opinion", "where public order or morality is liable to be injured thereby" in the proviso to Section 145(5) shall read "where the presiding judicial examiner considers it necessary", "Section 147" in Section 151 shall read "Section 147(1) and (2)", "before a hearing decision becomes final and conclusive" in Section 155(1) shall read "before the certified copy of the written advisory opinion is served".
- (4) No appeal shall be available against a ruling under Section 135 to be applied mutatis mutandis in the preceding subsection.

71-2.

- (1) Where the Commissioner of the Patent Office is commissioned by the court for the provision of an expert opinion on the technical scope of a patented invention, the Commissioner of the Patent Office shall appoint three judicial examiners and direct them to provide an expert opinion on the requested matter.
- (2) Sections 36(1), 36(2), 137(2) and 138 shall apply mutatis mutandis to the commissioning of the provision of an expert opinion prescribed in the preceding subsection.

72. Related to patented inventions, etc., by others

Where a patented invention uses another person's patented invention, registered utility model, registered design or design similar thereto for which an application was filed prior to the date of filing of the said patent application, or where the patent right is in conflict with another person's design right or trademark right obtained based on an application filed prior to the date of filing of the said patent application, the patentee, exclusive licensee or non-exclusive licensees may not work the patented invention on a commercial basis.

73. Jointly owned patent rights

- (1) Where a patent right is jointly owned, no joint owner may assign or establish a right of pledge on the said joint owner's own share without the consent of all the other joint owners.
- (2) Where a patent right is jointly owned, unless otherwise agreed upon by contract, each of the joint owners of a patent right may work the patented invention without the consent of the other joint owners.

(3) Where a patent right is jointly owned, no joint owner may grant an exclusive license or non-exclusive license with regard to the patent right to any third party without the consent of all the other joint owners.

74. and 75. (Deleted)

76. Lapse of patent rights in absence of heir

A patent right shall lapse where no person claims the right as an heir within the time limit designated in Section 958 of the Civil Code.

77. Exclusive license

- (1) A patentee may grant an exclusive license on the patent right.
- (2) An exclusive licensee shall have an exclusive right to work the patented invention on a commercial basis to the extent permitted by the contract granting the license.
- (3) An exclusive license may be transferred only where the business involving the working of the relevant invention is also transferred, where the consent of the patentee is obtained or where the transfer occurs as a result of general succession including inheritance.
- (4) An exclusive licensee may establish a right of pledge or grant a non-exclusive license on his exclusive license to a third party only where the consent of the patentee is obtained.
- (5) Section 73 shall apply mutatis mutandis to exclusive licenses.

78. Non-exclusive license

- (1) A patentee may grant a non-exclusive license on the patent right to any third party.
- (2) A non-exclusive licensee shall have a right to commercially work the patented invention to the extent prescribed by this Law or permitted by the contract granting the license.

79. Non-exclusive license based on prior use

A person who, without knowledge of the content of an invention claimed in a patent application, made an invention identical to the said invention, or a person who, without knowledge of the content of an invention claimed in a patent application, learned the invention from a person who made an invention identical to the said invention and has been working the invention or preparing for the working of the invention in Japan at the time of the filing of the patent application, shall have a non-exclusive license on the patent right, only to the extent of the invention worked or prepared to be worked and for the purpose of such business.

80. Non-exclusive license due to the working of the invention prior to the registration of the petition for a hearing for patent invalidation

- (1) A person falling under any of the following paragraphs, and who is doing a business working an invention in Japan or preparing such business, before the registration of a petition for a hearing for patent invalidation, without knowledge that the patent falls under any of the paragraphs of Section 123(1), shall have a non-exclusive license regarding the invalidated patent right or the exclusive license existing at the time of the invalidation, within the scope of the invention that has been worked or prepared to be worked and within the scope of the purposes of the business:
 - (i) the original patentee in the case where one of two or more patents granted for the same invention has been invalidated;
 - (ii) the original patentee in the case where, after invalidating a patent for the same invention, a patent is granted to the person who is entitled to obtain a patent; and

(iii) in the case referred to in Paragraphs (i) and (ii), a person that, at the time of the registration of the petition for a hearing for patent invalidation, has an exclusive license regarding the patent right to be invalidated, or a non-exclusive license effective under Section 99(1) regarding the patent right or an exclusive license on the patent right.

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

81. Non-exclusive license after expiration of term of design right

Where a design right with regard to an application for a design registration filed on or before the date of filing of a patent application is in conflict with the patent right with regard to the patent application, the original design right holder shall, upon expiration of the term of the design right, have a non-exclusive license on the patent right or on the exclusive license actually existing at the time of expiration of the term of the design right, limited to the extent of the original design right.

82.

(1) Where a design right with regard to an application for a design registration filed on or before the date of filing of a patent application is in conflict with the patent right with regard to the patent application, a person who, at the time of expiration of the term of the design right, actually owns the exclusive license on the design right, or a non-exclusive license on the design right, or on the exclusive license having effect under Section 99(1) of the Patent Law as applied under Section 28(3) of the Design Law shall, upon expiration of the term of the design right, have a non-exclusive license on the patent right or on the exclusive license actually existing at the time of expiration of the term of the design right, limited to the extent of the original right.

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

83. Decision granting non-exclusive license where invention is not worked

(1) Where a patented invention is not sufficiently and continuously worked for 3 years or longer in Japan, a person intending to work the patented invention may request the patentee or the exclusive licensee to hold consultations to discuss granting a non-exclusive license. Notwithstanding the foregoing, this provision shall not apply unless 4 years have lapsed from the filing date of the patent application in which the patented invention was claimed.

(2) Where no agreement is reached by consultations or no consultations are able to be held as provided in the preceding subsection, the person intending to work the patented invention may request the Commissioner of the Patent Office for a ruling.

84. Submission of a written reply

Where a request for an ruling has been filed under Section 83(2), the Commissioner of the Patent Office shall serve a copy of the written petition to the patentee or exclusive licensee relating to the request, or any other person having a registered right relating to the patent, and give such a person an opportunity to submit a written reply, designating an adequate time limit.

85. Hearing of opinions of councils, etc.

(1) In rendering a ruling under Section 83(2), the Commissioner of the Patent Office shall hear the opinions of those prescribed by Cabinet Order, including councils, etc. (refer to organs prescribed in Section 8 of National Government Organization Law (Law No.120 of 1948)).

(2) Where there is a reasonable ground for failing to properly work the patented invention, the Commissioner of the Patent Office shall not render a ruling to the effect that a non-exclusive license is to be granted.

86. Formal requirements for ruling

- (1) The ruling under Section 83(2) shall be rendered in writing and state the grounds therefor.
- (2) The following matters shall be determined in a ruling to the effect that a non-exclusive license is to be granted:
 - (i) the scope of the non-exclusive license; and
 - (ii) the amount of consideration, and the method and time of payment thereof.

87. Service of certified copy of ruling

- (1) The Commissioner of the Patent Office shall, upon rendering a ruling under Section 83(2), serve a certified copy of the ruling to the parties and non-parties having registered rights relating to the patent.
- (2) Where a certified copy of a ruling to the effect that a non-exclusive license is to be granted is served to the parties under the preceding subsection, an agreement as prescribed in the ruling is deemed to have been reached between the parties.

88. Deposit of consideration

A person(s) required to pay consideration under Section 86(2)(ii) shall deposit the said consideration in the following cases:

- (i) where the person(s) entitled to the consideration refuses or is unable to receive such consideration;
- (ii) where an action with respect to the consideration is instituted under Section 183(1); or
- (iii) where a right of pledge is established on the patent right or the exclusive license. Notwithstanding the foregoing, this provision shall not apply where the consent of the pledgee is obtained.

89. Loss of effect of ruling

Where a person(s) who desires a non-exclusive license to be granted fails to pay or deposit consideration (or, where such consideration is to be paid periodically or by installments, the first installment thereof) within the time of payment determined in the ruling under Section 83(2), the ruling to the effect that a non-exclusive license is to be granted shall lose its effect.

90. Cancellation of ruling

- (1) After rendering a ruling to the effect that a non-exclusive license is to be granted under Section 83(2), where the enforcement of the ruling becomes inappropriate due to specific reason(s) including the case where the grounds for the ruling have ceased to exist, or where the person to whom the non-exclusive license was granted fails to properly work the patented invention, the Commissioner of the Patent Office may, upon request of an interested person or ex officio, cancel the ruling.
- (2) Sections 84, 85(1), 86(1) and 87(1) shall apply mutatis mutandis to the cancellation of rulings under the preceding subsection and Section 85(2) shall apply mutatis mutandis to the cancellation of rulings under the preceding subsection where the person to whom a non-exclusive license is granted fails to properly work the patented invention.

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A non-exclusive license shall lapse after the cancellation of the ruling under Section 90(1).

91-2. Restriction on grounds for objection to ruling

No objection under the Administrative Appeal Law (Law No.160 of 1962) to the ruling rendered under Section 83(2) may be raised on the ground that the consideration prescribed in the ruling is unsatisfactory.

92. Ruling granting non-exclusive license to work own patented invention

(1) Where a patented invention falls under any of the cases as provided in Section 72, the patentee or exclusive licensee may request the other person under the said section to hold consultations to discuss granting a non-exclusive license to work the patented invention or a non-exclusive license on the utility model right or the design right.

(2) The other person under Section 72 who is requested to hold consultations under the preceding subsection may request the patentee or exclusive licensee requesting such consultations to hold consultations to discuss granting a non-exclusive license to the extent of the patented invention desired to be worked by the patentee or exclusive licensee if a non-exclusive license on the patent right, the utility model right or the design right is granted to the patentee or exclusive licensee through consultations.

(3) Where no agreement is reached by consultations or no consultations are able to be held as provided in Subsection (1), the patentee or the exclusive licensee may request the Commissioner of the Patent Office for a ruling.

(4) Where no agreement is reached by consultations or no consultations are able to be held as provided in Subsection (2) and where a request for a ruling is filed under the preceding subsection, the other person under Section 72 may request the Commissioner of the Patent Office for a ruling only within the time limit for the submission of a written reply by the said other person designated by the Commissioner of the Patent Office under Section 84 as applied mutatis mutandis under Subsection (7).

(5) In the case of Subsection (3) or (4), the Commissioner of the Patent Office shall not render a ruling to the effect that a non-exclusive license is to be granted where the granting of the non-exclusive license will be unreasonably prejudicial to the other person under Section 72, the patentee or the exclusive licensee.

(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 a ruling ordering a non-exclusive license to be granted if a ruling ordering a non-exclusive license to be granted is not rendered with respect to the request for a ruling under Subsection (3).

(7) Sections 84, 85(1) and 86 through 91-2 shall apply mutatis mutandis to the ruling under Subsection (3) or (4).

93. Ruling granting non-exclusive license for public interest

(1) Where the working of a patented invention is particularly necessary for the public interest, a person(s) intending to work the patented invention may request the patentee or the exclusive licensee to hold consultations to discuss granting a non-exclusive license.

(2) Where no agreement is reached by consultations or no consultations are able to be held as provided in the preceding subsection, the person intending to work the patented invention may request the Minister of Economy, Trade and Industry for a ruling.

(3) Sections 84, 85(1) and 86 through 91-2 shall apply mutatis mutandis to the ruling under the preceding subsection.

94. Transfer, etc. of non-exclusive license

(1) Except for a non-exclusive license granted by a ruling under Section 83(2), 92(3), 92(4) or 93(2) of the Patent Act, Section 22(3) of the Utility Model Act or Section 33(3) of the Design Act, a non-exclusive license may be transferred only where the business involving the working of the relevant invention is also transferred, where the consent of the patentee (or, in the case of non-exclusive license on the exclusive license, the patentee and the exclusive licensee) is obtained or where the transfer occurs as a result of general succession such as inheritance and others.

(2) Except for a non-exclusive license granted by a ruling under Section 83(2), 92(3), 92(4) or 93(2) of the Patent Law, Section 22(3) of the Utility Model Law or Section 33(3) of the Design Law, a non-exclusive licensee may establish a right of pledge on the non-exclusive right only where the consent of the patentee (or, in the case of non-exclusive license on the exclusive license, the patentee and the exclusive licensee) is obtained.

(3) A non-exclusive license granted by a ruling under Section 83(2) or 93(2) may be transferred only where the business involving the working of the relevant invention is also transferred.

(4) Where a non-exclusive license is granted by a ruling under Section 92(3) of the Patent Act, Section 22(3) of the Utility Model Act or Section 33(3) of the Design Act, the said non-exclusive license shall be transferred together with each right of the non-exclusive licensee, and the business involving the working of the relevant invention in the case where each right is transferred together with the said business and shall be extinguished in the case where each right of the said non-exclusive licensee is extinguished or transferred independently of the business involving the working thereof.

(5) A non-exclusive license granted by a ruling under Section 92(4) shall be transferred together with the patent right, utility model right or design right of the non-exclusive licensee on which the non-exclusive license is granted and shall be extinguished in the case where the said patent right, utility model right or design right is extinguished.

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

95. Right of pledge

Unless otherwise agreed upon by contract, where a right of pledge is established on a patent right, exclusive license or non-exclusive license, the pledgee may not work the patented invention.

96.

A right of pledge on a patent right, exclusive license or non-exclusive license may be exercised against any consideration to be paid for the patent right, exclusive license or non-exclusive license or any money or goods to be received by the patentee or the exclusive licensee for the working of the patented invention. Notwithstanding the foregoing, the payment of money or delivery of goods may not be made without first obtaining an attachment order.

97. Abandonment of patent right, etc.

(1) Where there is an exclusive licensee, pledgee or non-exclusive licensee as provided in Section 35(1), 77(4) or 78(1), a patentee may abandon the patent right, only where the consent of the said exclusive licensee, pledgee or non-exclusive licensee is obtained.

(2) Where there is a pledgee or non-exclusive licensee as provided in Section 77(4), an exclusive licensee may abandon the exclusive license, only where the consent of the said pledgee or non-exclusive licensee is obtained.

(3) Where there is a pledgee, a non-exclusive licensee may abandon the non-exclusive license, only where the consent of the said pledgee is obtained.

98. Effect of registration

(1) The following matters must be registered to take effect.

(i) the transfer (except for a transfer arising from general succession such as inheritance and others), lapse due to abandonment and restriction on disposition of a patent right;

(ii) the grant, transfer (except for a transfer arising from general succession such as inheritance and others), amendment, lapse (except for a lapse arising from a merger or a lapse of the patent right) or restriction on disposition of an exclusive license;

(iii) the establishment, transfer (except for a transfer arising from general succession including inheritance), amendment, lapse (except for a lapse arising from a merger or extinguishment of credit secured thereby) or restriction on disposition of a right of pledge of a patent right or exclusive license.

(2) Matters of general succession including inheritance under the preceding subsection shall be notified to the Commissioner of the Patent Office without delay.

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(1) When a non-exclusive license is registered, the non-exclusive license shall have effect on the patentee, the exclusive licensee and any person who subsequently acquires the exclusive license on the patent right .

(2) A non-exclusive license under Section 35(1), 79, 80(1), 81, 82(1) or 176 shall have effect as provided in the preceding subsection without being registered.

(3) A transfer, modification, lapse, or restriction on disposition of a non-exclusive license or the establishment, transfer, amendment, lapse, or restriction on disposition of a right of pledge on a non-exclusive license shall have no effect on any third party unless registered.

Part 2 Infringement of rights

100. Right to seek injunction

(1) A patentee or exclusive licensee may demand a person who infringes or is likely to infringe the patent right or exclusive license to stop or prevent such infringement.

(2) In making a demand under the preceding subsection, the patentee or exclusive licensee may demand measures necessary for the prevention of such infringement including the disposal of products constituting such act of infringement (including, in the case of a patented invention of a process of manufacturing products, products produced by the act of infringement; the same shall apply in Section 102(1)) and the removal of facilities used for the act of infringement.

101. Acts Deemed to be acts of infringement

The following acts shall be deemed acts of infringement of a patent right or an exclusive license:

(i) where a patent has been granted for an invention of a product, acts of manufacturing, assigning, etc., importing or offering for assignment, etc. on a commercial basis any product to be used exclusively for the manufacturing of the said product;

(ii) where a patent has been granted for an invention of a product, acts of manufacturing, assigning, etc., importing or offering for assignment, etc. on a commercial basis any product (excluding those widely distributed within Japan) to be used for the manufacturing of the said product and indispensable for the resolution of the problem by the said invention, knowing that the said invention is a patented invention and the said product is used for the working of the invention;

(iii) where a patent has been granted for an invention of a process, acts of manufacturing, assigning, etc., importing or offering for assignment, etc. on a commercial basis any product to be used exclusively for the use of the said process; and

(iv) where a patent has been granted for an invention of a process, acts of manufacturing, assigning, etc., importing or offering for assignment, etc. on a commercial basis any product (excluding those widely distributed within Japan) to be used for the use of the said process and indispensable for the resolution of the problem by the said invention, knowing that the said invention is a patented invention and the said product is used for the working of the invention.

102. Presumption of Amount of Damage, etc.

(1) Where a patentee or an exclusive licensee claims against an infringer compensation for damage sustained as a result of the intentional or negligent infringement of the patent right or exclusive license, and the act of infringement consists of the assignment of articles, the amount of damage sustained by the patentee or the exclusive licensee may be presumed to be the amount of profit per unit of articles which would have been sold by the patentee or the exclusive licensee if there had been no such act of infringement, multiplied by the quantity of articles assigned by the infringer (hereinafter referred to in this subsection as the "Assigned Quantity"), the maximum of which shall be the amount attainable by the patentee or the exclusive licensee in light of the capability of the patentee or the exclusive licensee to work such articles. Notwithstanding the foregoing, if any circumstances exist under which the patentee or the exclusive licensee would have been unable to sell the Assigned Quantity in whole or in part, the amount calculated as the number of articles not able to be sold due to such circumstances shall be deducted.

(2) Where a patentee or an exclusive licensee claims against an infringer compensation for damage sustained as a result of the intentional or negligent infringement of the patent right or exclusive license, and the infringer earned profits from the act of infringement, the amount of profits earned by the infringer shall be presumed to be the amount of damage sustained by the patentee or exclusive licensee.

(3) A patentee or an exclusive licensee may claim against an infringer compensation for damage sustained as a result of the intentional or negligent infringement of the patent right or exclusive license, by regarding the amount the patentee or exclusive licensee would have been entitled to receive for the working of the patented invention as the amount of damage sustained.

(4) The preceding subsections shall not prevent any relevant party from claiming compensation for damage in an amount exceeding the amount provided for therein. In such a case, where the infringer committed the infringement of the patent right or exclusive license without intent or gross negligence, the court may take these circumstances into consideration in determining the amount of damages to be awarded.

103. Presumption of negligence

An infringer of a patent right or exclusive license of another person is presumed negligent in the commission of said act of infringement.

104. Presumption of (patented) manufacturing process

Where the invention of a process of manufacturing a product has been patented and the product was not publicly known in Japan prior to the filing of the patent application, a product identical with such product shall be presumed to have been manufactured by the patented process.

104-2. Obligation to clarify acts in concrete manner

In litigation concerning the infringement of a patent right or an exclusive license, in order to deny 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 adverse party shall clarify the the nature of its actions in a concrete manner. Notwithstanding the foregoing, this provision shall not apply where there exist reasonable grounds preventing the other party from so doing.

104-3. Restriction on exercise of rights of patentee, etc.

(1) Where, in litigation concerning the infringement of a patent right or an exclusive license, the said patent is recognized as one that should be invalidated by a hearing for patent invalidation, the rights of the patentee or exclusive licensee may not be exercised against the other party.

(2) Where the court considers that the materials used for a challenge or defense under the preceding subsection are submitted for the purpose of unreasonably delaying the trial, the court may, upon a motion or ex officio, render a ruling to the effect that the challenge or the defense is to be dismissed.

105. Production of documents, etc.

(1) In litigation concerning the infringement of a patent right or exclusive license, the court may, upon a motion of a party, order the other party to produce documents that are required to substantiate the said act of infringement or to calculate the damage arising from the said act of infringement. Notwithstanding the foregoing, this provision shall not apply where there are reasonable grounds for the person possessing the documents to refuse production of the said documents.

(2) Where the court considers it necessary for determining whether or not there are reasonable grounds as provided in the proviso to the preceding subsection, the court may cause the person possessing the documents to present such documents. In such a case, no person may request the disclosure of the documents presented.

(3) In the case of the preceding subsection, where the court considers it necessary to disclose the documents as provided in the latter sentence of the preceding subsection to make a decision concerning the existence of reasonable grounds as provided in the proviso to Subsection (1), the court may disclose the documents to the parties, etc. (the parties (or, in the case of legal entities, their representatives), their agents (excluding attorneys and guardians of quasi-incompetent persons), employees and other staff, hereinafter the same), attorneys or guardians of quasi-incompetent persons.

(4) The preceding three subsections shall apply mutatis mutandis to the presentation of the subject-matter of the inspection that is required to substantiate the act of infringement in litigation concerning the said act of infringement of a patent right or exclusive license.

105-2. Expert opinion for calculation of damages

In litigation concerning the infringement of a patent right or exclusive license, where, upon the motion of a party, the court orders that an expert opinion be obtained for the calculation of damage arising from the act of infringement, the other party shall explain to the expert witness the matters necessary for the expert witness's expert opinion.

105-3. Determination of reasonable damages

In litigation concerning the infringement of a patent right or exclusive license, where the court has determined that damage actually arose and where it is extremely difficult for the court, due to the nature of the facts, to substantiate the facts necessary to determine the amount of damage, the court may determine a reasonable amount of damage based on the gist of the entire oral proceedings and the result of the examination of evidence.

105-4. Order to keep confidentiality

(1) In litigation concerning the infringement of a patent right or exclusive license, where there is prima-facie evidence of the fact that trade secrets (refers to trade secrets as provided in Section 2(6) of the Unfair Competition Prevention Act (Act No.47 of 1993), hereinafter the same) possessed by a party satisfy all of the following paragraphs, the court may, upon a motion of the party, order by a ruling that the parties, etc., attorneys or guardians of quasi-incompetent persons shall neither use the trade secrets for any purpose other than those for the proceedings of the litigation nor disclose the trade secrets to any person other than those who receive the order regarding the trade secrets under this provision. Notwithstanding the foregoing, this provision shall not apply where the parties, etc., attorneys or guardians of quasi-incompetent persons have, prior to the filing of the motion, already obtained or been in the possession of the trade secrets by a method other than by reading of the preliminary pleadings under Paragraph (i) or through the examination or disclosure of evidence under the said paragraph.

(i) where the trade secrets possessed by the party were or are contained in the preliminary pleadings already submitted or to be submitted or such trade secrets were or are contained in the evidence already examined or to be examined (including documents disclosed under Section 105(3) and under Section 105-7(4)); and

(ii) where it is necessary to restrict the use or the disclosure of the trade secrets under the preceding paragraph to prevent any possible interference with the party's business activities based on the trade secrets, that might arise if the trade secrets are used for any purpose other than those for the proceedings of the litigation or if the said trade secrets are disclosed.

(2) A motion requesting the order under the preceding subsection (hereinafter referred to as a "confidentiality order") shall be made in writing specifying the following matters:

(i) the person(s) to whom the confidentiality order is to be issued;

(ii) the facts that clearly identify the trade secrets to be protected by the confidentiality order; and

(iii) the facts corresponding to the reasons each of the paragraphs in the preceding subsection is applicable.

(3) Where the confidentiality order is issued, a written ruling thereof shall be served to the person(s) to whom the confidentiality order is issued.

(4) The confidentiality order shall take effect as of the date the written ruling is served to the person(s) to whom the confidentiality order is issued.

(5) The decision dismissing a motion requesting the confidentiality order shall be subject to immediate Kokoku-appeal.

105-5. Revocation of confidentiality order

(1) A person(s) who has filed a motion requesting a confidentiality order or to whom a confidentiality order is issued may file a motion with the court where the trial record is maintained (or, in the case of no such court maintaining the trial record, the court issuing the confidentiality order), requesting the revocation of the confidentiality order on the ground that the requirements as provided in Section 105-4(1) are not met or are no longer met.

(2) Where a decision on a motion requesting the revocation of a confidentiality order is rendered, a written ruling thereof shall be served to the person who filed the motion and the other party in the case.

(3) The decision on a motion requesting the revocation of a confidentiality order shall be subject to immediate Kokoku-appeal.

(4) A decision to the effect that a confidentiality order is to be revoked shall have no effect unless the decision becomes final and conclusive.

(5) Where a decision to the effect that a confidentiality order is to be revoked is rendered, the court shall immediately notify the person(s) who, in the litigation in which the said confidentiality order was issued, received the confidentiality order relating to the trade secrets who are neither the person filing the motion requesting the revocation of the confidentiality order nor the other party, if any, of the fact that the decision to the effect that the confidentiality order is to be revoked was rendered.

105-6. Notification of petition requesting inspection of trial record, etc

(1) Where a ruling under Section 92(1) of the Code of Civil Procedure was rendered concerning the trial record of litigation in which a confidentiality order was issued (excluding litigation in which all confidentiality orders have been revoked), where a person who is not a party to whom the confidentiality order was issued in the litigation requests inspection etc. under the said section to a part of the trial record in which the confidential information is contained, etc., immediately after the filing of the petition, the court clerk shall notify the party who filed the motion (restricting access to the trial record) under the said section (excluding the person who filed the petition, the same in Subsection (3)) of the fact that the said petition has been filed.

(2) In the case of the preceding subsection, the court clerk shall not allow the person who filed the petition to inspect the part in which confidential information is contained under the said subsection before a lapse of two weeks from the date of filing of the petition under the said subsection (or, where a motion requesting a confidentiality order is filed prior to the day in which two weeks have lapsed, against the person who filed the petition, before the decision on the motion becomes final and conclusive).

(3) The preceding two subsections shall not apply where the consent is obtained of all the parties who filed a motion under Section 92(1) of the Code of Civil Procedure, allowing the person who filed a petition under Subsection (1) to inspect the part in which confidential information is contained.

105-7. Ban on open examination of parties, etc.

(1) Where a party, etc., to litigation concerning the infringement of a patent right or exclusive license is to be examined as a party to the litigation, as its legal representative or as a witness, with regard to matters that will be a basis for the determination of the existence or non-existence of the said infringement, and such matters are deemed to be trade secrets possessed by a party, the court may, by a ruling, elect to hold closed examinations of such matters where the court, upon the unanimous consent of all judges, considers that the parties, etc. will be unable to make sufficient statements regarding the matters due to the obvious fact that making statements regarding the matters at an open examination will significantly interfere with the business activities of the party based on such trade secrets and that, without such statements, a proper decision on the fact of the existence or non-existence of the infringement of a patent right or exclusive license that ought to be made based on the said matters may not be made based solely on other evidence.

(2) The court shall, in rendering the ruling as provided in the preceding subsection, hear the opinions of the parties, etc. in advance.

(3) In the case of the preceding subsection, where necessary, the court may cause the parties, etc., to present a document stating the gist of the matters to be stated. In such a case, no person may request the disclosure of the document presented.

(4) Where the court considers it necessary to hear opinions by disclosing the document as provided in the latter sentence of the preceding subsection, the court may disclose the document to the parties, etc., their attorneys or guardians of quasi-incompetent persons.

(5) Where the examination on certain matters is to be closed under Subsection (1), the court shall declare such fact and reasons therefor prior to requiring the public to leave the court. Upon completion of the examination on said matters, the court shall allow the public to re-enter the court.

106. Measures to restore credibility

The court may, upon the petition of a patentee or exclusive licensee, order the person(s) who harmed the business credibility of the patentee or exclusive licensee by intentionally or negligently infringing upon the patent right or exclusive license to take measures necessary to restore the business credibility of the patentee or exclusive licensee in lieu of or in addition to compensation for damages.

Part 3 Maintenance Fees

107. Maintenance fees

(1) A person obtaining the registration establishing a patent right, or a patentee, shall pay as maintenance 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 patent registration and for each year from the date of the registration establishing the patent right to the expiration of the term as provided in Section 67(1), (and, where the said term is extended by virtue of Section 67(2), for such additional period):

Period within term	Amount
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 rights belonging to the State.

(3) Notwithstanding the provisions of Subsection (1), where a patent right is jointly owned by persons including the State and/or a juridical person entitled to receive a reduction of the maintenance fees or exemption therefrom under Section 109 or the provisions of any other laws or ordinances (hereinafter referred to as a "Reduction/Exemption" in this subsection), and the portion of their respective shares of said patent right has been agreed, the maintenance fees payable under Subsection (1) shall be determined as the sum of the amounts calculated for each person other than the State jointly owning the patent right by multiplying the applicable maintenance fees as provided in Subsection (1) (in the case of a person receiving a Reduction/Exemption, the amount after said Reduction/Exemption) by the ratio of the share of each person other than the State jointly owning the patent right, and, the persons or juridical persons other than the State shall pay such sum.

(4) For the amount of maintenance fees calculated under the preceding subsection, fractional figures of less than ten yen shall be discarded.

(5) The payment of maintenance fees under Subsection (1) shall be made by patent revenue stamps as provided by an ordinance of the Ministry of Economy, Trade and Industry. Notwithstanding the foregoing, where so provided by an ordinance of the Ministry of Economy, Trade and Industry, a cash payment thereof shall be accepted.

108. Time limit for payment of maintenance fees

(1) The maintenance fees for each year from the first to the third year under Section 107(1) shall be paid in a lump sum within 30 days from the date on which a certified copy of the examiner's decision or the hearing decision to the effect that the patent is to be granted has been served.

(2) The maintenance fees for each year from the fourth and subsequent years under Section 107(1) shall be paid by the end of the previous year. Notwithstanding the foregoing, where the date on which a certified copy of the examiner's decision or the hearing decision to the effect that the extension of the term of the patent right is to be registered is served (hereinafter referred to in this subsection as the "certified copy service date") is on or after the thirtieth day before the end of the year in which the term of the patent right would have expired if the said extension of term had not been registered, the maintenance fees for each year from the year following that year to the year in which the certified copy service date falls (or, in the case where a period from the certified copy service date to the last day of the year in which the certified copy service date falls is shorter than 30 days, the year following the year in which the certified copy service date falls) shall be paid in a lump sum within 30 days after the certified copy service date.

(3) The Commissioner of the Patent Office may, upon a petition by a person by whom the maintenance fees are to be paid, extend the time limit under Subsection (1) by a period not exceeding 30 days.

109. Reduction, exemption or deferment of maintenance fees

(1) Where a person who meets the requirements of the Cabinet Order to be recognized as a person with insufficient funds is recognized by the Commissioner of the Patent Office as falling under any of the following paragraphs, and has difficulties paying the maintenance fees, the Commissioner of the Patent Office may, pursuant to the provisions of the Cabinet Order, grant the person a reduction of, exemption from or deferment of the payment of the maintenance fees for each year from the first to the third year under Section 107(1).

(i) the inventor of the patented invention or the inventor's heir;

(ii) the employer, etc., who has succeeded the right to obtain a patent from the employee, etc., where the patented invention is an invention by the employee, etc., under Section 35(1) and there exists any provision of any contract, employment rules or any other stipulations providing in advance that the employer, etc. shall succeed the right to obtain a patent.

110. Payment of maintenance fees by interested persons

(1) An interested person may pay the maintenance fees even against the will of the person by whom the maintenance fees are to be paid.

(2) The interested person who has paid the maintenance fees under the preceding subsection may request the reimbursement of the expenses arising therefrom to the extent of the actual benefit obtained by the person by whom the maintenance fees were to be paid.

111. Refund of maintenance fees

(1) The following maintenance fees shall be refunded upon the petition of the person that paid them:

(i) maintenance fees paid in error or in excess;

(ii) maintenance fees for each year following the year in which a hearing decision to the effect that the patent is to be invalidated has become final and conclusive; and

(iii) maintenance fees for the year following the year in which a hearing decision to the effect that the registration of extension of the term of a patent right is to be invalidated became final and conclusive, and subsequent years (limited to those for the year following the year in which the term of a patent right would have expired if the said extension of term had not been registered, and subsequent years).

(2) A petition for refund of maintenance fees under the preceding subsection may not be filed after one year from the date of payment in the case of maintenance fees under Paragraph (i) above, or after six months from the date on which a hearing decision became final and conclusive in the case of maintenance fees under Paragraphs (ii) and (iii) above.

112. Late payment of maintenance fees

(1) Where a patentee is unable to pay the maintenance fees within the time limit under Section 108(2) or the time limit for deferred payment under Section 109, the patentee may make a late payment of the maintenance fees after the expiration of the said time limit, but not later than 6 months following the expiration of the said time limit.

(2) The patentee who makes a late payment of the maintenance fees under the preceding subsection shall pay, in addition to the maintenance fees to be paid under Section 107(1), a surcharge in the same amount as the maintenance fees.

(3) The payment of the surcharge under the preceding subsection shall be made by patent revenue stamps as provided by an ordinance of the Ministry of Economy, Trade and Industry. Notwithstanding the foregoing, where so provided by an ordinance of the Ministry of Economy, Trade and Industry, a cash payment thereof shall be accepted.

(4) Where a patentee fails to pay, within the time limit for late payment of the maintenance fees under Subsection (1), the maintenance fees that were due and payable within the time limit as provided in the principal sentence of Section 108(2) and the surcharge under Subsection (2), the patent right shall be deemed to have been extinguished retroactively upon expiration of the time limit as provided in the principal sentence of Section 108(2).

(5) Where a patentee fails to pay, within the time limit for late payment of the maintenance fees under Subsection (1), the maintenance fees as provided in the proviso to Section 108(2) and the surcharge under Subsection (2), the patent right shall be deemed to have been extinguished retroactively upon the lapse of the year in which the term of the patent right would have expired if the said extension of the term had not been registered.

(6) Where a patentee fails to pay, within the time limit for late payment of the maintenance fees under Subsection (1), the maintenance fees for which the deferment was granted under Section 109 and the surcharge under Subsection (2), the patent right shall be deemed never to have existed.

112-2. Restoration of patent right by late payment of maintenance fees

(1) Where the original patentee of the patent right which was deemed to have been extinguished under Section 112(4) or 112(5), or which was deemed never to have existed under Section 112(6), was unable to pay the maintenance fees and the surcharge under Sections 112(4) to 112(6) within the time limit for late payment of the maintenance fees under Section 112(1), due to reasons not attributable to the original patentee, the original patentee may make a late payment of the maintenance fees and the surcharge within 14 days (where resident abroad, within two months) from the date on which the reasons ceased to exist, but not later than six months following the expiration of the said time limit.

(2) Where the maintenance fees and the surcharge are paid under the preceding subsection, the patent right shall be deemed to have been maintained retroactively from the time of expiration of the time limit as provided 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.

112-3. Restriction on effect of restored patent right

(1) Where a patent right has been restored under Subsection (2) of the preceding section, where the patent has been granted for the invention of a product, such patent right shall not be effective against the product which was imported into, produced or acquired within Japan after the lapse of the time limit during which the late payment of the maintenance fees is allowed under Section 112(1) but before the registration of the restoration of the patent right.

(2) A restored patent right under Subsection (2) of the preceding section shall not be effective against the following acts conducted after the lapse of the time limit during which the late payment of the maintenance fees is allowed under Section 112(1) but before the registration of the restoration of the patent right:

- (i) the working of the said invention;
- (ii) where a patent has been granted for an invention of a product, manufacturing, assigning, etc., importing or offering for assignment, etc. of any product to be used for manufacturing of the said product; and
- (iii) where a patent has been granted for an invention of a process, manufacturing, assigning, etc., importing or offering for assignment, etc. of any product to be used for the use of the said process.

Chapter V (Deleted)

113. through 120. (Deleted)

Chapter VI Hearings

121. Hearing against examiner's decision of refusal

- (1) A person who has received an examiner's decision to the effect that an application is to be refused and is dissatisfied may file a petition for a hearing against the examiner's decision of refusal within 30 days from the date the certified copy of the examiner's decision has been served.
- (2) Where, due to reasons beyond the control of the person, said person is unable to file a petition for a hearing against the examiner's decision of refusal within the time limit as provided in the preceding subsection, said person may, notwithstanding said subsection, file the petition within 14 days (where 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.

122. (Deleted)

123. Hearing for patent invalidation

- (1) Where a patent falls under any of the following, a petition for a hearing for patent invalidation may be filed. In the event of two or more claims, a petition for a hearing for patent invalidation may be filed for each claim.
 - (i) where the patent has been granted on a patent application (excluding a Foreign Language Document Application) with an amendment that does not comply with the requirements as provided in Section 17bis(3);
 - (ii) where the patent has been granted in violation of Sections 25, 29, 29bis, 32, 38 or 39(1) to 39(4);
 - (iii) where the patent has been granted in violation of a treaty;
 - (iv) where the patent has been granted on a patent application not complying with the requirements as provided in Section 36(4)(i) or 36(6) (excluding 36(6)(iv));
 - (v) where matters stated in the description, claims or drawings attached to the request in a Foreign Language Document Application are not within the scope of matters stated in the Foreign Language Document;
 - (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 said invention;
 - (vii) where, after the grant of a patent, the patentee has become unable to hold a patent right under Section 25, or the patent has become in violation of a treaty; and
 - (viii) where the correction of the description, scope of claims or drawings attached to the request for the patent has been obtained in violation of the proviso to Section 126(1), Section 126(3) to (5) (including its application mutatis mutandis under Section 134-2(5)) or the proviso to Section 134-2(1).

(2) Any person may file a petition for a hearing for patent invalidation. Notwithstanding the foregoing, where a petition for a hearing for patent invalidation is filed on the ground that the patent falls under Paragraph (ii) of the preceding subsection (limited to cases where the patent is obtained in violation of Section 38) or Paragraph (vi) of the preceding subsection, only an interested person may file a petition for a hearing for patent invalidation.

(3) A petition for a hearing for patent invalidation may be filed even after the lapse of the patent right.

(4) Where a petition for a hearing for patent invalidation has been filed, the presiding judicial examiner shall notify the exclusive licensee of the patent right and other persons who have any registered rights relating to the patent.

124. (Deleted)

125.

Where a hearing decision to the effect that a patent is to be invalidated has become final and conclusive, the patent right shall be deemed never to have existed. Notwithstanding the foregoing, where a patent falls under Section 123(1)(vii) and where a hearing decision to the effect that the patent is to be invalidated has become final and conclusive, the patent shall be deemed not to have existed from the time the said paragraph first became applicable to the patent.

125-2. Hearing for invalidation of a registration of extension of term

(1) A petition for a hearing for invalidation of the registration of extension of term of a patent right may be filed if the registration falls under any of the following:

(i) where the registration of extension has been made for an application filed where the disposition as provided in the Cabinet Order under Section 67(2) for the working of the patented invention is not deemed to have been required;

(ii) where the registration of extension has been made for an application filed where the patentee or an exclusive licensee or a registered non-exclusive licensee of the patent did not receive the disposition as provided in the Cabinet Order under Section 67(2);

(iii) where the term extended by the registration of extension exceeds the period during which the patented invention could be worked;

(iv) where the registration of extension has been made upon an application filed by a person who is not the said patentee; and

(v) where the registration of extension has been made upon an application not complying with the requirements as provided in Section 67-2(iv).

(2) Sections 123(3) and (4) shall apply mutatis mutandis to a petition for a hearing for invalidation of the registration of extension of term.

(3) Where a hearing decision to the effect that the registration of extension is to be invalidated has become final and conclusive, the extension of the term by the said registration of extension shall be deemed never to have been made. Notwithstanding the foregoing, where the registration of extension falls under Subsection (1)(iii) and a hearing decision to the effect that the registration of extension for the term exceeding the period during which the patented invention could be worked is to be invalidated has become final and conclusive, the extension for the said excess period shall be deemed not to have been made.

126. Hearing for correction

(1) The patentee may file a petition for a hearing for correction with regard to the correction of the description, scope of claims or drawings attached to the request. Notwithstanding the foregoing, such correction shall be limited to the following:

- (i) restriction of the scope of claims;
- (ii) correction of errors or incorrect translations; and
- (iii) clarification of an ambiguous statement.

(2) A petition for a hearing for correction may not be filed from the time the relevant hearing for patent invalidation has become pending before the Patent Office to the time the hearing decision has become final and conclusive. Notwithstanding the foregoing, this provision shall not apply to a petition for a hearing for correction filed within 90 days from the day an action against the hearing decision in the hearing for patent invalidation is instituted (in the case of the judgment annulling the hearing decision under Section 181(1) or a ruling annulling the hearing decision under Section 181(2) concerning the case, the period after the judgment or the ruling has become final and conclusive shall be excluded).

(3) The correction of the description, claims or drawings under Subsection (1) above shall remain within the scope of the features disclosed in the description, claims, or drawings attached to the request [in the case of correction for the purposes -provided in Paragraph (ii) of the proviso to Subsection (1), the description, claims and drawings originally attached to the request (in the case of a patent with regard to a foreign document application, the foreign document)].

(4) The correction of the description, claims or drawings under Subsection (1) shall not substantially enlarge or alter the scope of claims.

(5) In the case of correction for any of the purposes as provided in Paragraph (i) or (ii) of the proviso to Subsection (1), an invention constituted by the features described in the corrected claim must be one which could have been patented independently at the time of filing of the patent application.

(6) A petition for a hearing for correction may be filed even after the lapse of the patent right. Notwithstanding the foregoing, this provision shall not apply after the patent has been invalidated in a hearing for patent invalidation.

127.

Where there is a non-exclusive licensee under Section 35(1), 77(4) or 78(1), an exclusive licensee, or a pledgee, the patentee may file a petition for a hearing for correction only with the consent of the said person.

128.

Where a hearing decision to the effect that the description, claims or drawings attached to the request is to be corrected, has become final and conclusive, the filing of the patent application, the publication of the patent application, the examiner's decision or the hearing decision to the effect that the patent is to be granted, or the registration of the establishment of the patent right, shall be deemed to have been made based on the corrected description, claims or drawings.

129. and 130. (Deleted)

131. Formal requirements of petition for hearing

(1) A person filing a petition for a hearing shall submit a written petition to the Commissioner of the Patent Office stating the following:

- (i) the name, and the domicile or residence of the party or parties concerned and the representative thereof;
- (ii) the identification of the hearing case; and
- (iii) the gist and grounds of the petition.

(2) When a petition for a hearing for patent invalidation is filed, the facts on which the invalidation of the patent is based shall be specified in concrete terms, and the relationship of each fact that is required to be substantiated with the relevant evidence shall be stated in the grounds for the petition as provided in Paragraph (iii) of the preceding subsection.

(3) Where a petition for a hearing for correction is filed, the corrected description, claims or drawings shall be attached to the petition.

131-2. Amendment of petition for hearing

(1) An amendment of the petition filed under Subsection (1) of the preceding section shall not change the gist thereof. Notwithstanding the foregoing, this provision shall not apply where the said amendment is made with respect to the grounds for the petition as provided in Subsection (1) Paragraph (iii) of the preceding section in the course of filing a petition for a hearing other than a hearing for patent invalidation, or in the event that approval is granted by the presiding judicial examiner under the following subsection.

(2) In the course of filing a petition for a hearing for patent invalidation, where an amendment of the grounds for the petition as provided in Subsection (1), Paragraph (iii) of the preceding section changes the gist thereof, the presiding judicial examiner may make a ruling approving such amendment if the presiding judicial examiner recognizes that there is no possibility of unreasonable delay of the hearing by such amendment and any of the following facts exists:

(i) a petition for correction under Section 134-2(1) has been filed in the said hearing for patent invalidation and such petition for correction has given rise to a need for amendment of the grounds for the petition; and

(ii) other than the case as provided in the preceding paragraph there exist reasonable grounds for not stating the grounds for the petition with regard to the amendment of the petition at the time the petition for a hearing was filed, and the respondent has agreed to such amendment.

(3) The approval of the amendment as provided in the preceding subsection may not be granted if the amendment of proceedings with regard to the said amendment is submitted prior to the service of a copy of the petition under Section 134(1).

(4) No appeal shall be available from a ruling under Subsection (2).

132. Joint hearing

(1) Where two or more persons file a petition for a hearing for patent invalidation or a hearing for invalidation of the registration of extension of term concerning the same patent right, the petition may be filed jointly.

(2) Where a petition for a hearing is filed against patentees jointly owning a patent right, the respondents in the said petition shall be all the joint owners of the said patent right.

(3) Where a petition for a hearing is filed by a joint owner or owners of a patent right or a right to obtain a patent, with regard to the right under joint ownership, all of the said joint owners shall jointly file the petition.

(4) Where there is a ground for suspension or termination of hearing procedures on any of the petitioners of a petition for a hearing under Subsection (1) or (3) or any of the respondents of a petition for a hearing under Subsection (2), the said suspension or termination shall have effect on all of the petitioners or respondents.

133. Dismissal by ruling in the case of non-compliance with formal requirements

(1) Where a written petition does not comply with Section 131, the presiding judicial examiner shall order the petitioner to amend the written petition, designating an adequate time limit.

(2) Excluding the case as provided in the preceding subsection, the presiding judicial examiner may order the petitioner to amend a procedure relating to the hearing, designating an adequate time limit, in any of the following cases:

- (i) where the procedure does not comply with Sections 7(1) to (3) or Section 9;
 - (ii) where the procedure does not comply with formal requirements as provided in this Law or an order thereunder; and
 - (iii) where the fees for a procedure payable under Sections 195(1) or (2) have not been paid;
- (3) The presiding judicial examiner may dismiss the procedure by a ruling where a person ordered to make an amendment to a procedure relating to a hearing fails to make such amendment within the time limit designated under the preceding two subsections or where such amendment is made in violation of Section 131bis(1).
- (4) The ruling under the preceding subsection shall be made in writing and state the grounds thereof.

133-2. Dismissal of inadequate procedures

- (1) In the procedures relating to a hearing case (excluding a petition for a hearing), the presiding judicial examiner may, by a ruling, dismiss procedures that are inadequate and not amendable.
- (2) Where the presiding judicial examiner intends to dismiss a procedure under the preceding subsection, he shall notify the person who undertook the procedures of the reasons therefor, and give the said person an opportunity to submit a statement of explanation, designating an adequate time limit.
- (3) The ruling under this Subsection (1) shall be in writing and state the grounds therefor.

134. Submission of a written reply, etc.

- (1) Where a petition for a hearing has been filed, the presiding judicial examiner shall serve a copy of the written petition to the respondent and give the respondent an opportunity to submit a written reply, designating an adequate time limit.
- (2) When the presiding judicial examiner approves the correction of the petition under Section 131-2(2), the presiding judicial examiner shall serve a copy of the statement of the amendment of proceedings with regard to such amendment to the respondent, and shall give the respondent an opportunity to submit a written reply, designating an adequate time limit. Notwithstanding the foregoing, this provision shall not apply where special circumstances exist under which it is recognized that giving an opportunity to the respondent to submit a written reply is not required.
- (3) Upon receipt thereof, the presiding judicial examiner shall serve to the petitioner a copy of the written reply under Subsection (1) or the principal sentence of the preceding subsection.
- (4) The presiding judicial examiner may question the parties concerned and the interveners with regard to the hearing.

134-2. Petition for correction in a hearing for patent invalidation

- (1) The respondent in a hearing for patent invalidation may file a petition for a correction of the description, scope of claims or drawing(s) attached to the request only within the time limit designated in accordance with Subsection (1) or (2) of the preceding section, Subsection (1) or (2) of the following section or Section 153(2). Notwithstanding the foregoing, such correction shall be limited to the following purposes:
- (i) restriction of the scope of claims;
 - (ii) correction of errors in the description or of incorrect translations; and
 - (iii) clarification of an ambiguous description.

(2) Upon receipt thereof, the presiding judicial examiner shall serve to the petitioner a copy of the petition for correction as well as the corrected description, claims or drawings attached to the petition under the preceding subsection.

(3) The judicial examiner may examine grounds that have not been pleaded by a the party in the case or an intervener in determining whether the petition for correction under Subsection (1) is not for any of the purposes provided in the paragraphs of the proviso to the said subsection, or matters not provided in Sections 126(3) to (5) that shall be applied mutatis mutandis upon reading the specified terms in accordance with Subsection (5). In such a case, where the judicial examiner does not approve of the petition for correction on the above grounds where the petition for correction on the above grounds is not approved of, the presiding judicial examiner shall notify the parties in the case and the intervenors of the result of the hearing and shall give them an opportunity to state their opinions, designating an adequate time limit.

(4) Where a petition for correction under Subsection (1) is made, if another petition for correction has been previously made in the said hearing, such previous petition shall be deemed to have been withdrawn.

(5) Sections 126(3) to (6), 127, 128, 131(1) and (3), 131-2(1) and 132(3) and (4) shall apply mutatis mutandis to the case of Subsection (1). In such a case, "Paragraph (i) or (ii) of the proviso to Subsection (1)" in Section 126(5) shall read "Paragraph (i) or (ii) of the proviso to Subsection (1) relating to a claim or claims for which a petition for a hearing for patent invalidation is not filed."

134-3. Petition for correction where annulment judgment, etc. is rendered

(1) Where a judgment annulling a hearing decision in a hearing for patent invalidation (limited to a hearing decision concluding that the petition for a hearing is groundless) has been annulled under Section 181(1) and has become final and conclusive, and following which a hearing is initiated under Subsection (5) of the said Section, the presiding judicial examiner may designate to the respondent an adequate time limit for filing a petition for correction of the description, scope of claim(s) or drawing(s) attached to the request, only if such motion is made by the respondent within one week from the date such decision became final and conclusive.

(2) Where a ruling annulling a hearing decision under Section 181(2) has become final and conclusive, and following which a hearing is initiated under Subsection (5) of the said Section, the presiding judicial examiner shall designate to the respondent an adequate time limit for filing a petition for correction of the description, claim(s) or drawing(s) attached to the request. Notwithstanding the foregoing, this provision shall not apply where a hearing decision in a hearing for correction with regard to with respect to the said case filed within the time limit as provided in the proviso to Section 126(2) has become final and conclusive at the time of the initiation of the hearing.

(3) Where a petition for a hearing for correction is filed within the time limit as provided in the proviso to Section 126(2) and a petition for correction under Subsection (1) of the preceding section is filed within the time limit designated in accordance with the preceding two subsections, the respondent in a hearing for patent invalidation may quote the description, claims or drawings attached to the petition for the hearing for correction.

(4) Where a petition for a hearing for correction is filed within the time limit as provided in the proviso to Section 126(2) and a petition for correction under Subsection (1) of the preceding section is filed within the time limit designated in accordance with Subsection (1) or (2), the petition for a hearing for correction shall be deemed to have been withdrawn. Notwithstanding the foregoing, this provision shall not apply where a hearing decision in such hearing for correction has become final and conclusive at the time of the petition for correction.

(5) Where a petition for a hearing for correction is filed within the time limit as provided in the proviso to Section 126(2) and a petition for correction under Subsection (1) of the preceding section is not filed within the time limit designated in accordance with Subsection (1) or (2) of this Section, a petition for correction under Subsection (1) of the said Section quoting the corrected description, scope of claims or drawings attached to the petition for a hearing for correction in accordance with Subsection (3) of this section shall be deemed to have been filed at the end of such time limit. Notwithstanding the foregoing, this provision shall not apply where a decision in such hearing for correction has become final and conclusive at the end of such time limit.

135. Dismissal of inadequate petition for hearing by hearing decision

An inadequate petition for a hearing, that is not amendable, may be dismissed by a hearing decision without giving the respondent an opportunity to submit a statement of explanation.

136. Judicial hearing system

- (1) A hearing shall be conducted by a judicial panel consisting of three or five judicial examiners.
- (2) A decision of the judicial panel under the preceding subsection shall be made by a majority vote.
- (3) Qualifications of judicial examiners shall be as provided by Cabinet Order.

137. Designation of judicial examiners

- (1) The Commissioner of the Patent Office shall designate the judicial examiners constituting a judicial panel under Section 136(1) for each hearing (for a hearing that is to be examined by an examiner under Section 162, limited to the case where a report is submitted under Section 164(3)).
- (2) Where any of the judicial examiners designated under the preceding subsection is unable to participate in the hearing, the Commissioner of the Patent Office shall terminate the designation and appoint another judicial examiner to fill the vacancy.

138. Presiding judicial examiner

- (1) The Commissioner of the Patent Office shall designate one of the judicial examiners designated under Section 137(1) as the presiding judicial examiner.
- (2) The presiding judicial examiner shall preside over matters relating to the hearing.

139. Exclusion of judicial examiners

A judicial examiner shall be excluded from performing his/her duties in any of the following cases:

- (i) where the judicial examiner or his/her spouse or former spouse is or was a party in the case or an intervener in the case;
- (ii) where the judicial examiner is or was a relative by blood within the fourth degree, a relative by affinity within the third degree or a cohabiting relative (as defined in the Civil Code of Japan) of a party in the case or an intervener in the case;
- (iii) where the judicial examiner is a guardian, a supervisor of a guardian, a guardian of a quasi-incompetent person, a supervisor of the guardian of quasi-incompetent person, an assistant or a supervisor of the assistant of a party in the case or an intervener in the case;
- (iv) where the judicial examiner has become a witness or an expert witness in the case;
- (v) where the judicial examiner is or was a representative of a party in the case or an intervener in the case;
- (vi) where the judicial examiner was involved in the procedures relating to the examiner's decision as the examiner who is being appealed in the case; and
- (vii) where the judicial examiner has a direct interest in the case.

140.

Where there exists any ground for exclusion under Section 139, a party or an intervener may file a motion requesting the exclusion.

141. Challenges to judicial examiner

(1) Where there exists any circumstances of a judicial examiner that might hinder fair proceedings of the hearing, a party or an intervener may challenge the judicial examiner.

(2) A party or an intervener may not challenge a judicial examiner after making a written or oral statement to the judicial examiner with regard to the case. Notwithstanding the foregoing, this provision shall not apply where the party or the intervener was not aware of the ground of the challenge or the ground of the challenge occurred after making such statement.

142. Formal requirements for a motion requesting exclusion or challenge

(1) A person filing a motion requesting an exclusion or challenge shall submit a document to the Commissioner of the Patent Office stating the grounds therefor. Notwithstanding the foregoing, in the case of an oral hearing examination such request may be made orally.

(2) The grounds for the exclusion or challenge shall be substantiated within 3 days from the date the motion under the preceding subsection has been filed. The same shall apply to the facts prescribed in Section 141(2).

143. Ruling on motion requesting exclusion or challenge

(1) Where a motion requesting an exclusion or challenge has been filed, judicial examiners who are not the judicial examiner named in the motion shall render a ruling thereon through a hearing. Notwithstanding the foregoing, the judicial examiner named in the motion may present his opinion.

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

(3) The ruling under Subsection (1) shall not be subject to appeal.

144.

Where a motion requesting an exclusion or challenge has been filed, the hearing procedures shall be suspended until a ruling on the motion is rendered. Notwithstanding the foregoing, this provision shall not apply to the case requiring urgent action.

144-2. Hearing Clerk

(1) The Commissioner of the Patent Office shall designate the hearing clerk for each hearing case (in the case of a hearing case for which a petition is filed that is to be examined by the examiner in accordance with Section 162, limited to a hearing case relating to which a report has been submitted under Section 164(3)).

(2) Qualifications of hearing clerks shall be as provided by Cabinet Order

(3) Where the hearing clerk designated under Subsection (1) is unable to participate in the hearing, the Commissioner of the Patent Office shall relieve the designated hearing clerk and appoint another hearing clerk.

(4) The hearing clerk shall undertake affairs relating to the preparation and service of the hearing record for each hearing case and, upon the order of the presiding judicial examiner, undertake any other affairs relating thereto.

(5) Sections 139 (excluding Paragraph (vi)) and 140 to 144 shall apply mutatis mutandis to the hearing clerk. In such a case, the hearing clerk named in the motion requesting the exclusion or challenge may not participate in the hearing with regard to the said exclusion or challenge.

145. Hearing examination procedure

(1) A hearing for patent invalidation or a hearing for invalidation of the registration of extension of the term of a patent shall be conducted by oral hearing examination. Notwithstanding the foregoing, the presiding judicial examiner may, upon a motion by a party in the case decide to conduct the hearing by documentary examination.

(2) Hearings, excluding those as provided in the preceding subsection, shall be conducted by documentary examination. Notwithstanding the foregoing, the presiding judicial examiner may, upon a motion by the party concerned or ex officio, decide to conduct the hearing by oral examination.

(3) Where a hearing is conducted by oral examination under Subsection (1) or the proviso to the preceding subsection, the presiding judicial examiner shall designate the date and place thereof and summon the parties concerned and the intervener on the designated date.

(4) Section 94 (Summon on the designated date) of the Code of Civil Procedure shall apply mutatis mutandis to a summon on the designated date as provided in the preceding subsection.

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

146.

Section 154 (presence of interpreter, etc.) of the Code of Civil Procedure shall apply mutatis mutandis to a hearing.

147. Hearing Records

(1) In an oral hearing examination under Subsection (1) or the proviso to Subsection (2) of Section 145, the hearing clerk shall prepare a hearing record stating the gist of the hearing examination and all other necessary matters on each hearing date.

(2) Where the hearing clerk considers that an order received from the presiding judicial examiner with regard to the preparation or amendment of the hearing record under the preceding subsection is inappropriate, the hearing clerk may add his opinion.

(3) Sections 160(2) and 160(3) (record of oral proceedings) shall apply mutatis mutandis to the hearing record under Subsection (1).

148. Intervention

(1) A person who may file a petition for a hearing under Section 132(1) may intervene in the hearing as a petitioner until the conclusion of the examination.

(2) An intervener under the preceding subsection may continue the hearing procedures even after the withdrawal of the petition for a hearing by the original party.

(3) A person with an interest in the result of the hearing may intervene in the hearing to assist one of the original parties until the conclusion of the examination.

(4) The intervener under the preceding subsection may undertake all hearing procedures.

(5) Where there is a ground for interruption or suspension of hearing procedures on behalf of the intervener under Subsection (1) or (3), the said interruption or suspension shall have effect on the original parties.

149

- (1) A person requesting to intervene shall submit an application for intervention to the presiding judicial examiner.
- (2) Where an application for intervention is submitted, the presiding judicial examiner shall serve a copy of the application for intervention to the original parties and intervener(s) and give such persons an opportunity to present opinions, designating an adequate time limit.
- (3) Where an application for intervention is filed, the judicial examiner of the hearing in which the applicant intends to intervene shall render a ruling through a hearing.
- (4) The ruling under the preceding subsection shall be made in writing and state the grounds therefor.
- (5) The ruling under Subsection (3) shall not be subject to appeal

150. Examination and preservation of evidence

- (1) Evidence may be examined in a hearing, upon a motion by a party or an intervener, or ex officio.
- (2) Evidence may be preserved in an hearing, upon a motion by an interested person prior to the filing of a petition for a hearing, or by a party to or an intervener in the hearing, or ex officio when the hearing is pending.
- (3) A motion prior to the filing of a petition for a hearing under the preceding subsection shall be filed with the Commissioner of the Patent Office.
- (4) Where a motion has been filed prior to the filing of a petition for a hearing under Subsection (2), the Commissioner of the Patent Office shall designate the judicial examiner and the hearing clerk who shall be in charge of preservation of evidence.
- (5) Where evidence has been, ex officio, examined or preserved under Subsection (1) or (2), the presiding judicial examiner shall notify the parties and intervener(s) of the result thereof and give such persons an opportunity to present opinions, designating an adequate time limit.
- (6) The examination or preservation of evidence under Subsection (1) or (2) may be entrusted to a district court or summary court having jurisdiction over the matter.

151.

Section 147 of this Act and Sections 93(1) (designation of date), 94 (summons on designated 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 214(3), 215 to 222, 223(1) to 223(6), 226 to 228, 229(1) to 229(3), 231, 232(1), 233, 234, 236 to 238, 240 to 242 (evidence) and 278 (submission of document in lieu of examination) of the Code of Civil Procedure shall apply mutatis mutandis to the examination and preservation of evidence under the preceding section. In such a case, “facts that are admitted by the party in court or that are obvious” in Section 179 of the said Code shall read “obvious facts”, and “Supreme Court Rules” in Section 204 and 215-3 of the said Code shall read “an ordinance of the Ministry of Economy, Trade and Industry.”

152. Ex officio hearing examination

The presiding judicial examiner may proceed with the hearing procedures, even if a party or intervener fails to undertake required procedures within the legal or designated time limit or the said person fails to appear pursuant to the provision of Section 145(3).

153.

- (1) Any grounds not pleaded by a party or intervener may be examined in a hearing.
- (2) Where any grounds not pleaded by a party or intervener has been examined under the preceding subsection, the presiding judicial examiner shall notify the parties and the intervener(s) of the result thereof and give such persons an opportunity to present opinions, designating an adequate time limit.
- (3) Relief not claimed by the petitioner may not be examined in a hearing.

154. Joint or separate conduct of hearing examinations

- (1) Where one or both parties to two or more hearings are identical, the hearing examination may be jointly conducted.
- (2) Hearing examinations that have been jointly conducted under the preceding subsection may later be separately conducted.

155. Withdrawal of petition for hearing

- (1) A petition for a hearing may be withdrawn before a hearing decision becomes final and conclusive.
- (2) A petition for a hearing 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 petition for a hearing for patent invalidation has been filed with regard to two or more claims covered by a patent that has two or more claims, the petition may be withdrawn for any of the claims.

156. Notification of conclusion of hearing examination

- (1) When the case has reached the point at which a hearing decision may be rendered, the presiding judicial examiner shall notify the parties and intervener(s) of the conclusion of the hearing examination.
- (2) The presiding judicial examiner may, upon a motion by a party or intervener, or ex officio, resume a hearing examination, where necessary, even after the notification has been given under the preceding subsection.
- (3) The hearing decision shall be rendered within 20 days from the date on which the notification under subsection (1) has been issued. Notwithstanding the foregoing, this provision shall not apply where the case is complex or there are unavoidable reasons therefor.

157. Hearing decision

- (1) When a hearing decision has been rendered, the hearing shall be concluded.
- (2) A hearing decision shall be rendered in writing stating the following matters:
 - (i) the hearing number;
 - (ii) the name, and domicile or residence of each of the parties, intervener(s) and their representatives;
 - (iii) the identification of the hearing case;
 - (iv) the conclusion of and reasons for the hearing decision; and
 - (v) the date of the hearing decision.

(3) Where a hearing decision has been rendered, the Commissioner of the Patent Office shall serve a certified copy of the hearing decision to the parties, intervener(s) and person whose application for intervention has been refused.

158. Special provisions regarding hearings against examiner's decision of refusal

Any procedure taken during the examination procedure shall also be effective in a hearing against an examiner's decision of refusal.

159.

(1) Section 53 shall apply mutatis mutandis to a hearing against an examiner's decision of refusal. In such a case, "Section 17-2(1)(iii)" in Section 53(1) shall read "Section 17-2(1)(iii) or (iv)", and "an amendment" in Section 53(1) shall read "an amendment (in the case of Section 17-2(1)(iii), excluding the amendment made prior to the petition for a hearing against the examiner's decision of refusal)".

(2) Section 50 shall apply mutatis mutandis where a reason for refusal found in a hearing against an examiner's decision of refusal is different from the reason(s) of the examiner's decision. In such a case, "in the case of Section 17-2(1)(iii)" in the proviso to Section 50 shall read "in the case of Section 17-2(1)(iii) or (iv) (in the case of Section 17-2(1)(iii), excluding the amendment made prior to the petition for a hearing against an examiner's decision of refusal)."

(3) Sections 51 and 67-3(2) shall apply mutatis mutandis where a petition for a hearing against an examiner's decision of refusal is found to have reasonable grounds.

160.

(1) Where an examiner's decision has been cancelled in a hearing against the examiner's decision of refusal, a hearing decision may be made to order a further examination to be carried out.

(2) The decision made in the hearing decision shall be binding upon the examiner with respect to the case.

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

161.

Sections 134(1) to (3), 134-2, 134-3, 148 and 149 shall not apply to a hearing against the examiner's decision of refusal.

162.

Where, in the case of a petition for a hearing against an examiner's decision of refusal, within 30 days of such petition an amendment has been made to the description, scope of claims or drawings attached to the request in the patent application, the Commissioner of the Patent Office shall direct the examiner to examine the petition.

163.

(1) Sections 48, 53 and 54 shall apply mutatis mutandis to an examination under the preceding section. In such a case, "Section 17-2(1)(iii)" in Section 53(1) shall read "Section 17-2(1)(iii) or (iv)" and "an amendment" in Section 53(1) shall read "an amendment (in the case of Section 17-2(1)(iii), excluding the amendment made prior to the petition for a hearing against an examiner's decision of 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 petition for a hearing is found in the examination under the preceding section. In such a case, "in the case of Section 17-2(1)(iii)" in the proviso to Section 50 shall read "in the case of Section 17-2(1)(iii) or (iv) (in the case of Section 17-2(1)(iii), excluding the amendment made prior to the petition for a hearing against an examiner's decision of refusal)."

(3) Sections 51 and 52 shall apply mutatis mutandis where a petition for a hearing is found to have reasonable grounds in the examination under the preceding section.

164.

(1) In an examination under Section 162, where the examiner renders a decision to the effect that a patent is to be granted, the examiner shall cancel the examiner's decision of refusal that is the basis of the hearing petition.

(2) Except in the case of the preceding subsection, the examiner may not render a ruling rejecting an amendment under Section 53(1) as applied under Section 163(1).

(3) Except in the case of Subsection (1), the examiner shall report to the Commissioner of the Patent Office the result of the examination without rendering a decision on the petition for the said hearing.

165. Special provisions for hearings for correction

Where a petition for a hearing for correction does not correspond to one of the purposes provided in the proviso to Section 126(1) or does not comply with Sections 126(3) to (5), the presiding judicial examiner shall notify the petitioner of the reasons therefore and give the petitioner an opportunity to submit a written opinion in writing, designating an adequate time limit.

166.

Sections 134(1) to (3), 134-2, 134-3, 148 and 149 shall not apply to a hearing for correction.

167. Effect of hearing decision

When a final and conclusive hearing decision in a hearing for patent invalidation or a hearing for invalidation of the registration of extension of the term has been registered, no one may file a petition for a hearing on the basis of the same facts and evidence.

168. In relation to litigation

(1) Where deemed necessary during a hearing, the hearing proceedings may be suspended until the decision in another hearing has become final and conclusive or litigation proceedings have been concluded.

(2) Where a lawsuit is instituted or a petition for order of provisional seizure or order of provisional disposition is filed, the court may, if it considers it necessary, suspend the court proceedings until the hearing decision becomes final and conclusive.

(3) Where a lawsuit with respect to infringement of a patent right or an exclusive license is instituted, the court shall notify the Commissioner of the Patent Office thereof. The same shall apply when the said court proceedings have been concluded.

(4) Where the Commissioner of the Patent Office receives the notification as provided in the preceding subsection, the Commissioner of the Patent Office shall notify the court of whether a petition for a hearing with regard to the said patent right has been filed. The same shall apply when, with regard to the said hearing, a ruling dismissing the petition or a hearing decision has been rendered or the petition has been withdrawn.

(5) Where the court receives the notification to the effect that a petition for a hearing with regard to the said patent right has been filed under the preceding subsection, if a document stating a method of challenge or defense as provided in Section 104-3(1) has already been submitted in the lawsuit prior to the said notification or if the said document is submitted for the first time after the said notification, the court shall notify the Commissioner of the Patent Office thereof.

(6) Where the Commissioner of the Patent Office receives the notification as provided in the preceding subsection, the Commissioner of the Patent Office may request the court to deliver copies of any record of the said lawsuit which the judicial examiner considers necessary for the hearing.

169. Burden of costs of hearing

(1) The burden of costs in connection with a hearing for patent invalidation or a hearing for invalidation of the registration of extension of the term shall be decided *ex officio* by a hearing decision where the hearing is terminated by a hearing decision or by a ruling in the hearing where the hearing is terminated otherwise than by a hearing decision.

(2) Sections 61 to 66, 69(1), 69(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 hearing under the preceding subsection. In such a case, "Supreme Court Rules" in Section 71(2) of the said Code shall read "ordinance of the Ministry of Economy, Trade and Industry."

(3) The costs in connection with a hearing against an examiner's decision of refusal and a hearing for correction shall be borne by the petitioner.

(4) Section 65 (Bearing of litigation costs in joint litigation) of the Code of Civil Procedure shall apply *mutatis mutandis* to the costs to be borne by the petitioner under the preceding subsection.

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

(6) The scope, the amount and the payment of the costs in connection with a hearing and the payment required for undertaking a procedure for a hearing shall be governed by the relevant provisions of the Law concerning Civil Procedure Costs, etc. (Law No. 40 of 1971) (excluding provisions in Chapter II, Parts 1 and 3 of the said Law) unless such provisions are contrary to the nature of the said matters.

170. Enforceability of ruling on amount of costs

A final ruling on the amount of costs for a hearing shall have the same effect as that of an enforceable instrument of obligation.

Chapter VII Rehearing

171. Petition for rehearing

(1) A party or an intervener may file a petition for a rehearing against a final and conclusive hearing decision.

(2) Sections 338(1), 338(2) and 339 (Grounds for retrial) of the Code of Civil Procedure shall apply *mutatis mutandis* to a petition for a rehearing under the preceding subsection.

172.

(1) Where a petitioner for a hearing, in conspiracy with the respondent, has caused the hearing decision to be rendered for the purpose of impairing the right or interest of a third party, the third party may file a petition for a rehearing against the final and conclusive hearing decision.

(2) A petition for a rehearing under the preceding subsection shall be filed against the petitioner and the respondent in the hearing as joint respondents.

173. Time limit for petition for rehearing

(1) A petition for a rehearing shall be filed within 30 days from the date on which the petitioner became aware of the grounds for the rehearing after the hearing decision became final and conclusive.

(2) Where a person intending to file a petition for a rehearing is unable to file the said petition within the time limit as provided in the preceding subsection due to reasons beyond the control of the person, notwithstanding the said subsection, prior to the lapse of six months from the expiration of the said time limit the said person may file the petition within 14 days (in the case of a resident abroad, within two months) from the date on which the said reasons ceased to exist.

(3) Where a petition for a rehearing is filed on the ground that the petitioner was not represented in accordance with the applicable legal provisions, the time limit as provided in Subsection (1) shall be counted from the day following the date on which, by being served a copy of the hearing decision, the petitioner or his legal representative became aware that the hearing decision had been rendered.

(4) No petition for a rehearing may be filed after the expiration of three years from the date on which the hearing decision became final and conclusive.

(5) Where a ground for a rehearing has arisen after the hearing decision became final and conclusive, the time limit as provided 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 petition for a rehearing filed on the ground that the hearing decision is in conflict with a final and conclusive hearing decision previously rendered.

174. Application mutatis mutandis of provisions regarding hearing, etc.

(1) Sections 131(1), the principal sentence of 131-2(1), 132(3) and (4), 133, 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 rehearing against a final and conclusive hearing decision in a hearing against an examiner's decision of refusal.

(2) Sections 131(1), the principal sentence of 131-2(1), 132(1), (2) and (4), 133, 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 rehearing against a final and conclusive hearing decision in a hearing for patent invalidation or a hearing for invalidation of the registration of extension of the term.

(3) Sections 131(1) and (3), the principal sentence of 131bis(1), 132(3) and (4), 133, 133bis, 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 rehearing against a final and conclusive hearing decision in a hearing for correction .

(4) Section 348(1) of the Code of Civil Procedure (Scope of examination) shall apply mutatis mutandis to a rehearing.

175. Restriction on effect of patent right restored by rehearing

(1) Where a patent right relating to an invalidated patent or a patent right relating to the invalidated registration of extension of the term thereof has been restored by a rehearing, 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 the registration of extension of the term of a patent right which was refused by a hearing decision has been registered by a rehearing, and where the patent has been granted for the invention of a product, such patent right shall not be effective against any product imported into or manufactured or acquired in Japan in good faith, after the hearing decision became final and conclusive but before the registration of the petition for a rehearing.

(2) Where a patent right relating to an invalidated patent or a patent right relating to the invalidated registration of extension of the term thereof has been restored by a rehearing 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 the registration of extension of the term of a patent right which was refused by a hearing decision has been registered by a rehearing, such patent right shall not be effective against the following acts conducted after the hearing decision became final and conclusive but before the registration of the petition for a rehearing:

(i) working of the said invention in good faith;

(ii) where a patent has been granted for the invention of a product, manufacturing, assigning, etc., importing or offering for assignment, etc. in good faith any product to be used for manufacturing of the said product; and

(iii) where a patent has been granted for the invention of a process, manufacturing, assigning, etc., importing or offering for assignment, etc. in good faith any product to be used for the use of the said process.

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 rehearing 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 refused by a hearing decision has been registered through a rehearing, and where a person/party has, in good faith, been working the invention in Japan or has, in good faith, been making preparations therefore, after the hearing decision became final and conclusive but before the registration of the demand for a rehearing, such person shall have a non-exclusive license on the patent right, said license being limited to the invention being worked or for which preparations for working are being made, and to the purpose of such working or the preparations therefore.

177. (Deleted)**Chapter VIII Litigation****178. Actions against hearing decisions, etc.**

- (1) The Tokyo High Court shall have exclusive jurisdiction over any action against a hearing decision or a ruling to dismiss a petition for a hearing or a rehearing-
- (2) An action under Subsection (1) may be instituted only by a party in the case, an intervener, or a person whose application for intervention in the hearing or in the rehearing has been refused.
- (3) An action under Subsection (1) may not be instituted after the expiration of thirty days from the date on which a certified copy of the hearing decision or the ruling has been served.
- (4) The time limit as provided in the preceding subsection shall be invariable.
- (5) The presiding judicial examiner may ex officio designate an additional period extending the invariable time limit under the preceding subsection for a person in a remote area or an area with transportation difficulty.
- (6) An action with regard to a matter for which a petition for an hearing may be filed may be instituted only against a hearing decision.

179. Appropriate party as respondent

In an hearing under Section 178(1), the Commissioner of the Patent Office shall be the respondent. Notwithstanding the foregoing, in the case of an action against a hearing decision in a hearing for patent invalidation, or a hearing for invalidation of the registration of extension of term, or in a rehearing under Section 171(1) against a final and conclusive hearing decision in such hearing, the petitioner or the respondent in the hearing or rehearing shall be the respondent.

180. Notification of institution of action

Where an action under the proviso to Section 179 has been instituted, the court shall notify the Commissioner of the Patent Office thereof without delay.

180-2. Opinion of the Commissioner of the Patent Office in hearings annulling the hearing decision

- (1) Where an action under the proviso to Section 179 is instituted, the court may seek the opinion of the Commissioner of the Patent Office regarding the application of this law or any other necessary matters relating to such case.
- (2) Where an action under the proviso to Section 179 is instituted, upon the court's consent, the Commissioner of the Patent Office may express his opinions to the court regarding the application of this law or any other necessary matters relating to such case.

(3) The Commissioner of the Patent Office may designate another Patent Office official to express the Commissioner's opinions for the purpose of the preceding two subsections.

181. Annulment of the hearing decision or ruling

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

(2) Where an action regarding a decision in a hearing for patent invalidation is instituted under Section 178(1), and the court considers it appropriate to cause the judicial examiners in a hearing for patent invalidation to carry out a further hearing examination with regard to whether or not the said patent shall be invalidated, on the basis that the patentee has filed a petition or will file a petition for a hearing for correction with regard to the patent in question in the action after such action is brought, the court may annul the said hearing decision by a ruling in order to return the case to the judicial examiners.

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

(4) The ruling under Subsection (2) shall have effect on the judicial examiners and any other third parties.

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

182. Delivery of original copy of judgment

Where the court procedures with respect to an action under the proviso to Section 179 have been concluded, the court shall, without delay, deliver the original copy of the judgment rendered by the court of each instance to the Commissioner of the Patent Office.

182-2. Composition of judicial panel

With respect to an action under Section 178(1), the ruling that examination and judgment shall be rendered by a judicial panel consisting of five judges may be made if so determined by the said judicial panel.

183. Lawsuit against amount of compensation

(1) A person(s) who has received an ruling under Section 83(2), 92(3), 92(4), or 93(2) may, if not satisfied with the amount of the compensation determined in the ruling, institute an action demanding an increase or decrease of the said amount.

(2) An action under the preceding subsection may not be instituted after the expiration of six months from the date on which a certified copy of the ruling has been served.

184. Standing as defendant

(1) In an action under Section 183(1), the following person shall have standing as a defendant:

(i) in an action against a ruling under Section 83(2) , 92(4) or 93(2), the non-exclusive licensee, patentee or exclusive licensee; and

(ii) in an action against a ruling under Section 92(3), the non-exclusive licensee or the other person under Section 72.

184-2. Relationship between (administrative) hearing and litigation

A lawsuit demanding the annulment of measures imposed by this Act or an order thereunder (excluding measures under Section 195(4)), may be instituted only after the rendering of a ruling or a decision on an hearing against the measures or on the request for examination thereof.

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

184-3. Patent application based on international application

(1) An international application (a patent application only) to which the international filing date is accorded under Article 11(1), 11(2)(b) or 14(2) of the Patent Cooperation Treaty signed in Washington on June 19, 1970 (hereinafter referred to as the "Treaty" in this Chapter) and which specifies Japan as a designated State under Article 4(1)(ii) of the Treaty shall be deemed to be a patent application filed on the said international filing date.

(2) Section 43 (including its mutatis mutandis application under Section 43-2(3)) shall not apply to the international application deemed to be a patent application under the preceding subsection (hereinafter referred to as an "International Patent Application").

184-4 Translations of international patent application in foreign language

(1) An applicant of an international patent application in a foreign language (hereinafter referred to as a "Foreign Language Patent Application") shall submit to the Commissioner of the Patent Office Japanese translations of the description, claims, drawings (the descriptive text in such drawings only), and the abstract, as provided in Article 3(2) of the Treaty, as of the international filing date as provided in Subsection (1) of the preceding section (hereinafter referred to as the "International Filing Date") within the period from the priority date under Article 2 (xi) of the Treaty (hereinafter referred to as the "Priority Date"), to two years and six months (hereinafter referred to as the "Time Limit for the Submission of National Documents") therefrom. Notwithstanding the foregoing, the applicant of a Foreign Language Patent Application who has submitted the document under Subsection (1) of the following section during the period from two months before the expiration of the Time Limit for the Submission of National Documents to the expiry date thereof (excluding the case where the said translations have been submitted prior to the submission of the said documents) may submit the said translations within two months from the date of submission of the said document (hereinafter referred to as the "Special Time Limit for the Submission of Translations").

(2) In the case of the preceding subsection, where the applicant of the Foreign Language Patent Application has made an amendment under Article 19(1) of the Treaty, the applicant may, in lieu of the translation of the claim(s) as provided in the preceding subsection, submit a translation of the amended claim(s).

(3) Where the translation of the description as provided in Subsection (1) and the translation of the claim(s) as provided in the preceding two subsections have not been submitted within the Time Limit for the Submission of National Documents (in the case of a Foreign Language Patent Application under the proviso to Subsection (1), the Special Time Limit for the Submission of Translations, hereinafter the same in the following subsection), the International Patent Application shall be deemed to have been withdrawn.

(4) Where an amendment under Article 19(1) of the Treaty has been made, an applicant who has submitted the translation of the claim(s) as provided in Subsection (1) may further submit a Japanese translation of the said amended claim(s) no later than the date on which the Time Limit for the Submission of National Documents expires (the time of requesting where the applicant requests the examination of the application within the Time Limit for the Submission of National Documents, hereinafter referred to as the "National Processing Standard Time").

(5) The principal sentence of Section 184-7(3) shall apply mutatis mutandis to the case where the translation under Subsection (2) or the preceding subsection has not been submitted.

184-5. Submission of documents and order to amend procedures

(1) An applicant of an International Patent Application shall submit a document to the Commissioner of the Patent Office within the Time Limit for the Submission of National Documents 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) matters as provided by an ordinance of the Ministry of Economy, Trade and Industry, including the international filing number.

(2) The Commissioner of the Patent Office may order the amendment of procedures for an applicant, designating an adequate time limit, in the following cases:

- (i) where the document to be submitted under the preceding subsection is not submitted within the Time Limit for the Submission of National Documents;
 - (ii) where the procedure as provided in the preceding subsection does not comply with Sections 7(1) to (3) or Section 9;
 - (iii) where the procedure as provided in the preceding subsection does not comply with the formal requirements as provided by an ordinance of the Ministry of Economy, Trade and Industry;
 - (iv) where a translation of the abstract to be submitted under Subsection (1) of the preceding section is not submitted within the Time Limit for the Submission of National Documents (in the case of a Foreign Language Patent Application under the proviso to Subsection (1) of the preceding section, the Special Time Limit for the Submission of Translations); and
 - (v) where the fees payable under Section 195(2) are not paid within the Time Limit for the Submission of National Documents.
- (3) Where the person ordered to amend a procedure under the preceding subsection does not make the amendment within the designated time limit under the said subsection, the Commissioner of the Patent Office may dismiss the said International Patent Application.

184-6. Effect, etc. of request, description, etc. of international application

(1) The request of an International Patent Application as of the international filing date shall be deemed to be a request submitted under Section 36(1).

(2) The description of an International Patent Application in the Japanese language (hereinafter referred to as a "Japanese Language Patent Application") as of the international filing date and translations of the description of a Foreign Language Patent Application as of the international filing date shall be deemed to be the description submitted with the request under Section 36(2); claim(s) of a Japanese Language Patent Application as of the international filing date and a translation of the claim(s) of a Foreign Language Patent Application as of the international filing date shall be deemed to be the claim(s) submitted with the request under the said Subsection; drawing(s) of a Japanese Language Patent Application as of the international filing date, drawing(s) of a Foreign Language Patent Application as of the international filing date (excluding the descriptive text in the drawing(s)) and a translation of the descriptive text in the drawing(s) shall be deemed to be the drawing(s) submitted with the request under the said Subsection; and, the abstract of a Japanese Language Patent Application and a translation of the abstract of a Foreign Language Patent Application shall be deemed to be the abstract submitted with the request under the said Subsection.

(3) Where a translation of the amended claim(s) under Article 19(1) of the Treaty is submitted as provided in Section 184-4(2) or (4), notwithstanding the preceding subsection, a translation of the said amended claim(s) shall be deemed to be the claim(s) submitted with the request under Section 36(2).

184-7. Amendment under Article 19 of the Treaty with regard to Japanese Language Patent Application

(1) Where an applicant of a Japanese Language Patent Application has made an amendment under Article 19(1) of the Treaty, such applicant shall submit to the Commissioner of the Patent Office a copy of the written amendment submitted under Article 19(1) on or before the date which the National Processing Standard Time falls into.

(2) Where a copy of a written amendment has been submitted under the preceding subsection, an amendment to the claim(s) attached to the request shall be deemed to have been made under Section 17bis(1) by the said copy of the written amendment. Notwithstanding the foregoing, where the written amendment has been served to the Patent Office under Article 20 of the Treaty within the time limit under the preceding subsection, the amendment is deemed to have been made by the said written amendment.

(3) Where the procedure under Subsection (1) has not been taken by the applicant of a Japanese Language Patent Application within the time limit under Subsection (1), no amendment under Article 19(1) of the Treaty shall be deemed to have been made. Notwithstanding the foregoing, this provision shall not apply to the case as provided in the proviso to the preceding subsection.

184-8. Amendment under Article 34 of the Treaty

(1) Where an applicant of an International Patent Application has made an amendment under Article 34(2)(b) of the Treaty, such applicant shall submit to the Commissioner of the Patent Office, in the case of amendment with regard to a Japanese Language Patent Application, a copy of the written amendment submitted under Article 34(2)(b) and, in the case of amendment with regard to a Foreign Language Patent Application, a Japanese translation of the said written amendment, on or before the date which the National Processing Standard Time falls into.

(2) Where a copy of the written amendment or a translation of the written amendment has been submitted under the preceding subsection, an amendment to the description, claim(s) or drawing(s) attached to the request shall be deemed to have been made under Section 17bis(1) by the copy of the written amendment or the translation of the written amendment. Notwithstanding the foregoing, where the written amendment with regard to a Japanese Language Patent Application has been served to the Patent Office under Article 36(3)(a) of the Treaty within the time limit under the preceding subsection, the amendment is deemed to have been made by the said written amendment.

(3) Where the procedure under Subsection (1) has not been taken by the applicant of an International Patent Application within the time limit under Subsection (1), no amendment under Article 34(2)(b) of the Treaty shall be deemed to have been made. Notwithstanding the foregoing, this provision shall not apply to the case as provided in the proviso to the preceding subsection.

(4) Where, in accordance with Subsection(2), an amendment to the description, claims or drawings attached to the request with regard to a Foreign Language Patent Application has been deemed to have been made under Section 17-2(1), such amendment shall be deemed to have been made by submitting the written correction of incorrect translation as provided in Section 17-2(2).

184-9. National publication, etc.

(1) The national publication of a Foreign Language Patent Application, a translation of which has been submitted under Section 184-4, excluding a Foreign Language Patent Application, Patent Gazette Containing Registered Patent of which has been published, shall be effected, without delay, by the Commissioner of the Patent Office after the lapse of the Time Limit for the Submission of National Documents (in the case of a Foreign Language Patent Application under the proviso to Section 184-4(1), the Special Time Limit for the Submission of Translations, hereinafter the same in this subsection) [in the case of an International Patent Application for which the applicant has requested an examination of the patent application within the Time Limit for the Submission of National Documents and of which the international publication under Article 21 of the Treaty (hereinafter referred to as "International Publication") has been effected, after such request for the examination of the patent application].

(2) National publication shall be effected by publishing the following matters in the Patent Gazette:

(i) the name, and the domicile or residence of the applicant;

(ii) the filing number of the application;

(iii) the international filing date;

(iv) the name, and the domicile or residence of the inventor;

(v) the matters stated in the translations of the description and the descriptive text in the drawing(s) as provided in Section 184-4(1); the matters stated in the translation of the claim(s) (in the case where a translation has been submitted under Subsection (2) of the said section, the said translation); the matters stated in the translation under Subsection (4) of the said section; the contents of the drawing(s) (excluding the descriptive text in the drawing(s)); and the matters stated in the translation of the abstract (excluding matters, recognized by the Commissioner of the Patent Office, to be liable to contravene public order or morality by stating those in the Patent Gazette);

(vi) the number and the date of the national publication; and

(vii) other necessary matters.

(3) Section 64(3) shall apply mutatis mutandis where the matters stated in the translation of the abstract as provided in Paragraph (v) of the preceding subsection are to be contained in the Patent Gazette under the preceding subsection.

(4) Section 64 shall not apply to an International Patent Application.

(5) For the purpose of an International Patent Application, "the publication of the patent application" in Sections 48-5(1), 48-6, the proviso to 66(3), 128, 186(1)(i) and (ii) and 193(2)(i), (ii), (vi) and (ix) shall read "the international publication under Section 184-9(1)" in the case of a Japanese Language Patent Application and "the national publication under Section 184-9(1)" in the case of a Foreign Language Patent Application.

(6) For the purpose of a petition for a certificate, etc., with regard to a Foreign Language Patent Application, "or the materials under Section 67-2(2)" in Section 186(1)(i) shall read "or a request, a description, claim(s), drawing(s), or an abstract in an international application under Article 3(2) of the Patent Cooperation Treaty signed in Washington on June 19, 1970 (excluding those with regard to an international patent application where the establishment of a patent right has been registered has been made or those contained in the International Publication)."

(7) For the purpose of the matters to be contained in the Patent Gazette with regard to an International Patent Application, "after the publication of a patent application" in Section 193(2)(iii) shall read "with regard to an International Patent Application, the International Publication of which has been effected."

184-10. Effect etc., of International Publication and National Publication

(1) After the International Publication of a patent application in the case of a Japanese Language Patent Application, or after the National Publication of a patent application in the case of a Foreign Language Patent Application, where the applicant of the International Patent Application has given warning with documents stating the contents of the invention claimed in the International Patent Application, the applicant of the International Patent Application may claim compensation against a person who has commercially worked the invention after the warning, prior to the registration establishing a patent right, and the amount of compensation shall be equivalent to the amount the applicant(s) would be entitled to receive for the working of the invention if the invention were patented. Even where the said warning has not been given, the same shall apply to a person who, with the knowledge of the invention having been claimed in the International Patent Application, commercially worked the invention prior to the registration establishing a patent right for which, in the case of a Japanese Language Patent Application, the International Publication has been effected or, in the case of a Foreign Language Patent Application, the National Publication has been effected.

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

184-11. Special provisions concerning patent administrators for nonresidents

(1) Notwithstanding Section 8(1), an applicant of an International Patent Application who is a nonresident may, prior to the National Processing Standard Time, undertake procedures without being represented by a patent administrator.

(2) The person prescribed in the preceding subsection shall appoint a patent administrator and notify the Commissioner of the Patent Office thereof on or after the National Processing Standard Time, but not later than the time limit as provided in an ordinance of the Ministry of Economy, Trade and Industry.

(3) Where no appointment of a patent administrator has been notified within the time limit as provided in the preceding subsection, the International Patent Application shall be deemed to have been withdrawn.

184-12. Special provisions concerning amendment

(1) Notwithstanding the principal sentence of Section 17(1), no amendment of the procedures shall be allowed (excluding those under Sections 184-7(2) and 184-8(2)) unless, in the case of a Japanese Language Patent Application, the procedure under Section 184-5(1) has been taken and the fee payable under Section 195(2) has been paid, and, in the case of a Foreign Language Patent Application, the procedures under Sections 184-4(1) and 184-5(1) have been taken, the fee payable under Section 195(2) has been paid, and the National Processing Standard Time has lapsed.

(2) For the purpose of the allowable scope of amendment to the description, claims or drawings with regard to a Foreign Language Patent Application, “a Foreign Document Application as provided in Section 36-2(2)” in Section 17-2(2) shall read “a Foreign Language Patent Application as provided in Section 184-4(1)”; “the description, claims or drawings originally attached to the request [in the case of a Foreign Document Application under Section 36-2(2), the translation of the foreign documents as provided in Section 36-2(2) that is deemed to be the description, claims and drawings under Section 36-2(4) (in the case where the amendment to the description, claims or drawing has been made through the submission of the statement of correction of incorrect translation, the said translations or the amended description, claim or drawings]” in Section 17-2(3) shall read “a translation as provided in Section 184-4(1) of the description or drawings (limited to the descriptive text in the drawings) of an International Patent Application as provided in Section 184-3(2) (hereinafter referred to as an “International Patent Application” in this subsection) as of the international filing date as provided in Section 184-4(1) (hereinafter referred to as the “International Filing Date” in this subsection), a translation as provided in Section 184-4(1) of the claims of an International Patent Application as of the International Filing Date (in the case where a translation of the claim(s) amended under Article 19(1) of the Patent Cooperation Treaty signed in Washington on June 19, 1970 has been submitted under Section 184-4(2) or (4), the said translation) or drawings (excluding the descriptive text in the drawings) of an International Patent Application as of the International Filing Date (hereinafter referred to as the “Translations, etc.” in this subsection) (in the case where an amendment to the description, claim(s) or drawing(s) has been made through the submission of the statement of correction of incorrect translation, the Translations, etc. or the said amended description, claims or drawings)”.

(3) Notwithstanding Section 17-3, an applicant of an International Patent Application may amend the abstract attached to the request only within one year and three months from the priority date (in the case of a Foreign Language Patent Application, a translation of which has been submitted under Section 184-4(1), where such application falls under an International Patent Application of which the applicant has requested an examination within the Time Limit for the Submission of National Documents and the International Publication has been effected, excluding the time after the request for an examination of the application has been filed).

184-13. Special provision concerning patentability

For the purpose of the application of Section 29-2, in the case where another patent application or a utility model registration application as provided in Section 29-2 is an International Patent Application or an International Utility Model Registration Application under Section 48-3(2) of the Utility Model Law, "another patent application or a utility model registration application " under Section 29-2 of this Law shall read "another patent application or utility model registration application (excluding a Foreign Language Patent Application under Section 184-4(1) or a foreign language utility model registration application under Section 48-4(1) of the Utility Model Law which has been deemed to have been withdrawn in accordance with Section 184-4(3) of this Law or Section 48-4(3) of the Utility Model Law)," "the publication of the patent application or" shall read "publication of the patent application," "published" shall read "published or where international publication under Article 21 of the Patent Cooperation Treaty signed in Washington on June 19, 1970 has been effected," and "the description, scope of claims or drawings originally attached to the request" shall read "the description, scope of claims, or drawings of an international application as of the International Filing Date under Section 184-4(1) of this Law or Section 48quarter(1) of the Utility Model Law."

184-14. Special provision concerning exception to lack of novelty of invention

Notwithstanding Section 30(4), an applicant of an International Patent Application who requests the application of Section 30(1) or 30(3) may submit to the Commissioner of the Patent Office, after the National Processing Standard Time, but not later than the time limit as provided in an ordinance of the Ministry of Economy, Trade and Industry, a document stating thereof and a document proving the fact that the invention which has fallen under any of the paragraphs of Section 29(1) has become applicable is an invention to which Section 30(1) or 30(3) may be applicable.

184-15. Special provisions concerning priority claim based on a patent application, etc.

(1) Sections 41(4) and 42(2) shall not apply to an International Patent Application.

(2) For the purpose of application of Section 41(3) to an Japanese Language Patent Application, "or the publication of the patent application" in the said Section shall read "or the international publication under Article 21 of the Patent Cooperation Treaty signed in Washington on June 19, 1970."

(3) For the purpose of the application of Section 41(3) for a Foreign Language Patent Application, "the description, scope of claims or drawings originally attached to the request in a patent application" in the said Section shall read "the description, scope of claims or drawings of an international application as of the international filing date under Section 184-4(1)," and "or the publication of the application" shall read "or the international publication under Article 21 of the Patent Cooperation Treaty done in Washington on June 19, 1970."

(4) For the purpose of application of Sections 41(1) to (3) and 42(1), in the case where the earlier application under Section 41(1) of this Law is an International Patent Application or an international utility model registration application under Section 48ter(2) of the Utility Model Law, "the description, claims for a patent or utility model registration and drawings ... originally attached to the request " in Sections 41(1) and (2) shall read "the description, scope of claims or drawings ... of an international application as of the international filing date under Section 184-4(1) of this Law or Section 48quarter(1) of the Utility Model Law,;" "the description, claims for patent or utility model registration and drawings ... originally attached to the request in the Earlier Application " in Section 41(3) shall read "the description, scope of claims or drawings ... of an international application of the Earlier Application as of the International Filing Date under Section 184quarter(1) of this Law or Section 48quarter(1) of the Utility Model Law,;" "the publication of the patent application ... relating to" in Section 41(3) shall read "the international publication under Article 21 of the Patent Cooperation Treaty signed in Washington on June 19, 1970 ... relating to,;" and "when one year and three months from the filing date has lapsed" in Section 42(1) shall read "at the later of the time of the National Processing Standard Time under Section 184-4 (4) of this Law or Section 48quarter(4) of the Utility Model Law or the time when one year and three months has lapsed from the International Filing Date under Section 184-4 (1) of this Law or Section 48quarter (1) of the Utility Model Law".

184-16. Special provision concerning conversion of application

An international application that has been deemed to be an application for utility model registration under Section 48ter(1) or 48sedecies(4) of the Utility Model Law may be converted to a patent application, only after the fees payable under Section 54(2) of the said Law have been paid (or, in the case of an international application that is deemed to be a utility model registration application under Section 48sedecies(4) of the said Law, after the ruling as provided in Section 48sedecies(4) has been rendered), and, in the case of a Japanese Language Utility Model Registration Application under Section 48quinqies(4) of the said Law, the procedures under Section 48quinqies(1) of the said Law has been completed, or, in the case of a Foreign Language Utility Model Registration Application under 48quarter(1) of the said Law, the procedures under Section 48quarter(1) and 48quinqies(1) of the said law have been completed.

184-17. Restriction on the time for request for examination of application

An applicant of an International Patent Application may not request an examination of the International Patent Application unless the procedure under Section 184-5 in the case of a Japanese Language Patent Application or the procedures under Sections 184-4(1) and 184-5(1) in the case of a Foreign Language Patent Application have been taken and the fee payable under Section 195(2) has been paid. Any person who is not the applicant of the International Patent Application may not request an examination of the International Patent Application unless the Time Limit for the Submission of National Documents (in the case of a Foreign Language Patent Application under the proviso to Section 184-4(1), the Special Time Limit for the Submission of Translation) has lapsed. Or A request for an examination of an International Patent Application shall not be allowed unless, for an applicant of the International Patent Application, the procedure under Section 184-5 in the case of a Japanese Language Patent Application or the procedures under Section 184-4(1) and 184-5(1) in the case of a Foreign Language Patent Application have been taken and the fee payable under Section 195(2) has been paid, and, for any person who is not the applicant of the International Patent Application, the Time Limit for the Submission of National Documents (in the case of a Foreign Language Patent Application under the proviso to Section 184-4(1), the Special Time Limit for the Submission of Translation) has lapsed.

184-18. Provisions for reasons for refusal, etc.

For the purpose of an examiner's decision of refusal and a hearing for patent invalidation, with respect to a foreign language patent application, "foreign document application" in Sections 49(vi), and 123(1)(i) and (v) shall read "foreign language patent application referred to in Section 184-4(1)," and "foreign document" in Section 49(vi) and 123(1)(v) shall read "the description, claim(s) or drawing(s) of the international application as of the international filing date referred to in Section 184-4(1)."

184-19. Special provisions concerning correction

For the purpose of the petition for correction under Section 134-2(1) and the petition for a hearing for correction with respect to a foreign language patent application, "foreign document application" in Section 126(3) shall read "foreign language patent application referred to in Section 184-4(1)" and "foreign document" shall read "the description, claim(s) or drawing(s) of the international application as of the international filing date referred to in Section 184-4(1)."

184-20. International application deemed to be patent application by decision

(1) Where a refusal under Article 25(1)(a) of the Treaty or a declaration under Article 25(1)(a) or (b) of the Treaty has been made by the receiving Office under Article 2(xv) of the Treaty, or a finding under Article 25(1)(a) of the Treaty has been made by the International Bureau under Article 2(xix) of the Treaty in relation to an international application (a patent application only) under Article 2(vii) of the Treaty which specifies Japan as a designated State under Article 4(1)(ii) of the Treaty, the applicant of the international application may make a request to the effect that the Commissioner of the Patent Office shall render a decision under Article 25(2)(a) of the Treaty in accordance with an ordinance of the Ministry of Economy, Trade and Industry within the time limit prescribed in the ordinance of the Ministry of Economy, Trade and Industry.

(2) A person making a request under the preceding subsection with regard to an international application in a foreign language shall submit at the time of the request to the Commissioner of the Patent Office Japanese translations of documents concerning the international application as required by an ordinance of the Ministry of Economy, Trade and Industry, including the Description, Claims, Drawings (limited to the explanations in the Drawings), and Abstract.

(3) Upon receiving the request under Subsection (1), the Commissioner of the Patent Office shall rule on whether the refusal, declaration or finding relating thereto was justified under the provisions of the Treaty and the Regulations under the Patent Cooperation Treaty.

(4) Where the Commissioner of the Patent Office has rendered a ruling under the preceding subsection to the effect that the refusal, declaration or finding under the said subsection was not justified under the provisions of the Treaty and the Regulations under the Patent Cooperation Treaty, the international application for which the decision is rendered shall be deemed to be a patent application filed on the day which would have been accorded as the international filing date if no such refusal, declaration or finding had been made for the international application.

(5) For the purpose of publication of an international application that is deemed to be a patent application under the preceding subsection, "the date of the filing of a patent application" in Section 64(1) shall read "the Priority Date under Section 184-4(1)", the "Foreign Language Document Application" and the "Foreign Language Document and the Foreign Language Abstract" in Section 64(2)(vi) shall read "international application in a foreign language" and "Description, Claim, Drawing and Abstract of an international application filed on the day to be accorded as the International Filing Date under Section 184-20(4)" respectively.

(6) Section 184-3(2), 184-6(1) and (2), 184-9(6), 184-12 to 184-14, 184-15(1), (3) and (4), 184-17 to 184-19 shall apply mutatis mutandis to an international application that is deemed to be a patent application under Subsection (4). In such a case, the replacement of terms necessary for the application of the said provisions shall be made as prescribed by Cabinet Order."

Chapter X Miscellaneous Provisions

185. Special provisions for patent or patent right covering two or more claims

Relating to the patent or patent rights covering two or more claims, for the purposes of the provisions of Section 27(1)(i) or Section 65(4) (including its application under Section 184-10(2)), 80(1), 97(1), 98(1)(i), 111(1)(ii), Section 123(3), 125, 126(6) (including its application under Section 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, the patent shall be deemed to have been granted, or the patent right shall be deemed to exist, for each claim.

186. Petition for certificate, etc.

(1) Any person may file a petition with regard to patents to the Commissioner of the Patent Office to issue a certificate, a certified copy of documents or an extract of documents, to allow the inspection or copying of documents, or to issue documents stored on the magnetic tapes that constitute the part of the Patent Register. Notwithstanding the foregoing, if the Commissioner of the Patent Office considers it necessary to keep such documents confidential, this provision shall not apply in the case of the following documents:

(i) a request, or the description, claims or drawings attached to a request, an abstract, a Foreign Language Document, a Foreign Language Abstract or any document relating to the examination of a patent application (except where the establishment of a patent right has been registered or where the publication of a patent application has been effected) or the materials under Section 67-2(2);

(ii) documents concerning a hearing against an examiner's decision of refusal (except where the establishment of the patent right has been registered or where the patent application concerned has been published);

(iii) documents concerning a hearing for patent invalidation, a hearing for invalidation of the registration of extension of the term or a rehearing of the final and conclusive hearing decision, with respect to which a party in the case or intervener has given notice that a trade secret owned by the said party in the case or intervener has been described (trade secret as provided in Section 2(4) of the Unfair Competition Prevention Act (Law No. 47 of 1993));

(iv) documents which are liable to cause damage to an individual's reputation or peaceful life; and

(v) documents which are liable to cause damage to public order or morality .

(2) Where the Commissioner of the Patent Office approves of the petition under the principal sentence of the preceding subsection with regard to the documents as provided in Paragraphs (i) to (iv) of the said subsection, the Commissioner of the Patent Office shall notify the person who submitted the said documents thereof and reasons therefor.

(3) Provisions of 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 stored on magnetic tapes.

(4) Provisions in Chapter 4 of the Law Concerning Protection of Personal Information Possessed by Administrative Organs (Law No.58 of 2003) shall not apply to the **possessed personal information** (refers to the possessed personal information as provided in Article 2(3) of the said Law) recorded in the documents concerning patents and the part of the Patent Register stored on magnetic tapes.

187. Mark of Patent

(1) A patentee, exclusive licensee or non-exclusive licensee shall make efforts to place a mark (hereinafter referred to as a "mark of patent") as provided by an ordinance of the Ministry of Economy, Trade and Industry, on the patented product, product produced by the patented process (hereinafter referred to as a "patented product"), or package thereof, indicating that the product or process is a patented product or process.

188. Prohibition of false marking

It shall be prohibited for a person to do the following acts:

(i) putting a mark of patent or a mark confusing therewith on or in a non-patented product or the packaging thereof;

(ii) assigning, etc. or displaying for the purpose of assignment, etc. a non-patented product or the packaging thereof on or in which a mark of a patent or a mark confusing therewith is put;

(iii) giving in an advertisement an indication to the effect that a non-patented product is related to a patent or an indication confusing therewith for the purpose of having the product manufactured or used or assigning, etc. the product; or

(iv) giving in an advertisement an indication to the effect that a non-patented process is related to a patent or an indication confusing therewith for the purpose of having the process used, assigned or leased the process.

189. Service

Documents to be served shall be as provided in this Law and by ordinance of the Ministry of Economy, Trade and Industry.

190.

(1) Sections 98(2), 99 to 103, 105, 106, 107(1) (excluding Paragraphs (ii) and (iii)), 107(3) and 109 (Service) of the Code of Civil Procedure shall apply mutatis mutandis to the service of documents as provided in this Law or the ordinance of the Ministry of Economy, Trade and Industry under the preceding section. In such a case, “a court clerk” in Sections 98(2) and 100 of the Code of Civil Procedure shall read “an official designated by the Commissioner of the Patent Office or a hearing clerk”, “post or bailiff” in Section 99(1) of the said Law shall read “post”, “where ... the court clerk” in Section 107(1) of the said Law shall read “where ... and where documents concerning the examination are to be served, an official designated by the Commissioner of the Patent Office or a hearing clerk” and “Supreme Court Rules” in Section 107(1) of the said Law shall read “an ordinance of the Ministry of Economy, Trade and Industry” respectively.

191

(1) Where the domicile or residence of the person who is to be served or any other place to which service is to be made is unknown, or where the service is unable to be effected under Section 107(1) (excluding Paragraphs (ii) and (iii)) of the Code of Civil Procedure as applied mutatis mutandis under Section 190 of this Law, service may be effected by public notification.

(2) Service by public notification shall be effected by publishing in the Official Gazette and the Patent Gazette and posting on the noticeboard of the Patent Office a notification stating the fact that documents to be served are ready to be served at any time to the person who is to be served.

(3) Service by public notification shall take effect following the duration of 20 days from the day the notification is published in the Gazette.

192.

(1) Where an overseas resident has a patent administrator, service shall be made to the patent administrator.

(2) Where an overseas resident has no patent administrator, documents may be dispatched by registered mail, etc. (refers to registered mail or service of mail under Section 2(2) of the Law concerning Service of Mail by Private Business Operator (Law No.99 of 2002) by air provided by a general mail delivery service operator under Section 2(6) of the said Law or by a special mail delivery service operator under Section 2(9) of the said Law that is equivalent to registered mail by ordinance of the Ministry of Economy, Trade and Industry, hereinafter the same in Subsection (3)).

(3) Where documents are dispatched by registered mail, etc., under the preceding subsection, the documents shall be deemed to have been served at the time of dispatch.

193. Patent Gazette

(1) The Patent Office shall publish the Patent Gazette (Tokkyo Koho).

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

(i) the examiner’s decision to the effect that an application is to be refused, or the abandonment, withdrawal or dismissal of a patent application after the publication of the patent application, or the 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 publication of a patent application;

(iii) amendments of the description, claims or drawings attached to a request under Section 17-2(1) after the publication of a patent application (in the case of an amendment under any of the paragraphs in the proviso to the said subsection, limited to an amendment made through the submission of a statement of correction of an incorrect translation);

(iv) the extinguishment of patent rights (excluding extinguishment upon expiration of the term and under Section 112(4) or 112(5)) or the restoration thereof (limited to restoration under Section 112-2(2));

(v) filings for a petition for hearings or rehearings, or withdrawals thereof;

(vi) final and conclusive hearing decisions or rehearing decisions (limited to patent applications in which the establishment of a patent right has been registered or which have been published);

(vii) matters stated in the corrected description and claims and the contents of drawings (limited to those corrected following a final and conclusive hearing decision to the effect that the correction was to be made);

(viii) petitions for a ruling, the withdrawal thereof or a Commissioner's decision; and

(ix) final and conclusive judgments in an action under Section 178(1) (limited to cases where the establishment of a patent right has been registered or the publication of the patent application has been effected).

194. Submission of documents, etc.

(1) The Commissioner of the Patent Office or the examiner may request a party in a case to submit documents or other materials necessary for a procedure other than one relating to a hearing or a rehearing.

(2) The Commissioner of the Patent Office or the examiner may commission related administrative agencies, educational institutions or any other organizations to conduct an investigation necessary for an examination.

195. Fees

(1) Fees shall be paid by the following persons in an amount to be provided by Cabinet Order in view of the actual costs:

(i) persons filing a petition for an extension of the term under Section 4, 5(1), 108(3), or a change of the date under Section 5(2);

(ii) persons filing a petition for the re-issuance of the certificate of patent;

(iii) persons notifying of succession under Section 34(4);

(iv) persons filing a petition for the issuance of a certificate under Section 186(1);

(v) persons filing a petition for the issuance of a certified copy of documents or an extract of documents under Section 186(1);

(vi) persons filing a petition to allow the inspection or copying of documents under Section 186(1); and

(vii) persons filing a petition for the issuance of documents whose contents are stored on the magnetic tapes that constitute the part of the Patent Register under section 186(1).

(2) The persons listed in the center column of the attached table shall pay fees in the amount as provided by Cabinet Order within the range of the amounts specified in the corresponding right-hand column of the table.

(3) Notwithstanding the provisions of the preceding subsection, where, after a request for the examination of an application has been filed by a person who is not the applicant of the patent, the number of claims is increased due to the amendment of the claims attached to the request in the said patent application, the fees for the request for the examination of the patent application payable under the preceding subsection regarding the increased claims shall be paid by the applicant of the patent.

(4) The three preceding subsections shall not apply where the person to pay the fee in accordance with these subsections is the State.

(5) Where the State has joint ownership of a patent right or a right to obtain a patent with a person other than the State, and the portion of their respective shares of said right has been agreed, notwithstanding the provisions of Subsection (1) or (2), the fees payable thereunder (limited to those prescribed by Cabinet Order excluding the fees for the petition for an examination) shall be determined as the sum of the prescribed fees multiplied by the ratios of the share of each person other than the State, and, the person(s) other than the State shall pay such sum.

(6) Where the State has joint ownership of a right to obtain a patent with person(s) including a person entitled to receive a reduction of the fees for the petition for an examination or exemption therefrom under the following section or provisions of any other laws and ordinances (hereinafter in this subsection referred to as a "Reduction/Exemption"), and the portion of their respective shares of said right has been agreed, notwithstanding the provisions of Subsection (2), the fees for the petition for an examination payable by such person for their right to obtain a patent thereunder shall be determined as the sum of the amounts calculated for each person other than the State jointly owning the right, by multiplying the applicable fees for the petition for an examination prescribed thereunder (in the case of a person who receives the reduction or exemption, the amount after said Reduction/Exemption) by the ratios of the share of each person other than the State, and the person(s) other than the State shall pay such sum.

(7) Where the amount of the fees calculated under the two preceding subsections has a fractional figure of less than ten yen, said portion shall be discarded.

(8) The payment of the fees under Subsections (1) to (3) shall be made by patent revenue stamps as provided by an ordinance of the Ministry of Economy, Trade and Industry. Notwithstanding the foregoing, where so provided by an ordinance of the Ministry of Economy, Trade and Industry, a cash payment thereof shall be accepted.

(9) After the petition for examination of an application, where said patent application has been abandoned or withdrawn, upon the petition of the person who paid the fees for the petition for examination under Subsection (2), such fees in the amount prescribed by the relevant Cabinet Order shall be refunded, provided that the certified copy of the examiner's decision has not been served, and none of the following orders or notifications has been made.

(i) an order under Section 39(7);

(ii) notification under Section 48-7;

(iii) notification under Section 50; and

(iv) service of a copy of the examiner's decision under Section 52(2).

(10) No petition for a refund of fees under the preceding subsection may be filed after six months from the date on which a patent application has been abandoned or withdrawn.

(11) Fees paid in excess or in error shall be refunded upon the petition of the person who made payment thereof.

(12) No petition for a refund of the fees under the preceding subsection may be filed after one year from the date on which the payment thereof has been made.

195-2. Reduction of or exemption from fees for request for examination of application

Where the Commissioner of the Patent Office recognizes that a person meets the requirements of the Cabinet Order to be recognized as a person with insufficient funds, and that the person has difficulties paying the fees for a request for the examination of an application, the Commissioner of the Patent Office may, in accordance with the Cabinet Order, grant the person a reduction of or exemption from the payment of the fees for the request for the examination of the person's own patent application payable under Section 195(2), where the Commissioner of the Patent Office recognizes that the person falls under any of the following paragraphs:

- (i) the inventor of the invention or the inventor's heir; and
- (ii) the employer, etc., who has succeeded to the right to obtain a patent from the employee, etc., where the invention is an invention by the employee, etc., under Section 35(1) and where it is provided in advance in any stipulations including contract or employment rules that the employer, etc. shall succeed to the right to obtain a patent.

195-3. Exclusion of application of Administrative Procedures Act

Chapters II and III of the Administrative Procedures Act (Law No.88 of 1993) shall not apply to dispositions or orders under this Law.

195-4. Restriction on appeals under Administrative Appeal Law

No appeal shall be available under the Administrative Appeal Law from an examiner's decision or a hearing decision, or a ruling to dismiss a petition for a hearing or rehearing, or from measures against which no appeal lies in accordance with this Law.

Chapter XI Penal Provisions

196. Offence of infringement

An infringer of a patent right or exclusive license shall be liable to imprisonment with labor for a term not exceeding five years or a fine not exceeding 5,000,000 yen.

197. Offence of fraud

Any person who has obtained a patent, a registration of extension of the term of a patent right or a hearing decision by means of a fraudulent act shall be liable to imprisonment with labor for a term not exceeding three years or a fine not exceeding 3,000,000 yen.

198. Offence of false marking

A person(s) who fails to comply with Section 188 shall be liable to imprisonment with labor for a term not exceeding three years or a fine not exceeding 3,000,000yen.

199. Offense of perjury, etc.

(1) A witness, an expert witness or an interpreter who has taken an oath under this Law and made a false statement or given an expert opinion or interpretation to the court which entrusted the said person with the said task shall receive a sentence of imprisonment with forced labor for a term between three month and ten years.

(2) A witness, an expert witness or an interpreter who has taken an oath under this Law and made a false statement or given a false expert opinion or interpretation to the Patent office or the court entrusted by the Patent office shall receive a sentence of imprisonment with forced labor for a term of between three months and ten years.

200. Offence of leaking secrets

A present or former official of the Patent Office who has leaked or appropriated any secret relating to an invention claimed in a pending patent application that has become known to him/her in the course of performing his/her duties shall be liable to imprisonment with labor for a term not exceeding one year or a fine not exceeding 500,000 yen.

200-2. Offence of breach of confidentiality order

(1) A person who fails to comply with a confidentiality order shall be liable to imprisonment with labor for a term not exceeding five years or a fine not exceeding 5,000,000 yen or combination thereof .

(2) The prosecution of the offence under the preceding subsection may not be initiated unless a complaint is filed.

(3) The offence under Subsection (1) shall apply to a person who commits the offence outside Japan.

201. Dual liability

(1) Where a representative of a legal-entity or an agent, employee or other staff of a legal entity, or an individual has committed in the course of performing his/her duties for the legal entity or individual, any act in violation of the sections prescribed in the following paragraphs, in addition to the offender, the legal entity shall be liable to a fine as provided in the corresponding paragraph and the individual shall be liable to a fine as provided in the section prescribed in the corresponding paragraph:

(i) Section 196 or 200-2(1), a fine not exceeding 150 million yen; and

(ii) Section 197 or 198, a fine not exceeding 100 million yen.

(2) In the case of the preceding subsection, the complaint under 200-2(2) against the offender shall have effect on the legal entity or individual and the complaint against the legal entity or individual shall have effect on the offender.

202. Administrative penalties

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, said person shall be liable to an administrative penalty not exceeding 100,000 yen.

203.

A person(s) who has been summoned by the Patent Office or a court commissioned thereby in accordance with this Act, and fails to appear or refuses to take an oath, make a statement, testify, give an expert opinion or interpret without a justifiable reason shall be liable to an administrative penalty not exceeding 100,000 yen.

204.

A person(s) who has been ordered by the Patent Office or a court commissioned thereby to submit or present documents or other materials for the purpose of examination or preservation of evidence in accordance with this Act and fails to comply with the order without a justifiable reason shall be liable to a fine not exceeding 100,000 yen.

Attached Table (In relation to Section 195)

		Amounts
1.	A person filing a patent application (excluding one in the following paragraph)	¥16,000 per case
2.	A person filing a foreign language document application	¥26,000 per case
3.	A person responsible for the procedures under Section 184-5(1)	¥16,000 per case
4.	A person responsible for the procedures under Section 184-20(1)	¥16,000 per case
5.	A person filing an application for the registration of extension of the term of a patent right	¥74,000 per case
6.	A person requesting an examination of an application	¥168,600 per case plus ¥4,000 per claim
7.	A person amending a description, claims or drawings through the submission of a statement of correction of incorrect translation	¥19,000 per case
8.	A person requesting an advisory opinion under Section 71(1)	¥40,000 per case
9.	A person requesting a ruling	¥55,000 per case
10.	A person requesting canceling of a ruling	¥27,500 per case
11.	A person filing a petition for a hearing or rehearing (excluding one in the following paragraph)	¥49,500 per case plus ¥5,500 per claim
12.	A person filing a petition for a hearing against an examiner's decision of refusal of the registration of extension of the term of a patent right, a hearing for invalidation of the registration of extension of the term of a patent right, or a rehearing against the final and conclusive judicial examiner's decision in these hearings.	¥55,000 per case
13.	Person demanding correction of the specification, claim(s) or drawing(s) (excluding cases where, by demanding such correction, the demand for a correction hearing is deemed to have been withdrawn under Section 134-3(4))	¥49,500 per case plus ¥5,500 per claim
14.	A person requesting participation in a hearing or rehearing.	¥55,000 per case