

**Patent Act**

**Act No. 950, Promulgated on Dec. 31, 1961**  
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## CHAPTER I GENERAL PROVISIONS

### *Purpose*

1. The purpose of this Act shall be to encourage, protect and utilize inventions, thereby improving and developing technology, and to contribute to the development of industry.

### *Definitions*

2. The definitions of terms used in this Act shall be as follows:

(i) “invention” means the highly advanced creation of technical ideas utilizing rules of nature;

(ii) “patented invention” means an invention for which a patent has been granted; and

(iii) “working” means any one of the following acts:

(a) in the case of an invention of a product, acts of manufacturing, using, assigning, leasing, importing, or offering for assigning or leasing (including displaying for the purpose of assignment or lease) the product;

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

(c) in the case of an invention of a process of manufacturing a product, acts of using, assigning, leasing, importing, or offering for assigning or leasing the product manufactured by the process, in addition to the acts mentioned in subparagraph (b).

#### *Capacity of Minors, etc.*

**3.—**(1) Minors, limited-competents and incompetents shall not initiate a procedure for filing an application, requesting examination, or others relating to a patent (hereinafter referred to as “procedure relating to a patent”) unless represented by their legal representatives. However, this provision shall not apply where a minor or a limited competent can perform a legal act independently.

(2) The legal representative as referred to in paragraph (1) may, without the consent of the family council, act in any opposition, trial, or retrial procedure relating to a patent initiated by another party.

(3) Procedures relating to a patent, initiated by a person who lacks the requisite power of legal representation or competence or delegation necessary to initiate any such procedures, shall have retroactive effect if they are ratified by a person having such power of representation or competence.

#### *Associations, etc., Other than Legal Entity*

**4.** A representative or an administrator, who has been so designated by an association or a foundation which is not a legal entity, may make a request for examination of a patent application, file an opposition to the grant of a patent, or appear as a plaintiff or defendant in a trial or a retrial in its own name.

#### *Patent Administrator for Nonresidents*

**5.—**(1) A person who has neither an address nor a place of business in the Republic of Korea (hereinafter referred to as a “nonresident”) may not, except in cases where an application for registration under paragraph (3) has been made, or a Presidential Decree otherwise prescribes, initiate any procedure relating to a patent, nor appeal against any decision taken by an administrative agency in accordance with this Act or any decree thereunder, unless he is represented by an agent with respect to his patent, who has an address

or a place of business in the Republic of Korea (hereinafter referred to as “patent administrator”).

(2) The patent administrator shall, in addition to the powers specially conferred on him, represent the principal in all procedures relating to a patent and in any appeal against a decision taken by an administrative agency in accordance with this Act or any decree thereunder.

(3) If a nonresident is the holder of a patent or has a registered right in a patent, the appointment or change of his patent administrator, or the grant of a power of attorney or the extinguishment thereof, shall not be effective against any third party unless it is registered.

(4) When a nonresident intends to register the establishment of a patent right or during the term of a patent right, he shall appoint and register a patent administrator, as provided for in paragraph (1).

#### *Scope of Powers of Attorney*

6. An agent, who is instructed to initiate a procedure relating to a patent before the Korean Industrial Property Office by a person who is domiciled or has his place of business in the Republic of Korea shall not, unless expressly so empowered, abandon or withdraw an application for a patent, withdraw an application for registration of an extension of the term of a patent right, withdraw a petition, withdraw a request for a motion, make or withdraw a priority claim under Article 55(1), request for a trial under Article 132<sup>ter</sup> and 132<sup>quater</sup>, or appoint a sub-representative.

#### *Proof of Powers of Attorney*

7. An agent (including a patent administrator, the same being applicable hereafter) of a person who is initiating a procedure relating to a patent before the Korean Industrial Property Office, but who is not a person referred to in Article 5(3), shall present written proof of his power of attorney.

#### *Non-Extinguishment of Powers of Attorney*

8. The power of attorney of an agent of a person initiating a procedure relating to a patent shall not be extinguished upon the death or loss of legal capacity of the principal, the extinguishment of a legal entity of the principal due to a merger, the termination of the duty of trust of the principal, the death or loss of legal capacity of the legal representative, or the modification or extinguishment of his power of attorney.

#### *Independence of Representation*

9. Where two or more agents of a person initiating a procedure relating to a patent have been designated, each of them shall independently represent the principal before the Korean Industrial Property Office or the Industrial Property Tribunal.



*Replacement of Agents, etc.*

10.—(1) If the Commissioner of the Korean Industrial Property Office or the presiding trial examiner considers that a person initiating a procedure relating to a patent is not qualified to conduct such a procedure or make oral statements, etc. he may order, *ex officio*, the appointment of an agent to conduct the procedure.

(2) If the Commissioner of the Korean Industrial Property Office or the presiding trial examiner considers that the agent of a person initiating a procedure relating to a patent is not qualified to conduct such a procedure or make oral statements, etc. he may order, *ex officio*, the replacement of the agent.

(3) The Commissioner of the Korean Industrial Property Office or the presiding trial examiner may, in the case referred to in paragraph (1) or (2) of this Article, order the appointment of a patent attorney to conduct the procedure.

(4) The Commissioner of the Korean Industrial Property Office or the presiding trial examiner may invalidate any action taken before the Korean Industrial Property Office or the Industrial Property Tribunal by the person initiating a procedure relating to a patent referred to in paragraph (1) of this Article or by the agent referred to in paragraph (2), of this Article prior to the appointment or the replacement of the agent, referred to under paragraph (1) or (2), respectively, after the issuance of an order referred to under paragraph (1) or (2).

*Representation of Two or More Persons*

11.—(1) Where two or more persons jointly initiate a procedure relating to a patent, each of them shall represent the joint initiators except for actions falling under any of the following subparagraphs; however, this provision shall not apply where those persons have appointed a common representative and have notified the appointment of the representative to the Korean Industrial Property Office or the Industrial Property Tribunal:

(i) abandonment or withdrawal of a patent application or withdrawal of an application for registration of an extension of term of a patent right;

(ii) withdrawal of a petition; claim or withdrawal of a priority claim under Article 55(1);

(iii) withdrawal of a request; and

(iv) request for a trial under Article 132*ter* or 132*quater*.

(2) Where the common representative has been appointed and notified under the provision of paragraph (1), a written proof of the fact that the representative has been appointed shall be presented.

*Mutatis Mutandis Application of Provisions of the Code of Civil Procedure*

**12.** Except where there is an express provision relating to agents in the Patent Act, the provisions of Part I, Section 2, Subsection 4 of the Code of Civil Procedure shall apply *mutatis mutandis* to agents under this Act.

*Venue of Nonresidents*

**13.** If a nonresident has appointed a patent administrator with respect to his patent right or other right relating to a patent, the domicile or place of business of the patent administrator shall be considered to be that of the nonresident. Where there is no such patent administrator, the location of the Korean Industrial Property Office shall be regarded as the seat of the property under Article 9 of the Code of Civil Procedure.

*Calculation of Time Limits*

**14.** The time limits provided for in the Patent Act, or any decrees thereunder shall be calculated as follows:

- (i) the first day of the period shall not be counted unless the period starts at midnight;
- (ii) if the period is expressed in months or years, it shall be counted according to the calendar;
- (iii) if the start of the period does not coincide with the beginning of a month or year, the period shall expire on the day preceding the date in the last month or year of the period corresponding to the date on which the period started; however, if there is no corresponding day in the last month, the period shall expire on the last day of that month; and
- (iv) if the last day of a period falls on an official holiday, including the Labor Day designated by the Labor Day Designation Act, the period shall expire on the working day following such holiday.

*Extension of Time Limits, etc.*

**15.—(1)** The Commissioner of the Korean Industrial Property Office or the President of the Industrial Property Tribunal may extend, for the benefit of a person residing in an area that is remote or difficult to access, the period for submitting an amendment of grounds for opposition according to Article 70(1) or the period for demanding a trial under Article 132*ter* or 132*quater* upon a request or *ex officio*.

(2) When the Commissioner of the Korean Industrial Property Office, the President of the Industrial Property Tribunal, a presiding trial examiner or an examiner has designated a time limit for a procedure relating to a patent to be initiated under the Patent Act, extend it upon a request or *ex officio*.

(3) When a presiding trial examiner or an examiner has designated a date for taking a procedure relating to a patent under the Patent Act, he may change the date upon a request or *ex officio*.

#### *Invalidation of Procedure*

**16.**—(1) When a person who has been notified to make an amendment in accordance with Article 46 fails to do so within the designated time limit, or when a person who intends to obtain the establishment of a patent right fails to pay the patent fee within the time limit as prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy under Article 79(2), the Commissioner of the Korean Industrial Property Office or the President of the Industrial Property Tribunal may invalidate the procedure relating to the patent.

(2) When a procedure has been invalidated under paragraph (1), if the delay of the time is deemed to have been caused by a natural disaster or other unavoidable circumstances, the Commissioner of the Korean Industrial Property Office or the President of the Industrial Property Tribunal may revoke a disposition of invalidation at the request of a person who received an invitation to amend or a person who intends to have the establishment of a patent right registered within fourteen days from the date on which the reasons for the delay ceased to exist. However, this provision shall not apply in a case where one year elapsed after the said period expires.

#### *Subsequent Completion of Procedure*

**17.** If a person who initiated a procedure relating to a patent has failed to observe the time limit for requesting a trial under Article 132<sup>ter</sup> or 132<sup>quater</sup>, or the time limit for demanding a retrial under Article 180(1) due to a natural disaster or other unavoidable circumstances, he may subsequently complete the procedure within fourteen days after the said reason ceases to exist. However, this provision shall not apply in a case where one year has elapsed after the said period expires.

#### *Succession of Procedural Effects*

**18.** The effects of a procedure taken in relation to a patent or other right relating to a patent shall extend to the successor in title.

#### *Continuation of Procedure by Successor*

**19.** Where a patent right or other right relating to a patent is transferred while a procedure relating to the patent is pending before the Korean Industrial Property Office or the Industrial Property Tribunal, the Commissioner of the Korean Industrial Property Office or the presiding trial examiner may require the successor in title to continue the procedure relating to the patent.

### *Interruption of Procedure*

**20.** If any procedure relating to a patent pending before the Korean Industrial Property Office or the Industrial Property Tribunal falls under any of the following subparagraphs, it shall be interrupted, unless there is a representative authorized to conduct the procedure:

- (i) when the party involved has died;
- (ii) when the legal entity involved has ceased to exist by reason of merger;
- (iii) when the party involved has lost the ability to conduct the procedure;
- (iv) when the legal representative of the party involved has died or lost his power;
- (v) when the commission of a trustee given by the trust of the party involved has terminated; or
- (vi) where the representative as provided in the provisions of Article 11(1) has died or lost his qualification.

### *Resumption, of an Interrupted Procedure*

**21.** When a procedure pending in the Korean Industrial Property Office or the Industrial Property Tribunal has been interrupted in the manner referred to in Article 20, any person who falls under any of the following subparagraphs shall resume the procedure:

- (i) in the case as provided for under Article 20(i), the deceased person's successor, administrator of inheritance, or other person authorized to pursue the procedure under the Act; however, the deceased person's successor may not resume the procedure until such time as his right to succession is no longer subject to renunciation;
- (ii) in the case as provided for under Article 20(ii), the legal entity established by or existing after the merger;
- (iii) in the cases as provided for under Article 20(iii) and (iv), the party whose ability to take the necessary procedure has been restored or any person who becomes the legal representative of the party, respectively;
- (iv) in the case as provided for under Article 20(v), a new trustee; and
- (v) in the case as provided for under Article 20(vi), a new representative or each joint initiator involved.

### *Request for Continuation*

**22.—(1)** The request for continuation of an interrupted procedure under Article 20 may be made by an opposite party.

(2) When a request for continuation of an interrupted procedure interrupted under Article 20 is made, the Commissioner of the Korean Industrial Property Office or the presiding trial examiner shall notify the opposite party.

(3) The Commissioner of the Korean Industrial Property Office or the trial examiner shall, if it has been deemed that there are no grounds for granting the request for continuation of the interrupted procedure under Article 20, dismiss the request by decision after examining the request, *ex officio*.

(4) The Commissioner of the Korean Industrial Property Office or the trial examiner, shall decide, upon the request for continuation, whether to permit resumption of the interrupted procedure after a certified copy of the decision, ruling or trial decision was sent.

(5) If a person referred to in Article 21 does not take over the interrupted procedure, the Commissioner of the Korean Industrial Property Office or the trial examiner shall, *ex officio*, designate a period within which he shall resume such procedure.

(6) If no request for continuation has been made within the designated period provided in paragraph (5), it is considered that the continuation has been made on the day following the expiration of such designated period.

(7) If the Commissioner of the Korean Industrial Property Office or the presiding trial examiner deems that the continuation made in accordance with paragraph (6), he shall so notify the parties involved.

#### *Suspension of Procedure*

**23.**—(1) If the Commissioner of the Korean Industrial Property Office or the trial examiner is unable to carry out his duties due to a natural disaster or other unavoidable circumstances, the procedure pending in the Korean Industrial Property Office or the Industrial Property Tribunal shall be suspended until such impediments cease to exist.

(2) If a party involved is unable to pursue a procedure pending in the Korean Industrial Property Office or the Industrial Property Tribunal on account of impediments of indefinite duration, the Commissioner of the Korean Industrial Property Office or the trial examiner may order its suspension by decision.

(3) The Commissioner of the Korean Industrial Property Office or the trial examiner may cancel the decision issued under paragraph (2).

(4) If a procedure is suspended under paragraphs (1) or (2), or a decision is canceled under paragraph (3), the Commissioner of the Korean Industrial Property Office or the trial examiner shall so notify the parties involved.

#### *Effects of Interruption or Suspension*

**24.** The interruption or suspension of a procedure relating to a patent pending in the Korean Industrial Property Office shall suspend the running of a term and the entire term shall

start to run again from the time of the notification of the continuation or resumption of the procedure.

#### *Capacity of Foreigners*

**25.** Foreigners who have neither an address nor a place of business in the Republic of Korea shall not enjoy patent rights or other rights relating to a patent, except as provided for in any one of the following subparagraphs:

(i) where their country allows nationals of the Republic of Korea to enjoy patent rights or other rights relating to a patent under the same conditions as its own nationals;

(ii) where their country allows nationals of the Republic of Korea to enjoy patent rights or other rights relating to a patent under the same conditions as its own nationals in the case that the Republic of Korea allows their country's nationals to enjoy patent rights or other rights relating to a patent; or

(iii) where they may enjoy patent rights or other rights relating to a patent according to a treaty or equivalents of a treaty (hereinafter referred to as "treaty").

#### *Effects of Treaty*

**26.** Where a treaty contains special provisions relating to patents that are different from those of the Patent Act, such special provisions shall prevail.

#### *Subsidies for Encouragement of Inventions*

**27.** The Government may grant a subsidy to encourage inventive activities under the conditions provided in the Presidential Decree.

#### *Effective Date of Submitted Documents*

**28.**—(1) Applications, demands or other documents (including articles, the same applying hereafter in this provision) submitted to the Korean Industrial Property Office or the Industrial Property Tribunal under the provisions of the Patent Act, or any decree thereunder, shall be effective as of the date on which they are delivered to the Korean Industrial Property Office or the Industrial Property Tribunal.

(2) Where applications, demands or other documents are submitted by mail to the Korean Industrial Property Office or the Industrial Property Tribunal, they are deemed to be delivered to the Korean Industrial Property Office or the Industrial Property Tribunal on the date as stamped by the mail service if the stamped date is clear; however, if such stamped date is unclear they are deemed to be delivered on the date when the mail was submitted to a post office, provided that such date is proved by a receipt therefor. However, this provision shall not apply in cases where written applications for registration of a patent right and other rights related thereto and documents concerning an international application under



Article 2(vii) of the Patent Cooperation Treaty (hereinafter referred to as an “international application”) are submitted by mail.

(3) deleted.

(4) Details concerning the submission of documents with regard to the delay of mail, loss of mail, or interruption of mail service, other than the provisions of paragraphs (1) to (2), shall be prescribed by the Ordinance of the Ministry of Commerce, Industry, and Energy.

#### *Entry of Identification Number*

**28bis.**—(1) A person who initiates a procedure for patent as prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy (excluding a person to whom an identification number has already been granted under paragraph (2) or (3)), shall apply for the grant of his identification number to the Korean Industrial Property Office or the Industrial Property Tribunal.

(2) If any person makes an application under paragraph (1), the Commissioner of the Korean Industrial Property Office or the President of the Industrial Property Tribunal shall grant an identification number and notify him thereof.

(3) If a person who initiates a procedure for patent under paragraph (1) fails to apply for the grant of an identification number, the Commissioner of the Korean Industrial Property Office or the President of the Industrial Property Tribunal shall, *ex officio*, grant a identification number and notify him thereof.

(4) If a person to whom an identification number has been granted under paragraph (2) or (3) initiates a procedure for patent, he shall enter his identification number in any document as prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy. In this case, notwithstanding the provisions of this Act or any decree thereunder, a domicile (a place of business and the name of the representative, in case of a legal entity) may not be entered in said document.

(5) The provisions of paragraphs (1) to (4) shall apply *mutatis mutandis* to an agent of a person who initiates a procedure for patent.

(6) An application for grant of an identification number, the grant and notification thereof or other matters necessary therefor shall be prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

#### *Procedure for Filing Patent Applications by Means of Electronic Documents*

**28ter.**—(1) A person who initiates a procedure for patent may, pursuant to such methods as prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy, convert a written application for a patent or other documents as presented to the Commissioner of the Korean Industrial Property Office or the President of the Industrial



Property Tribunal under this Act into electronic documents, and may present them through any computerized network or by a floppy disk in which they are written.

(2) Electronic documents as presented under paragraph (1) shall have the same effect as other documents presented under this Act.

(3) Electronic documents as presented through a computerized network under paragraph (1) shall, if a presenter thereof confirms a receipt number through a computer network, be deemed to have been received as contents written in a file of a computer system for receipt operated by the Korean Industrial Property Office or the Industrial Property Tribunal.

(4) The kinds of documents capable of being presented by means of electronic documents under paragraph (1) and the methods of such presentation or other necessary matters shall be prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

*Report on Use of Electronic Documents and Electronic Signature*

**28<sup>quater</sup>.**—(1) A person who intends to initiate a procedure for patent by means of electronic documents shall, in advance, report the use thereof to the Commissioner of the Korean Industrial Property Office or the President of the Industrial Property Tribunal, and shall affix his electronic signature so that the presenters may be discerned.

(2) Electronic documents as presented under Article 28<sup>ter</sup> shall be deemed to have been filed by the person who affixes his electronic signature under paragraph (1).

(3) Matters necessary for procedures of report on use of electronic documents and the methods of electronic signature as prescribed under paragraph (1), shall be prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

*Notification, etc. through a Computerized Network*

**28<sup>quinquies</sup>.**—(1) If the Commissioner of the Korean Industrial Property Office, the President of the Industrial Property Tribunal, a presiding trial examiner, a trial examiner, a presiding examiner, or an examiner intends to give notification and make transmission (hereinafter referred to as a “notification”) of any pertinent documents to a person who reports the use of electronic documents under 28<sup>quater</sup>(1), he may do so through a computerized network.

(2) The notification of any pertinent documents given through a computerized network under paragraph (1) shall have the same effect as that given in writing.

(3) The notification of any pertinent documents under paragraph (1) shall, if it is written in a file of a computer system operated by a person who receives said notification, be deemed to reach as contents written in a file of a computer system for transmission operated by the Korean Industrial Property Office or the Industrial Property Tribunal.





(4) Matters necessary for the classification and the methods of such notification as given through a computerized network under paragraph (1) shall be prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

## CHAPTER II REQUIREMENTS FOR PATENTS AND PATENT APPLICATION

### *Requirements for Patents*

**29.**—(1) Inventions which have industrial applications may be patentable unless they fall under any of the following subparagraphs:

(i) inventions publicly known or worked in the Republic of Korea prior to the filing of the patent application; or

(ii) inventions described in a publication distributed in the Republic of Korea or in a foreign country prior to the filing of the patent application.

(2) Notwithstanding paragraph (1), where an invention could easily have been made prior to the filing of the patent application by a person having ordinary skill in the art to which the invention pertains, on the basis of an invention referred to in each subparagraph of paragraph (1), a patent shall not be granted for such an invention.

(3) Notwithstanding paragraph (1), where an invention for which a patent application is filed is identical with an invention or device described in the specification or drawings initially attached to another patent application which was laid open or published after grant for public inspection after the filing date of said patent application or to a utility model application which was published after grant for public inspection after the filing date of said patent application, a patent shall not be granted for the invention of the said patent application. This provision shall not apply, however, in cases where the inventor of the patent application concerned and the inventor of the other patent or utility model application are the same person or where the applicant of the patent application and the applicant of the other patent or utility model application are the same person at the time of filing.

(4) Where the other patent or utility model application under paragraph (3) is an international application which is deemed to be a patent application under Article 199(1) of this Act or which is deemed to be a utility model registration application under Article 57(1) of the Utility Model Act (including an international application considered to be a patent application under Article 214(4) of this Act or a utility model application under Article 71(4) of the Utility Model Act), in applying the provisions of paragraph (3), “laid open” shall read “laid open or was the subject of an international publication under Article 21 of the Patent Cooperation Treaty” and “an invention or device described in the specification or drawings originally attached” shall read “an invention or device described both in the specification, claims, or drawings of the international application as of the international filing date, and in the translated version thereof.”

*Inventions Deemed to be Novel*

**30.**—(1) If a patentable invention falls under any of the following subparagraphs, it shall be recognized to be novel provided that the patent application therefor is filed within six months of the applicable date:

(i) when a person having the right to obtain a patent has caused his invention to fall within the terms of any of the subparagraphs in Article 29(1) by conducting an experiment on it, publishing the invention in printed matter, or presenting it in writing at an academic meeting held by an academic organization;

(ii) when, against the intention of the person having the right to obtain a patent, the invention falls within the terms of any of the subparagraphs in Article 29(1); or

(iii) when a person having the right to obtain a patent has caused his invention to fall within the terms of any of the subparagraphs of Article 29(1) by displaying his invention at an exhibition which satisfies any of the following requirements:

(a) exhibitions held by the Government or a local governmental entity;

(b) exhibitions held by persons authorized by the Government or a local governmental entity;

(c) exhibitions held in a foreign country with the authorization of the government; or

(d) exhibitions held in the territory of a country party to a treaty by the government of the said country or by persons authorized by the said government.

(2) Any person desiring to take advantage of the provisions of paragraph (1)(i) or (iii) shall submit, simultaneously with his patent application, a written statement to that effect to the Commissioner of the Korean Industrial Property Office, to whom he shall also submit, within thirty days from the filing date of the patent application, a document proving the relevant facts.

*Patent for Plant Invention*

**31.** Any person who invents a variety of plant which reproduces itself asexually may obtain a plant patent therefor.

*Unpatentable Inventions*

**32.** Inventions liable to contravene public order or morality or to injure public health shall not be patentable, notwithstanding the provisions of Article 29(1) or (2).

*Persons Entitled to Obtain a Patent*

**33.**—(1) Any person who makes a new invention or his successor shall be entitled to obtain a patent in accordance with the Patent Act; however, employees of the Korean

Industrial Property Office and the Industrial Property Tribunal shall not be entitled to obtain patents during their employment at the Office except in the case of inheritance or bequest.

(2) If two or more persons jointly make an invention, the right to obtain a patent shall be jointly owned.

*Patent Application Filed by an Unentitled Person;  
Protection of Actful Holder of the Right*

**34.** If a patent cannot be granted because an application was filed by a person who is not the inventor or a successor to the right to obtain a patent (hereinafter referred to as an “unentitled person”) under Article 62(2), a subsequent application filed by the Actful holder of the right shall be deemed to have been filed on the date of filing of the initial application filed by the unentitled person. This provision shall not apply, however, if the subsequent application is filed by the Actful holder of the right more than thirty days after the date of the application filed by the unentitled person was rejected.

*Patent Granted to an Unentitled Person;  
Protection of Actful Holder of the Right*

**35.** If a decision of revocation becomes final on the basis of Article 69(1)(ii) or a decision of invalidation becomes final as prescribed in Article 133(1)(ii), a subsequent application filed by the Actful holder of the right shall be deemed to have been filed on the filing date the revoked or invalidated application; however, this provision shall not apply if the subsequent application is filed more than two years after the publication date of the first application or more than thirty days after the decision of revocation or invalidation becomes final.

*First-to-File Rule*

**36.—(1)** Where two or more applications relating to the same invention are filed on different dates, only the applicant of the application having the earlier filing date may obtain a patent for the invention.

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

(3) Where a patent application has the same subject matter as a utility model application and the applications are filed on different dates, paragraph (1) shall apply *mutatis mutandis* whereas if they are filed on the same date, paragraph (2) shall apply *mutatis mutandis*. However, the provision of paragraph (2) shall not apply in any case where a patent application is made on the same date as a utility model registration application (including a patent application which is deemed to be made on the same date as a utility model registration application under Article 53(3)), as prescribed in Article 53 as a dual application.

(4) Where a patent application or utility model application is invalidated or withdrawn, such application shall, for the purposes of paragraphs (1) to (3), be deemed never to have been filed.

(5) A patent application or utility model application filed by a person who is not the inventor, creator, or successor in title to the right to obtain a patent or utility model registration shall, for the purposes of paragraphs (1) to (3), be deemed never to have been filed.

(6) The Commissioner of the Korean Industrial Property Office shall in the case of paragraph (2), order the applicants to report to him the results of the consultation within a designated period of time. If such report is not submitted within the designated period, the applicants shall be deemed not to have reached an agreement within the meaning of paragraph (2).

#### *Transfer of the Right to Obtain a Patent*

**37.**—(1) The right to obtain a patent may be transferred.

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

(3) In the case of joint ownership of the right to obtain a patent, a joint owner shall not assign his share without the consent of all the other joint owners.

#### *Succession to the Right to Obtain a Patent*

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

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

(3) Paragraph (2) shall also apply where a patent application and a utility model application are filed on the same date, on the basis of the right to obtain a patent and utility model registration for the same invention and device which has been derived by succession from the same person.

(4) The succession to the right to obtain a patent after the filing of the patent application shall not be effective unless the applicant files a notice of change of applicant, except in the case of inheritance or other general succession.

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

(6) Where two or more notifications are made on the same date, on the basis of a right to obtain a patent for the same invention that has been derived by succession from the same person, a notification made by any person other than the one agreed upon after consultations among all the persons who made notifications shall not be effective.

(7) Article 36(6) shall apply *mutatis mutandis* to the cases under paragraphs (2), (3) or (6).

#### *In-Service Inventions*

**39.**—(1) An employer, a legal entity, or the Government or a local public entity (hereinafter referred to as a “employer”) shall have a non-exclusive license to the patent right concerned, where an employee, an executive officer of such a legal entity, or a public official (hereinafter referred to as a “employee”) or successor in title has obtained a patent for an invention which, by reason of its nature, falls within the scope of the business of the employer and an act or acts resulting in the invention (hereinafter referred to as “in-service invention”) were part of the present or past duties of the employee.

(2) An in-service invention made by a public official shall pass to the State and the patent right shall thereby revert to the State.

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

(4) Notwithstanding Article 6 of the National Property Act, the disposal and management of a patent right which has reverted to the State, in accordance with paragraph (2), shall be governed by the Commissioner of the Korean Industrial Property Office.

(5) A disposal and management of a patent right under paragraph (4) which has reverted to the State shall be prescribed by Presidential Decree.

#### *Remuneration for In-Service Inventions*

**40.**—(1) The employee shall have the right to obtain reasonable remuneration when he has transferred to the employer the right to obtain a patent or the patent right with respect to an in-service invention, or has given the employer an exclusive license in accordance with a contract or service regulation.

(2) The amount of the remuneration provided for in paragraph (1) shall be calculated in accordance with the profits to be realized by the employer from the invention and the extent of the employer’s contribution to the creation of the invention; any suggestion made by the employee as to the method of settlement shall also be taken into account.

(3) If the State succeeds to an in-service invention made by a public official, the State shall provide reasonable remuneration to the public official. Matters relating to the payment of remuneration, etc., shall be prescribed by Presidential Decree.

(4) Deleted.

*Inventions Necessary for National Defense, etc.*

**41.**—(1) If an invention is necessary for the national defense, the Government may order an inventor, an applicant, or an agent not to file a patent application for such invention in foreign patent offices concerned or to keep such invention confidential. However, if such persons obtain permission from the Government, they may file an application therefor in foreign patent offices.

(2) If an invention filed with the Korean Industrial Property Office is considered necessary for national defense, the Government may refuse for grant a patent and, for reasons of national defense such as in time of war, incident or other similar emergency, may expropriate the right to obtain a patent therefor.

(3) The Government shall pay reasonable compensation for the loss arising from maintaining secrecy under paragraph (1).

(4) The Government shall pay reasonable compensation in the event that a patent is not granted, or the right to obtain a patent is expropriated under paragraph (2).

(5) If there has been a violation of an order prohibiting the filing of an application for an invention in a foreign patent office concerned or of an order to maintain secrecy under paragraph (1), the right to obtain a patent therefor shall be deemed to be abandoned.

(6) If there has been a violation of an order to maintain secrecy under paragraph (1), the right to request the payment of compensation for the loss arising from maintaining secrecy shall be deemed to be abandoned.

(7) Matters relating to the procedure, etc., for prohibiting the filing of an application abroad, proceedings for maintaining secrecy under paragraph (1), or for expropriation or payment of compensation under paragraphs (2) to (4) shall be prescribed by Presidential Decree.

*Patent Application*

**42.**—(1) Any person desiring to obtain a patent shall file a patent application with the Commissioner of the Korean Industrial Property Office stating the following:

(i) the name and the domicile of the applicant (in the case of a legal entity, the title, place of business and the name of its representative);

(ii) the name and the domicile, or place of business, of the agent, if any;

(iii) the date of filing;

- (iv) the title of the invention;
- (v) the name and the domicile of the inventor; and
- (vi) matters prescribed in Articles 54(3) and 55(2) (only when claiming a priority right).

(2) The patent application under paragraph (1) shall be accompanied by a specification, drawing or drawings (if necessary), and an abstract stating the following:

- (i) the title of the invention;
- (ii) a brief explanation of the drawings;
- (iii) a detailed description of the invention; and
- (iv) claim(s).

(3) The detailed description of the invention under paragraph (2)(iii) shall state the purpose, construction, and effect of the invention in such a manner that it may easily be carried out by a person having ordinary skill in the art to which the invention pertains.

(4) The claim(s) under paragraph (2)(iv) shall describe the matter for which protection is sought in one or more claims (hereinafter referred to as “claim(s)”) and the claim(s) shall comply with each of the following sub-paragraphs:

- (i) the claim(s) shall be supported by a detailed description of the invention;
- (ii) the claim(s) shall define the invention clearly and concisely; and
- (iii) the claim(s) shall define only the features indispensable for the constitution of the invention.

(5) Details concerning the drafting of claim(s) under paragraph (2)(iv) shall be prescribed by Presidential Decree.

(6) Details concerning the description of an abstract under paragraph (2) shall be prescribed by the Ordinance of the Ministry of Commerce, Industry, and Energy.

#### *Abstract*

**43.** An abstract under Article 42(2) shall not be interpreted to define the scope of the invention for which protection is sought but rather, shall serve as a technical information document.

#### *Joint Applications*

**44.** Where the right to obtain a patent is owned jointly under Article 33(2), all the joint owners shall apply for the patent application jointly.

### *Scope of One Patent Application*

**45.**—(1) A patent application shall relate to one invention only. However, a group of inventions so linked as to form a single general inventive concept may be the subject of a patent application.

(2) The requirements for one patent application under paragraph (1) shall be prescribed by Presidential Decree.

### *Amendment of Procedure*

**46.** The Commissioner of the Korean Industrial Property Office, the president of the Industrial Property Tribunal or the presiding trial examiner may order amendments to a procedure relating to a patent, designating a time limit if such a procedure falls under any of the following subparagraphs:

- (i) where the procedure has not complied with the provisions of Article 3(1) or 6;
- (ii) where the procedure has not complied with the formalities specified in the Patent Act or Presidential Decree thereof; or
- (iii) where fees required in accordance with Article 82 have not been paid.

### *Amendment of Patent Application*

**47.**—(1) An applicant may, excluding the cases specified in paragraph (2), amend any specification or drawings attached to a patent application to the extent that it does not change the subject matter of the specification or drawings originally attached to the application within one year and three months from the date specified in any of the following subparagraphs:

- (i) the filing date of the patent application;
- (ii) the priority date, where a patent application contains a priority claim under Article 54(1);
- (iii) the filing date of the earlier application, as prescribed in Article 55(1), where a patent application contains a priority claim under the provisions of Article 55(1); or
- (iv) the earliest filing date among the filing dates of two or more applications which are the basis for claiming a priority right in a patent application under Article 54(1) or 55(1).

(2) After the expiration of one year and three months from any of the dates specified in any of the subparagraphs of paragraph (1), but prior to the transmittal of a certified copy of the decision to grant a patent, an applicant may amend the specification or drawings attached to the application to the extent that it does not change the scope of the subject matter, in any of the following cases:

- (i) where the amendment is made simultaneously with a request for an examination of the application under Article 59;



(ii) where the amendment is made within three months from receipt of the notice under Article 60(3);

(iii) where the amendment is made within the time limit designated for submission of arguments under Article 63; or

(iv) where the amendment is made within thirty days from the filing date of a request for trial against a final rejection under Article 132*ter*.

#### *Change of Subject Matter*

**48.** An amendment enlarging, restricting or changing the scope of patent claims regarding the features disclosed in the specification or drawing originally attached to the application made prior to the transmittal of a certified copy of the decision to grant a patent shall be deemed not to change the essential subject matter of the specification.

#### *Amendment of Specification, etc. and Change of Subject Matter*

**49.—(1)** Where an amendment to a specification or drawings attached to a patent application, made prior to the transmittal of a certified copy of the decision to grant a patent, is determined to have changed the subject matter of the specification or drawings after the establishment of the patent right is registered, the patent application shall be deemed to have been filed at the time when the amendment in writing was submitted.

(2) If a dual application, as prescribed in Article 53, is recognized to modify the essentials of such matters, as stated in the claims of the utility model registration in the specification, which are initially attached to the application for utility model registration after the establishment of the patent right is registered, said dual application shall be deemed to have been filed at the time when the application in writing was submitted.

*[Without Title]*

**50.** Deleted

#### *Rejection of Amendment*

**51.—(1)** Where an amendment of the specification or drawings attached to a patent application, made prior to the transmittal of a certified copy of the decision to grant a patent, would change the subject matter thereof, the examiner shall reject the amendment by a decision.

(2) Where a decision to reject an amendment under paragraph (1) has been made, the examiner's decision with respect to the patent application concerned shall not be rendered until the expiration of thirty days from the transmittal of a certified copy of such decision.

(3) Where an applicant has requested a trial under Article 132<sup>quater</sup> against a decision to reject an amendment under paragraph (1), the examiner shall suspend the examination of the patent application until the trial decision has become final and conclusive.

(4) Deleted.

(5) The decision to reject an amendment under paragraph (1) shall be made in writing and shall state the reasons therefor.

(6) Deleted.

#### *Division of Patent Application*

**52.**—(1) An applicant who has filed a patent application comprising of two or more inventions may divide the application into two or more applications in accordance with the time period allowed for amendment as prescribed under Article 47 or within the time limit by which the specification or drawings attached to the patent application may be amended.

(2) A patent application divided under paragraph (1) (hereinafter referred to as a “divisional application”) shall be deemed to have been filed at the time of filing of the original patent application. However, in applying the provisions of the following subparagraphs to said divisional application, such an application shall be deemed to be made at the time when the divisional application was filed:

(i) in the case where Article 29(3) of this Act or Article 5(3) of the Utility Model Act is applicable when the divisional application falls under an another patent application under Article 29(3) of this Act or a patent application under Article 5(3) of the Utility Model Act;

(ii) in the case where Article 30(2) is applicable;

(iii) in the case where Article 54(3) is applicable; or

(iv) in the case where Article 55(2) is applicable.

(3) In a divisional application, any person claiming priority as prescribed in Article 54, may file the documents as prescribed in paragraph (4) of the said Article with the Commissioner of the Korean Industrial Property Office within three months after filing a divisional application, regardless of the period as prescribed in the said paragraph of the said Article.

#### *Dual Application*

**53.**—(1) A person who makes an application for utility model registration may make an application for patent (hereinafter referred to as a “dual application”) within the limit of such matters as stated in the claims of the utility model registration in the specification, which are initially attached to the application for said utility model registration within one year from the date when the establishment of a utility model right has been registered.



(2) A person who makes a dual application under paragraph (1) shall, at the time when an application for patent is made, indicate the purpose thereof and the application for utility model registration, which forms the basis thereof in an application for a patent.

(3) When a dual application is carried out pursuant to paragraph (1), the application for patent shall be deemed to have been filed on the filing date of the utility model application. However, in a case where the provisions of the following subparagraphs apply to such an application for patent, it is deemed to be made at the time when said dual application is made:

(i) in the case where Article 29(3) of this Act or Article 5(3) of the Utility Model Act is applicable when the application for patent falls under an another patent application under Article 29(3) of this Act or a patent application under Article 5(3) of the Utility Model Act;

(ii) in the case where Article 30(2) is applicable;

(iii) in the case where Article 54(3) is applicable; or

(iv) in the case where Article 55(2) is applicable.

(4) A person who claims a priority, as prescribed in Article 54, in making an application for a patent under paragraph (1) may, notwithstanding the provision of paragraph (4) of said Article, submit such documents as prescribed in said paragraph to the Commissioner of the Korean Industrial Property Office within three months after he makes the dual application.

#### *Priority Claim under Treaty*

**54.**—(1) If a national of one of the countries which recognizes under a treaty a right of priority for a patent application filed by a national of the Republic of Korea, claims the right of priority for a patent application in the Republic of Korea on the basis of the initial application for the same invention in his country or in one of the said countries, the filing date of the initial application in the foreign country shall be deemed to be the filing date in the Republic of Korea for the purposes of Articles 29 and 36. Where a national of the Republic of Korea has filed a patent application in a country which recognizes under a treaty the right of priority for patent applications filed by nationals of the Republic of Korea, and claims the right of priority for a patent application in the Republic of Korea on the basis of the initial application for the same invention in the said country, this provision shall also apply.

(2) A person intending to claim the right of priority in accordance with paragraph (1) shall file a patent application claiming the right of priority within one year from the filing date of the initial application.

(3) A person intending to claim the right of priority in accordance with paragraph (1) shall specify such claim, the name of the country in which the initial application was filed and the filing date of such application in the patent application which he files in the Republic of Korea.

(4) A person who has claimed the right of priority in accordance with paragraph (1) shall submit to the Commissioner of the Korean Industrial Property Office a written statement setting forth the filing date of the application and a copy of the specification and drawings of the initial application certified by the government of the country where the initial application was filed within one year and four months from the earliest among the dates prescribed in the following subparagraphs:

(i) the date of the application first filed in the country which is a party to a treaty;

(ii) the filing date of the earlier application which would be the basis for claiming a priority right in cases where a patent application contains other priority claims in accordance with Article 55(1); or

(iii) the filing date of the application which would be the basis for claiming a priority right in cases where a patent application contains other priority claims in accordance with paragraph (3).

(5) Where a person who has claimed the right of priority in accordance with paragraph (3) fails to submit the document prescribed under paragraph (4) within the prescribed time limit, the claim to the right of priority shall lose its effect.

*Priority Claim Based on Patent Application, etc.*

**55.**—(1) A person desiring to obtain a patent may claim the right of priority for an invention claimed in a patent application which has been disclosed in the description or drawings originally attached to a patent or utility model application, for which he has the right to obtain a patent or utility model registration, and which has been filed earlier (hereinafter referred to as an “earlier application”) except in any of the following cases:

(i) where the patent application concerned is filed more than one year from the filing date of the earlier application;

(ii) where the earlier application is a divisional application under Article 52(2) or a dual application under Article 53 of this Act or a divisional application under Article 16(2) of the Utility Model Act or a dual application under Article 17 of the Utility Model Act;

(iii) where the earlier application has been abandoned, invalidated or withdrawn at the time the patent application is filed;

(iv) where an examiner’s decision, or a trial decision on the earlier application has become final and conclusive; or

(v) where the earlier application is registered under Article 35(2) of the Utility Model Act at the time when said patent application is made.

(2) A person intending to claim the right of priority under paragraph (1) shall, simultaneously with the patent application, make such a claim and identify the earlier application in the patent application.



(3) For inventions which are amongst those described in a patent application containing a priority claim under paragraph (1), which are disclosed in the specification or drawings originally attached to the earlier application which would be the basis for claiming a priority right, [excluding those inventions disclosed in the specification or drawings submitted at the time of the filing of an application whose priority is claimed for an earlier application in the case where that earlier application contains a priority claim under paragraph (1) of this Article or under Article 4D(1) of the Paris Convention for the Protection of Industrial Property] the patent application shall be considered to have been filed at the time when the earlier application was filed for the purpose of Articles 29(1) or (2), and 29(3) (principal sentence), 30(1), 36(1) to (3), 96(1)(iii), 98, 103, 105(1) and (2), 129 and 136(3) of the Patent Act, Articles 8(3), (4) and 39 of the Utility Model Act, or Articles 45 and 52(3) of the Design Act.

(4) For inventions which are amongst those described in the specification of drawings originally attached to a patent application containing a priority claim under paragraph (1), which are disclosed in the specification or drawings originally attached to the earlier application which would be the basis for claiming a priority right, [excluding those inventions disclosed in the specification or drawings submitted at the time of the filing of an application whose priority is claimed for an earlier application in the case where that earlier application contains a priority claim under paragraph (1) of this Article or under Article 4D(1) of the Paris Convention for the Protection of Industrial Property] the laying open of the earlier application for public inspection shall be considered to have been effected at the time when the publication after registration of a patent right or the laying open of the patent application for public inspection was effected, for the purposes of the principal sentence of Article 29(3) of the Patent Act and the principal sentence of Article 5(3) of the Utility Model Act. In this case, where the earlier application is an international application which is deemed to be a patent application under Article 199(1) of this Act or which is deemed to be a utility model registration application under Article 57(1) of the Utility Model Act (including an international application considered to be a patent application or a utility model application under Article 214(4) of the Patent Act or Article 71(4) of the Utility Model Act), “an invention or device described both in the specification, claim or drawings of the international application as of the international filing date and in the translated version thereof” in Article 29(4) of the Patent Act shall read “an invention or device described in the specification, claim or drawings of the international application as of the international filing date.”

*Withdrawal of Earlier Application, etc.*

**56.**—(1) The earlier application whose priority is claimed under Article 55(1) shall be deemed withdrawn at the expiration of one year and three months from the filing date of that earlier application. However, this provision shall not apply where that earlier application falls under any of the following subparagraphs:

- (i) in the case of its being abandoned, invalidated, or withdrawn;

(ii) in the case where an examiner's decision, or a trial or trial decision, rejecting the application has become final and conclusive;

(iii) in the case where priority claims based on the earlier application concerned have been withdrawn; or

(iv) in a case of it being registered under Article 35(2) of the Utility Model Act.

(2) The applicant of a patent application containing a priority claim under Article 55(1) may not withdraw the priority claim after the expiration of one year and three months from the filing date of the earlier application.

(3) Where the patent application containing a priority claim under Article 55(1) is withdrawn within one year and three months from the filing date of the earlier application, the priority claim shall be deemed withdrawn simultaneously therewith.

### CHAPTER III EXAMINATION

#### *Examination by Examiner*

**57.**—(1) The Commissioner of the Korean Industrial Property Office shall have applications for patents and oppositions to the grant of patents examined by an examiner.

(2) The qualifications for examiners shall be prescribed by Presidential Decree.

#### *Search of Prior Art, etc.*

**58.**—(1) If it is deemed necessary for speeding up the process of examination, the Commissioner of the Korean Industrial Property Office may rely on a specialized search organization for searching documents of prior art.

(2) If it is deemed necessary for the process of examination, the Commissioner of the Korean Industrial Property Office may request the cooperation of, or seek advice from, a government agency, an organization specialized in the technology concerned or an expert having profound knowledge and experience in patent matters, and may, pay them allowances or expenses for such cooperation or advice within the limits of the budget of the Korean Industrial Property Office.

(3) Concerning the designation of specialized search organizations and implementing procedures for searching documents under paragraph (1), necessary matters shall be prescribed by Presidential Decree.

#### *Request for Examination of Patent Application*

**59.**—(1) A patent application shall be examined only upon the filing of a request for examination.



(2) When a patent application has been filed, any person may make a request for examination of the patent application to the Commissioner of the Korean Industrial Property Office within five years from the filing date thereof.

(3) With respect to a divisional application under Article 52(2), or a dual application under Article 53, a request for examination can be made even after the expiration of the period prescribed in paragraph (2) within thirty days from the date of the division or the dual application.

(4) A request for examination of an application shall not be withdrawn.

(5) If a request for examination has not been made within the time limits prescribed in paragraph (2) or (3), the patent application concerned shall be deemed to have been withdrawn.

#### *Procedure for a Request for Examination*

**60.**—(1) Any person desiring to make a request for examination of an application shall submit a written request for examination of an application to the Commissioner of the Korean Industrial Property Office, stating the following:

(i) the name and the domicile of the person making the request (in case of a legal entity, the title, the place of business and the name of its representative);

(ii) the date of submission of the request; and

(iii) the identification of the patent application for which the request for examination is made.

(2) The Commissioner of the Korean Industrial Property Office shall, where a request for examination has been made prior to the publication of an application, publish such fact in the Patent Gazette at the time the application is laid open. Where a request for examination has been made after the laying-open of the application, the Commissioner shall publish such fact in the Patent Gazette without delay.

(3) The Commissioner of the Korean Industrial Property Office shall, where a request for examination of an application has been made by a person other than the applicant, notify the applicant of such fact.

#### *Preferential Examination*

**61.** When the Commissioner of the Korean Industrial Property Office recognizes that a person, other than the applicant, is commercially and industrially working the invention claimed in a patent application after the laying-open of the application or with respect to a patent application which he deems it necessary to settle urgently and which is prescribed by Presidential Decree, he may direct the examiner to examine the application in preference to other patent applications.

### *Ruling of Refusal*

**62.** The examiner shall make a ruling of refusal to a patent application where it falls under any of the following subparagraphs (hereinafter referred to as “reason for refusal”):

- (i) where it is not patentable under Articles 25, 29, 31 to 33, 36(1) to (3), or 44;
- (ii) where it is filed by a person who is not entitled to obtain a patent;
- (iii) where it is in violation of a treaty; or
- (iv) where it has not satisfied the requirements prescribed under Articles 42(3) to (5) or 45.

### *Notification of Reasons for Refusal*

**63.** An examiner shall, when intending to make a ruling of refusal under Article 62, notify the applicant of the reasons and give the applicant an opportunity to submit a written statement of applicant’s arguments, designating a time limit for such submission.

### *Laying Open of Application*

**64.**—(1) In accordance with the Ordinance of the Ministry of Commerce, Industry and Energy, the Commissioner of the Korean Industrial Property Office shall lay open the patent application in the Patent Gazette; After one year and six months from the filing date of an application for a patent (from the date prescribed in Article 47(1)(ii) to (iv), if the application contains a priority claim), or upon the request by an applicant even before one year and six months from the filing date of an application for a patent, however, this provision shall not apply where the application has already been published in accordance with Article 87(3).

(2) Any person may, at the time the application is laid open under paragraph (1), furnish the Commissioner of the Korean Industrial Property Office with information together with evidence, to the effect that the invention concerned is unpatentable under Article 62. However, if the requirements prescribed in Article 42(5) and 45 mentioned in subparagraph (iv) of Article 62 are not complied with, this provision shall not apply.

(3) The provisions of Article 87(4) shall apply *mutatis mutandis* to the laying-open of applications under paragraph (1).

(4) Matters to be published in the Patent Gazette with respect to the laying-open of applications under paragraph (1) shall be prescribed by the Presidential Decree.

### *Effects of Laying Open of Application*

**65.**—(1) After an application is laid open, an applicant may warn a person who has commercially or industrially worked the filed invention, in writing indicating that a patent application for the invention has been filed.



(2) An applicant may demand a person who has commercially or industrially worked the filed invention after being warned as provided in paragraph (1) or knowing that the invention has been laid open, to pay compensation in an amount equivalent to what he would have normally received for the working of the invention from the date of warning or the time when he/she knew that the patent application of the invention had been laid open to the time of the registration of the establishment of a patent right.

(3) The right to demand compensation as provided in paragraph (2) shall be exercised only after the registration of the establishment of a patent right.

(4) The exercise of the right to demand compensation under paragraph (2) shall not preclude the exercise of the patent right.

(5) Articles 127, 129, and 132 of the Patent Act, or Articles 760 and 766 of the Civil Code shall apply *mutatis mutandis* to the exercise of the right to demand compensation under paragraph (3). In such case, “the time when the damaged party or his legal representative became aware of such damage and of the identity of the person causing it” in Article 766(1) of the Civil Code shall read “the date of registration of the establishment of the involved patent right.”

(6) Where a patent application is abandoned, invalidated or withdrawn after the laying-open of the application, or a ruling of refusal to a patent application, a decision to revoke a patent under Article 74(3) or a decision to invalidate a patent under Article 133 (except for the case prescribed under subparagraph (iv) of Article 133 (1)) has become final and conclusive, the right under paragraph (2) shall be deemed never to have arisen.

#### *Decision to Grant a Patent*

**66.** Where an examiner does not find any grounds for rejecting a patent application, he shall render a decision to grant a patent.

#### *Formalities for Decision*

**67.**—(1) The examiner’s decision shall be made in writing and shall state the reasons therefor.

(2) Where the examiner’s decision has been rendered, the Commissioner of the Korean Industrial Property Office shall transmit a certified copy of the decision to the patent applicant.

#### *Mutatis Mutandis Application of Provisions Concerning Trial to Examination*

**68.** The provisions of Article 148(i) to (v) and (vii) shall apply *mutatis mutandis* to the examination of a patent application.

### *Opposition to the Grant of a Patent*

**69.**—(1) Within three months from the publication of the registration of a patent, any person can file an opposition to the grant of the patent with the Commissioner of the Korean Industrial Property Office on the grounds that the patent falls under any one of the following subparagraphs. Where the patent contains two or more claims, an opposition may be filed for each claim:

(i) where the patent has been granted contrary to the provisions of Article 25, 29, 31 to 33, 36(1) to (3) or 44;

(ii) where the patent has been granted to a person unentitled to obtain the patent;

(iii) where the patent has been granted in violation of a treaty;

(iv) where the patent has been granted contrary to the provision of Article 42(3) or (4);  
or

(v) where the establishment of the patent has been registered in violation of the proviso of Article 87(2).

(2) When filing an opposition, the opponent shall submit a written opposition together with the relevant evidence stating the following:

(i) the name and the domicile of the opponent and his agent (in the case of a legal entity, its title, the place of business and the name of its representative);

(ii) the identification of the patent to which the opposition is made; and

(iii) the grounds for the opposition and identification of the relevant evidence.

(3) The provisions of Article 133(4) shall apply *mutatis mutandis* to an opposition.

### *Amendment of Grounds for Opposition, etc.*

**70.**—(1) An opponent may amend the grounds and evidence set forth in the written opposition within thirty days from the expiration of the time limit for opposition.

(2) When an opposition to the grant of a patent is filed, the presiding examiner of the collegial body (hereinafter referred to as a “presiding examiner”) shall transmit a copy of the written opposition to the patentee and give him an opportunity to submit a written response, designating a time limit for submitting such a response.

### *Collegial Body for Examination and Decision*

**71.**—(1) Three examiners constituting a collegial body shall examine and rule on the opposition.

(2) The Commissioner of the Korean Industrial Property Office shall designate examiners constituting a collegial body for each opposition.



(3) The Commissioner of the Korean Industrial Property Office shall designate one examiner from the collegial body pursuant to paragraph (2) as the presiding examiner.

(4) The provisions of Articles 144(2), 145(2) and 146 shall apply *mutatis mutandis* to the collegial body and the presiding examiner.

#### *Examination Ex Officio in Examination of Opposition*

**72.**—(1) In the examination of opposition, grounds which have not been pleaded by the patentee or the opponent may also be considered; however, in such cases, the patentee or the opponent shall be given an opportunity to state his opinion within a designated time limit.

(2) In the examination of opposition, no examination may be made on the purpose of a claim not submitted by the opponent.

#### *Consolidation of Oppositions*

**73.**—(1) Where two or more oppositions have been filed, the examiners may examine or decide upon them jointly or separately.

(2) Where two or more oppositions are filed and one is deemed to be well-grounded upon examination, the examiner need not make any decision on the other opposition(s).

(3) The presiding examiner shall transmit a certified copy of the decision to revoke a patent to the opponents whose oppositions were not decided upon under paragraph (2) of this article.

#### *Decision on Opposition*

**74.**—(1) After the expiration of the time limits provided for under Article 70(1) and (2), the examiner shall render a decision on the opposition.

(2) Notwithstanding the provision of Article 70, where the opponent fails to submit the grounds and evidence within the time limit for opposition, the opposition may be rejected by decision.

(3) Where it is deemed that the opposition has legitimate grounds, a decision that the patent is to be revoked (hereinafter referred to “decision of revocation”) shall be made.

(4) Where a decision of revocation becomes conclusive, the patent shall be deemed never to have existed.

(5) Where it is deemed that the opposition has no grounds, a decision that the patent is to be maintained (hereinafter referred to “decision of maintenance”) shall be made.

(6) No appeal shall be made against the decision on the opposition.

### *Manner of Decision on Opposition*

**75.**—(1) All decisions on patent opposition shall be made in writing which shall include the following, and the examiner who has made the decision shall sign and seal it:

- (i) the case number of the opposition;
- (ii) the name and the domicile of the patentee, opponent and agent (in the case of a legal entity, its title, place of business and the name of its representative);
- (iii) the identification of the patent related to the decision;
- (iv) the conclusion and grounds of the decision; and
- (v) the date of the decision.

(2) Where a decision on an opposition is made, the presiding examiner shall transmit a certified copy of the decision to the patentee as well as the opponent.

### *Withdrawal of Opposition*

**76.**—(1) An opposition may not be withdrawn after a certified copy of the decision under Article 75(2) has been delivered.

(2) The provisions of Article 161(2) and (3) shall apply *mutatis mutandis* to a withdrawal of the opposition.

### *Correction of Patent*

**77.**—(1) A patentee may make a request for correction of the specification or drawings of a patented invention within the designated period pursuant to Article 70(2) or 72(1) (the latter part) only to:

- (i) narrow the claims;
- (ii) correct typographical errors; or
- (iii) clarify ambiguous descriptions.

(2) Where a request for correction as referred to in paragraph (1) has been made, the presiding examiner shall transmit a copy of the request for correction to the opponent.

(3) The provisions of Articles 136(2) to (4), (8) and (9), 139(3) and 140(1) and (5) shall apply *mutatis mutandis* to request for correction under paragraph (1).

(4) Where a correction made pursuant to paragraph (1) falls under any of the following subparagraphs after a decision of maintenance has become conclusive, the request for correction shall be deemed never to have existed:

- (i) where it is in violation of the provisions of paragraph (1); or

(ii) where it is in violation of the provisions of Article 136(2) or (3) which apply *mutatis mutandis* under paragraph (3).

*Suspension of Examination or Litigation Proceedings*

**78.**—(1) The examination procedure of a patent application or an opposition to the grant of a patent may, if necessary, be suspended until a decision on an opposition or a trial becomes conclusive or litigation proceeding have been completed.

(2) The court may, if necessary, suspend the proceedings until the examiner's decision on a patent application or an opposition to the grant of a patent becomes final and conclusive.

(3) No appeal shall be made against the suspension under paragraphs (1) and (2).

*Mutatis Mutandis Application of Provisions Concerning Trials to Opposition*

**78bis.**—The provisions of Articles 141(1) to (3), 142, 154(8), 157, 165(3) to (6) and 166 shall apply *mutatis mutandis* to the examination and decision of oppositions.

CHAPTER IV  
PATENT FEES AND PATENT REGISTRATIONS, ETC.

*Patent Fees*

**79.**—(1) A person who wishes to register the establishment of a patent right, or a patentee under Article 87(1), shall pay patent fees.

(2) Matters necessary to the payment of patent fees, including the method and time limits for the payment of patent fees under paragraph (1), shall be prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

*Payment of Patent Fees by Interested Party*

**80.**—(1) Regardless of the intent of a person liable to pay patent fees under the terms of Article 79(1), any interested party may pay the patent fees.

(2) An interested party who has paid the patent fees in accordance with paragraph (1) may demand reimbursement of his expenses to the extent that the person liable to pay is currently making a profit.

*Late Payment of Patent Fees*

**81.**—(1) A patentee or any person wishing to register the establishment of a patent right may make late payments of the patent fees within six months following the expiration of the payment period prescribed under Article 79(2).



(2) Where patent fees are paid late under paragraph (1), an amount equivalent to twice the patent fees shall be paid.

(3) If the patentee or person wishing to register the establishment of a patent right does not pay the patent fees within the extended period provided for under paragraph (1), the patent application shall be deemed to have been abandoned and the patent right concerned shall be deemed to have been extinguished retroactively to the time when the period for payment of the patent fees expired.

#### *Official Fees*

**82.**—(1) A person initiating a procedure relating to a patent shall pay the official fees.

(2) Where the number of claims is increased because of amendments or dismissal of amendments to the specification after a request for examination made by a person other than the applicant, the applicant shall pay the fees for the request for examination corresponding to the increased number of claims.

(3) Matters necessary to the payment of official fees, including the method and time limits for payment of the fees under paragraph (1), shall be prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

#### *Reduction or Exemption of Patent Fees or Official Fees*

**83.**—(1) Notwithstanding Articles 79 and 82, the Commissioner of the Korean Industrial Property Office shall grant an exemption from the payment of patent fees or official fees in the following situations:

(i) official fees or patent fees corresponding to the patent applications or patent rights belonging to the State; or

(ii) fees related to requests for an invalidation trial made by an examiner under Articles 133(1), 134(1) or 137(1).

(2) Notwithstanding Articles 79 and 82, where the patent application has been filed by an entitled person in accordance with Article 3 of the National Assistance Act, or a person prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy, the Commissioner of the Korean Industrial Property Office may reduce or exempt the payment of the fees prescribed by the Ordinance of the Ministry of Trade, Industry and Energy and the for the patent fees for obtaining the registration of the establishment of the patent right for the first three years.

(3) A person who wishes to take advantage of reduced fees or exemption from the payment of the patent fees or official fees in accordance with paragraph (2) shall submit the documents prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy to the Commissioner of the Korean Industrial Property Office.



*Refund of Patent Fees, etc.*

**84.**—(1) Patent fees and official fees which have been paid shall not be refunded. However, in the following cases such fees shall be refunded upon a request by the person who made such payment:

- (i) patent fees or official fees paid by mistake;
- (ii) portion corresponding to the patent fee for the years subsequent to the year in which a decision of revocation or invalidation on the patent becomes final and conclusive; or
- (iii) portion corresponding to the patent fee for the years subsequent to the year in which a decision of invalidation on the registration of patent term extension becomes final and conclusive.

(2) The refund of the patent fees and official fees under paragraph (1)(i) may not be claimed after one year from the date of the payment, and the refund of the portions corresponding to the patent fee under subparagraphs (ii) and (iii) of the said paragraph may not be claimed after one year from the date when a decision of revocation or invalidation on the patent becomes final and conclusive.

*Patent Register*

**85.**—(1) The Commissioner of the Korean Industrial Property Office shall keep the Patent Register at the Korean Industrial Property Office and shall register the following matters:

- (i) the establishment, transfer, extinguishment, restriction on disposal or extension of the term of a patent right;
- (ii) the establishment, maintenance, transfer, modification, extinguishment, or restriction on disposal of an exclusive or non-exclusive license; and
- (iii) the establishment, transfer, modification, extinguishment or restriction on the disposal of a pledge on a patent right or on an exclusive or non-exclusive license.

(2) All or parts of the Patent Register under paragraph (1) may be stored on magnetic tapes, etc.

(3) Necessary information relating to the matters and procedures of registration not provided for in paragraphs (1) or (2) shall be prescribed by Presidential Decree.

(4) Specifications and drawings of patent applications and documents prescribed by Presidential Decree are considered to be part of the Patent Register.

*Issuance of Certificate of Patent Registration*

**86.**—(1) When the establishment of a patent right has been registered, the Commissioner of the Korean Industrial Property Office shall issue the certificate of patent registration to the patentee.

(2) Where the certificate of patent registration do not coincide with the patent register or other documents, the Commissioner of the Korean Industrial Property Office shall reissue the certificate of patent registration with amendments, or issue new letters patent upon request or *ex officio*.

(3) When a decision on a trial for amendment under Article 136(1) has become final and conclusive, the Commissioner of the Korean Industrial Property Office shall issue new certificate of patent registration in accordance with the trial decision.

CHAPTER V  
PATENT RIGHT

*Registration of Establishment of Patent Right and Publication of Registration*

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

(2) Where patent fees have been paid in accordance with Article 79(1) or where an exemption from the payment of patent fees has been granted under Article 83(1)(i) and (ii), the Commissioner of the Korean Industrial Property Office shall register the establishment of the patent right. However, in a case which falls under any of the following subparagraphs, the establishment of a patent right shall be registered only if an utility model right concerned is abandoned:

(i) in a case where the establishment of an utility model right has been registered with respect to an application for utility model registration which forms the basis of a dual application in such a dual application; and

(ii) in a case where a dual application (hereinafter referred to as a “dual application for utility model registration” in this subparagraph) has been filed under Article 17 of the Utility Model Act on the basis of an application for a patent and where the establishment of an utility model right has been registered with respect to the dual application for utility model registration.

(3) Where a registration has been made under paragraph (2), the Commissioner of the Korean Industrial Property Office shall publish the grant of the patent together with the relevant information in the Patent Gazette.

(4) The publication of the registration of a patent for an invention required to be treated confidentially shall be reserved until it is declassified upon declassification, the registration shall be published without delay.



(5) The Commissioner of the Korean Industrial Property Office shall provide the application documents and the attached materials thereof for public inspection for a period of three months from the date of publication of registration.

(6) Matters to be published in the Patent Gazette with respect to the publication of registration under paragraph (3) shall be prescribed by the Presidential Decree.

#### *Term of Patent Right*

**88.**—(1) The term of a patent right shall be twenty years from the filing date of the patent application, following the registration of establishment of the patent right.

(2) Where a patent is granted to a Actful holder of the right under Article 34 or 35, the term of the patent right under paragraph (1) shall be calculated from the date following the filing date of the patent application by the unentitled person.

(3) Where a patent application is deemed to have been filed at the time of submission of an amendment under Article 49, the patent term under paragraph (1) of this Article shall be counted from the date following the filing date of the original patent application.

(4) Where a patent application is deemed to have been filed at the time of submission of a dual application under Article 49(2), the patent term under paragraph (1) of this Article shall be determined from the date following the filing date of the application for utility model registration, which was the basis of the dual application.

#### *Extension of Term of Patent Right*

**89.** Notwithstanding the provisions of Article 88(1), where authorization or registration under provisions of other Acts or regulations were required in order to work a patented invention, and it has taken an extended period of time to complete the activity test, the safety tests, etc., necessary to obtain such authorization or registration (hereinafter referred to as a “authorization”) and which is prescribed by the Presidential Decree, the term of the patent right may be extended by a period, up to five years, during which the patented invention could not have been worked.

#### *Application for Registration of Extension of Term of Patent Right*

**90.**—(1) A person who wishes to apply for the registration of extension of a patent right under Article 89 (hereinafter referred to as “applicant for registration of extension”) shall submit an application for registration of an extension of term of a patent right to the Commissioner of the Korean Industrial Property Office, stating each of the following:

(i) the name and domicile of the applicant for registration of extension (in case of a legal entity, the title, place of business and name of the representative);

(ii) the name and domicile, or place of business, of the agent, if designated;

- (iii) the identification by its patent number of the patent for which an extension is applied, and the claims of that patent;
- (iv) the period of extension applied for;
- (v) the requirements for authorization under Article 89; and
- (vi) the grounds for extension as prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy (accompanied by materials substantiating said grounds).

(2) The application for registration of an extension of the term of the patent right shall be filed within three months from the date the authorization under Article 89 was obtained; however, the application may not be filed when the unexpired length of the term as provided for in Article 88 is less than six months.

(3) Where the patent is owned by joint owners, an application for registration of an extension of the term of a patent right shall be made in the names of all the joint owners.

(4) Where an application for registration of an extension of term of a patent right has been filed, the term shall be deemed to have been extended, except where a ruling of refusal of the application under Article 91(1) has become final and conclusive.

(5) Where an application for registration of an extension of the term of a patent right has been filed, the Commissioner of the Korean Industrial Property Office shall publish the information prescribed in paragraph (1) in the Patent Gazette.

*Ruling of Refusal Against Application for Extension of  
Term of Patent Right*

**91.**—(1) The examiner shall make a ruling of refusal against an application for registration of an extension of term of a patent right where it falls under any of the following situations:

- (i) where it is deemed that the authorization under Article 89 is not necessary for working the patented invention;
- (ii) where the patentee, or a person who has an exclusive or non-exclusive license under the patent right has not obtained the authorization under Article 89;
- (iii) where the term for which an extension is applied exceeds the time period during which the patented invention could not have been worked;
- (iv) where the applicant for registration of an extension is not the patentee; or
- (v) where the application for registration of an extension is made in violation of the provisions of Article 90(3).
- (vi) deleted

(2) “The time period during which the patented invention could not have been worked,” as referred to in paragraph (1)(iii), shall not include any period which has elapsed for reasons attributable to the patentee.

*Ruling etc., on Application of Registration for Extending  
Term of Patent Right*

**92.**—(1) Where the examiner finds no reason under any of the subparagraphs of Article 91(1) for refusing an application for an extension of term of a patent right, he shall make a ruling that the application for an extension is to be granted.

(2) When the ruling of extension has been made under paragraph (1), the Commissioner of the Korean Industrial Property Office shall register the extension of the term of the patent right in the Patent Register.

(3) When the registration under paragraph (2) has been made, the information prescribed in the following subparagraphs shall be published in the Patent Gazette:

- (i) the name and domicile of the patentee (in the case of a legal entity, the title, place of business and name of the representative);
- (ii) the patent number;
- (iii) the date of registration of the extension;
- (iv) the period of the extension; and
- (v) the requirements, etc., for the authorization under Article 89.

*Mutatis Mutandis Application of Provisions*

**93.** The provisions of Articles 57 (1), 63, 67 and 148 (1) to (5) and (7) shall apply *mutatis mutandis* to the examination of an application for the registration of an extension of the term of a patent right.

*Effects of Patent Right*

**94.** A patentee shall have the exclusive right to work a patented invention both commercially and industrially. However, where the patent right is the subject of an exclusive license, this provision shall not apply to the extent that the exclusive licensee has the exclusive right to work the patented invention under Article 100(2).

*Effects of Patent Right the Term of Which Has Been Extended*

**95.** The effects of a patent right, the term of which has been extended, shall not extend to any other acts except the working of the patented invention with respect to such products for which an authorization was the basis for registering the extension (or where the

authorization was obtained for any specific use of the product, with respect to the product adapted for such specific use).

#### *Limitations on Patent Right*

**96.**—(1) The effects of the patent right shall not extend to the following:

- (i) working of the patented invention for the purpose of research or experiment;
- (ii) vessels, aircraft or vehicles merely passing through the Republic of Korea or machinery, instruments, equipment or other accessories used therein; or
- (iii) articles existing in the Republic of Korea at the time the patent application was filed.

(2) The effects of the patent right for inventions of medicines (namely, products used for diagnosis, therapy, alleviation, medical treatment or prevention of human disease, hereinafter referred to as “medicines”) manufactured by mixing two or more medicines, or for inventions of processes for manufacturing medicines by mixing two or more medicines, shall not extend to the acts of manufacturing medicines in accordance with the Pharmaceutical Affairs Act or to medicines manufactured by such acts.

#### *Scope of Protection of Patented Invention*

**97.** The scope of protection conferred by a patented invention shall be determined by the subject matters described in the claims.

#### *Relation to Patented Invention, etc. of Another Person*

**98.** Where the working of a patented invention would infringe another person’s patented invention, registered utility model or registered design or similar design under an application filed prior to the filing date of the patent application concerned, or where a patent right conflicts with another person’s design right under an application for registration for a design right filed prior to the filing date of the patent application concerned, the patentee, exclusive licensee or non-exclusive licensee shall not work the patented invention commercially or industrially without the license of the owner of the earlier patent, utility model right, or design right, except where Article 138(1) applies.

#### *Assignment and Co-ownership of a Patent Right*

**99.**—(1) A patent right may be assigned.

(2) Where a patent right is owned jointly, each co-owner of the patent right may neither assign his share nor establish a pledge upon it without the consent of all the other co-owners.

(3) Where the patent right is owned jointly, each co-owner may, except as otherwise agreed by a contract among all the joint owners, work the patented invention by himself without the consent of the other joint owners.

(4) Where the patent right is owned jointly, a co-owner of the patent right may not grant an exclusive license or a non-exclusive license of the patent right without the consent of all the other joint owners.

#### *Exclusive License*

**100.**—(1) A patentee may grant an exclusive license of the patent right to others.

(2) An exclusive licensee having been granted an exclusive license under paragraph (1), shall have the exclusive right to work the patented invention commercially or industrially to the extent provided for in the license contract.

(3) An exclusive licensee may not transfer the license without the consent of the patentee, except where it is transferred together with the underlying business of the licensee, by inheritance or other general succession.

(4) An exclusive licensee may not establish a pledge or grant a non-exclusive license on the exclusive license without the consent of the patentee.

(5) The provisions of Article 99(2) to (4) shall apply *mutatis mutandis* to an exclusive license.

#### *Effects of Registration of a Patent Right and an Exclusive License*

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

(i) the transfer (except through inheritance or other general succession) or extinguishment by abandonment, or restriction on the disposal of a patent right;

(ii) the grant, transfer (except through inheritance or other general succession), modification, extinguishment, or restriction on the disposal; or of an exclusive license.

(iii) the establishment, transfer (except through inheritance or other general succession) modification, extinguishment, or restriction on the disposal of a pledge on a patent right or exclusive license.

(2) Inheritance of, or other general succession relating to a patent right, exclusive license, and pledge under paragraph (1) shall be notified without delay to the Commissioner of the Korean Industrial Property Office.

#### *Non-exclusive License*

**102.**—(1) A patentee may grant to others a non-exclusive license on his patent right.

(2) A non-exclusive licensee shall have the right to work the patented invention commercially or industrially to the extent prescribed in the Patent Act or provided for by the license contract.

(3) A non-exclusive license granted under Article 107 may only be transferred together with the underlying business.

(4) A non-exclusive license under Article 138 of the Patent Act, Article 53 of the Utility Model Act, or Article 70 of the Design Act shall be transferred together with the patent right, utility model right, or design right concerned and shall be extinguished at the same time as the patent, utility model or design right concerned is extinguished.

(5) A non-exclusive license, other than those described in paragraphs (3) and (4), may not be transferred without the consent of the patentee (or the patentee and the exclusive licensee in the case of a non-exclusive license on an exclusive license), unless the transfer is made together with the underlying business.

(6) A pledge may not be established on a non-exclusive license, other than those under paragraphs (3) and (4), without the consent of the patentee (or the patentee and the exclusive licensee in case of a non-exclusive license on an exclusive license).

(7) The provisions of Article 99(2) and (3) shall apply *mutatis mutandis* to the non-exclusive license.

#### *Non-exclusive License by Prior Use*

**103.** Where, at the time of filing of a patent application, a person who has made an invention without having prior knowledge of the contents of an invention described in an existing patent application, or has learned how to make the invention from such a person and has been working the invention commercially or industrially, in the Republic of Korea, in good faith, or has been making preparations therefor, shall have a non-exclusive license on that patent right under the patent application. Such license shall be limited to the invention which is being worked, or for which preparations for working have been made, and to the purpose of such working or preparations.

#### *Non-exclusive License Due to Working Prior to Registration of Request for Invalidation Trial*

**104.**—(1) Where a person falling within any of the following subparagraphs has been working an invention, in the Republic of Korea, commercially or industrially, or has been making preparations therefor, prior to the registration of a request for an invalidation trial of the patent or registered utility model concerned, without knowing that his patented invention is subject to invalidation, or has been working a device, in the Republic of Korea, commercially or industrially, or has been making preparations therefor, on the basis of a maintenance decision as prescribed in Article 25(2) of the Utility Model Act or without knowing that his registered utility model is subject to invalidation notwithstanding any due care, such person shall have a non-exclusive license on that patent right or have an non-exclusive license on the exclusive license to a patent right existing at the time when the patent or the utility model registration was invalidated, but such non-exclusive license shall be limited to the invention or device which is being worked or for which preparations for working are being made and to the purpose of such working or the preparations therefor:

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

(ii) the original owner of a utility model right, where a patented invention and a device registered as a utility model are the same and the utility model registration has been invalidated;

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

(iv) the original owner of a utility model right, where his utility model registration has been invalidated and a patent for the same invention as the device has been granted to an entitled person; or

(v) in the cases referred to in subparagraphs (i) to (iv), a person who, at the time of registration of the request for an invalidation trial of the invalidated patent right or utility model right, has been granted an exclusive license or a non-exclusive license, or non-exclusive license on the exclusive license and such license has been registered; however, a person falling under Article 118(2) is not required to register the license.

(2) A person who has been granted a non-exclusive license in accordance with paragraph (1) shall pay reasonable remuneration to the patentee or exclusive licensee.

#### *Non-exclusive License After Expiration of a Design Right*

**105.**—(1) Where a design right under an application which resulted in the granting of a registration, filed prior to or on the filing date of a patent application, conflicts with the patent right and the term of the design right has expired, the owner of such design right shall, to the extent of such design right, have a non-exclusive license on the patent right or the exclusive license existing at the time when the design right expired.

(2) Where a design right under an application which resulted in the grant of a registration, filed prior to or on the filing date of a patent application, conflicts with the patent right and the term of the design right has expired, a person who at the time of expiration, has an exclusive license on the expired design right or non-exclusive license under Article 118(1) of this Act, as applied under Article 61 of the Design Act, to the design right or the exclusive license shall, to the extent of the expired right, have a non-exclusive license on the patent right concerned or on the exclusive license existing at the time when the design right expired.

(3) A person who has been granted a non-exclusive license under paragraph (2) shall pay reasonable remuneration to the patentee or exclusive licensee.

#### *Expropriation of Patent Right*

**106.**—(1) If a patented invention is necessary for national defense in time of war, incident or other similar emergency (hereinafter referred to as an “emergency”), the Government may expropriate the patent right, work the patented invention, or require a person other than the Government to work the patented invention.



(2) If a patent right is expropriated, rights to the invention other than the patent right shall be extinguished.

(3) If the Government expropriates the patent right, or the Government or a person concerned other than the Government works the patented invention under paragraph (1), the Government or that person shall pay reasonable remuneration to the patentee, exclusive licensee or non-exclusive licensee.

(4) Matters necessary for the expropriation, working of a patent right as well as payment in compensation therefor shall be prescribed by Presidential Decree.

*Adjudication for Grant of Non-exclusive License*

**107.**—(1) Where a patented invention falls under any of the following subparagraphs, a person who intends to work the patented invention may request the Commissioner of the Korean Industrial Property Office to adjudicate (hereinafter referred to as an “adjudication”) for the authorization of a non-exclusive license thereon; however, a request for adjudication under the following subparagraphs (i) and (ii) may only be made if consultations with the patentee or exclusive licensee is not possible or no agreement is reached at the consultation:

(i) where the patented invention has not been worked for more than three consecutive years in the Republic of Korea, except in the case of natural disaster, unavoidable circumstances or other justifiable reasons prescribed by Presidential Decree;

(ii) where the patented invention has not continuously been worked commercially or industrially in the Republic of Korea on a substantial scale during a period of three years or more without justification, or where the domestic demand for the patented invention has not been satisfied to an appropriate extent and under reasonable conditions;

(iii) where the working of the patented invention is necessary for public non-commercial use; or

(iv) where the working of a patented invention is necessary to remedy a practice determined to be anti-competitive after the judicial or administrative process.

(2) The provisions of paragraph (1)(i) and (ii) shall not apply unless a period of four years has lapsed from the filing date of the application for to the patented invention.

(3) In adjudication for the authorization of a non-exclusive license, the Commissioner shall consider the necessity of each and every claim.

(4) In adjudication for the authorization of a non-exclusive license, the Commissioner shall impose such conditions that the use of patented inventions through the non-exclusive license shall be limited predominantly to the supply of the domestic market; however, this provision need not apply where the authorization is ruled based on the request set forth in subparagraph (1)(iv).



(5) In adjudication for the authorization of a non-exclusive license set forth in subparagraph (1)(i), the Commissioner may take into account the need to amend anti-competitive practices in determining the amount of remuneration.

(6) With respect to semi-conductor technology, the request for adjudication can be made only in the cases set forth in subparagraph (1)(iii) and (1)(iv).

#### *Submission of Response*

**108.** Where a request for adjudication has been made the Commissioner of the Korean Industrial Property Office shall transmit a copy of the written request to the patentee or exclusive licensee mentioned in the request and to any other persons having any registered right relating to the patent, and shall give them an opportunity to submit a response within the time limit.

#### *Solicitation of Opinion from the Industrial Property Right Council*

**109.** Before making an adjudication the Commissioner of the Korean Industrial Property Office shall solicit an opinion from the Industrial Property Council established under Article 117.

#### *Formality of Adjudication*

- 110.—**(1) An adjudication shall be made in writing and shall state the reasons therefor.
- (2) The following matters shall be specified in an adjudication under paragraph (1):
- (i) the scope and duration of the non-exclusive license; and
  - (ii) the remuneration for the license and the method and time of payment.

#### *Transmittal of Certified Copies of Adjudication*

**111.—**(1) Where an adjudication is made, the Commissioner of the Korean Industrial Property Office shall transmit certified copies of the adjudication to the parties and any other persons having the registered right relating to the patent.

(2) When a copy of an adjudication has been transmitted to the parties under paragraph (1), a consultation to the terms as specified in the adjudication shall be deemed to have been held by the parties.

#### *Deposit of Remuneration*

**112.** A party who is obligated to pay a remuneration under Article 110(2)(ii) shall make a deposit thereof under the following circumstances:

- (i) where the party entitled to receive the remuneration refuses or is unable to receive it;

(ii) where an action under Article 190(1) has been brought with respect to the remuneration; or

(iii) where the patent right or exclusive license is the subject of a pledge, except where the pledgee has consented.

#### *Lapse of Adjudication*

**113.** Where a person who was granted the adjudication on the authorization fails to pay or deposit the remuneration (or the first installment thereof, if payment is to be made periodically or by installments) under Article 110(2)(ii) by the time such payment is due, the adjudication shall lose its effect.

#### *Cancellation of Adjudication*

**114.—**(1) Where a person who was granted the adjudication on the authorization falls under any of the following subparagraphs, the Commissioner of the Korean Industrial Property Office may cancel the adjudication, *ex officio* or upon the request by any interested party. However, in case of subparagraph (ii), such action shall protect the non-exclusive license's Actful interests:

(i) where the working of the patented invention is not within the purpose of the adjudication; and

(ii) where the grounds for the adjudication on the authorization of non-exclusive license disappears and it is deemed that such grounds will not reoccur.

(2) The provisions of Articles 108, 109, 110(1) and 111(1) shall apply *mutatis mutandis* paragraph (1) of the Article.

(3) The non-exclusive license shall be extinguished upon cancellation of the ruling under paragraph (1) of this Article.

#### *Restriction on Reason for Objections to Adjudication*

**115.** Where a request for an administrative trial has been filed as to the adjudication under Article 3(1) of the Administrative Trial Act, the remuneration determined in the adjudication shall not be a basis for objection.

#### *Cancellation of Patent Right*

**116.—**(1) Where a patented invention has not been continuously worked in the Republic of Korea for a period of two years or more from the date of an adjudication under Article 107(1), the Commissioner of the Korean Industrial Property Office may cancel the patent right, *ex officio*, or upon the request of any interested party.

(2) The provisions of Articles 108, 109, 110(1) and 111(1) shall apply *mutatis mutandis* to paragraph (1) of this Article.

(3) The patent right shall be extinguished upon cancellation of a patent right under paragraph (1) of this Article.

*Establishment of Industrial Property Right Council*

**117.**—(1) The Industrial Property Right Council shall be established in the Korean Industrial Property Office to advise the Commissioner of the Korean Industrial Property Office on matters concerning the expropriation, adjudication, and cancellation of patent rights.

(2) The organization, operation and other necessary matters of the Industrial Property Right Council shall be prescribed by Presidential Decree.

*Effects of Registration of Non-exclusive License*

**118.**—(1) When a non-exclusive license has been registered, it shall also be effective against any person who subsequently acquires the patent right or an exclusive license.

(2) A non-exclusive license granted under Articles 39(1), 103 to 105, 107, 122, 182 or 183 shall have the same effect as prescribed under paragraph (1) of this Article even if it has not been registered.

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

*Restriction on Abandonment of Patent Right, etc.*

**119.**—(1) A patentee shall not abandon his patent right without the consent of the exclusive licensee, pledgee, or non-exclusive licensee under Article 39(1), 100(4) or 102(1).

(2) An exclusive licensee shall not abandon his exclusive license without the consent of the pledgee or non-exclusive licensee under Article 100(4).

(3) A non-exclusive licensee shall not abandon his non-exclusive license without the consent of the pledgee.

*Effects of Abandonment*

**120.** The patent right, or license thereon, shall be extinguished as of the time of abandonment of a patent right or of an exclusive or non-exclusive license.

### *Pledge*

**121.** Where a patent right or an exclusive or non-exclusive license is the subject of a pledge, the pledgee may not work the patented invention except as otherwise provided by contract.

#### *Non-exclusive License Incidental to Transfer of Patent Right by Exercise of a Pledge Right*

**122.** If a patentee works a patented invention prior to the establishment of a pledge on the patent right, the patentee shall have a non-exclusive license on the patented invention even if the patent right is transferred by an auction; however, in such case, the patentee shall pay reasonable remuneration to the person to whom the patent right is transferred by an auction, etc.

#### *Subrogation of Pledge Right*

**123.** A pledge may be exercised against the remuneration provided for under the Patent Act or against remuneration or goods to be received for the working of the patented invention; however, an attachment order shall be obtained prior to the payment or delivery of the remuneration or goods.

#### *Extinguishment of Patent Right in Absence of Successor*

**124.** A patent right shall be extinguished when no successor exists at the time of succession.

#### *Report on Working of Patent*

**125.** The Commissioner of the Korean Industrial Property Office may require a patentee, exclusive licensee or non-exclusive licensee to report as to whether the patented invention has been worked or not, the extent of such working, etc.

## CHAPTER VI PROTECTION OF PATENTEE

### *Injunction, etc., Against Infringement*

**126.—(1)** A patentee or exclusive licensee may demand a person who is infringing or is likely to infringe on his patent right to discontinue or refrain from such infringement.

(2) A patentee or an exclusive licensee acting under paragraph (1) may demand the destruction of the articles by which the act of infringement was committed (including the products obtained by the act of infringement in cases of a process invention for manufacturing

the products), the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

*Acts Deemed to be Infringement*

**127.** The following acts shall be deemed to be infringements on a patent right or an exclusive license:

(i) in the case of an invention of a product, acts of making, assigning, leasing, importing, or offering for assignment or lease articles used exclusively for producing such products; and

(ii) in the case of an invention of process, acts of making, assigning, leasing, importing or offering for assignment or lease articles used exclusively for working such a process.

*Presumption, etc., of Amount of Damage*

**128.**—(1) Where a patentee or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a patent right or exclusive license, the profits gained by the infringer as a result of the infringement shall be presumed to be the amount of damage suffered by the patentee or exclusive licensee.

(2) Where a patentee or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a patent right or exclusive license, the pecuniary amount which he would normally be entitled to receive for the working of the patented invention may be claimed as the amount of damage suffered by the patentee.

(3) Notwithstanding paragraph (2), where the amount of actual damages exceeds the amount referred to in paragraph (2), the amount in excess may also be claimed as compensation for damage. In such a case, the court may take into consideration the fact that there has been neither willfulness nor gross negligence on the part of the person who has infringed the patent right or the exclusive license when awarding damages.

*Presumption of the Patented Process to Manufacture*

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

*Presumption of Negligence*

**130.** A person who has infringed a patent right or exclusive license of another person shall be presumed to have been negligent regarding such act of infringement.

*Recovery of Reputation of Patentee, etc.*

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

*Submission of Documents*

**132.** In litigation relating to the infringement of a patent right or exclusive license, the court may, upon the request of a party, order the other party to submit documents necessary for the assessment of damages caused by the infringement. However, this provision shall not apply when the person possessing the documents has justifiable reason for refusing to submit them.

CHAPTER VII  
TRIAL*Industrial Property Tribunal*

**132bis.**—(1) The Industrial Property Tribunal shall be established under the jurisdiction of the Commissioner of the Korean Industrial Property Office to be responsible for trials and retrials regarding patents, utility models, designs and trademarks and investigation and research thereof.

(2) The Industrial Property Tribunal shall be composed of the President and trial examiners.

(3) Matters necessary for the organization, personnel and operation of the Industrial Property Tribunal shall be determined by Presidential Decree.

*Trial Against Ruling of Refusal or Revocation*

**132ter.** Where a person has received a ruling of refusal or revocation by an examiner, such person may request a trial within thirty days from the date of receipt of the certified copy of the ruling.

*Trial Against Decision to Reject Amendment*

**132quater.** Where a person who receives a decision of rejection of amendment under Article 51(1) is dissatisfied therewith, he may request a trial within thirty days from the date of receipt of the certified copy of the decision.

*Invalidation Trial of Patent*

**133.**—(1) In the following cases, an interested party or an examiner may request a trial to invalidate a patent and for patent containing two or more claims, a request for an invalidation trial may be made for each claim:

- (i) where a patent has been granted contrary to Articles 25, 29, 31 to 33, 36(1) to (3), 42(3) and (4), or 44;
- (ii) where a patent has been granted to a person who is not entitled to obtain the patent;
- (iii) where a patent has been granted in violation of a treaty;
- (iv) where, after the grant of a patent, the patentee is no longer capable of enjoying the patent right under Article 25, or the patent no longer complies with a treaty; or
- (v) where a patent violates the provisions of the proviso of Article 87(2).

(2) A trial under paragraph (1) of this Article may be requested even after the extinguishment of a patent right.

(3) Where a trial decision invalidating a patent has become final and conclusive, the patent right shall be deemed never to have existed; however, where a patent falls under paragraph (1)(iv) of this Article and a trial decision invalidating the patent has become final and conclusive, the patent right shall be deemed not to have existed at the time when the patent first became subject to the said paragraph.

(4) Where a trial under paragraph (1) of this Article has been requested, the presiding trial examiner shall notify the contents of the request to the exclusive licensee of the patent right and any other persons having registered rights relating to such patent.

*Invalidation Trial of Registration for Extension of Term of Patent Right*

**134.**—(1) In the following cases, any interested party or examiner may request a trial to invalidate the registration of an extension of the term of a patent right:

- (i) where an extension had been registered with respect to the application which did not require any authorization, etc., under the provisions of Article 89 for the purpose of working the patented invention;
- (ii) where the authorization under the provisions of Article 89 was not obtained by the patentee or an exclusive licensee thereof or a registered non-exclusive licensee;
- (iii) where the term extended by the registration of an extension exceeds the period of time during which the patented invention could not be worked;
- (iv) where the registration of an extension has been effected on an application made by a person other than the patentee;

(v) where the registration of an extension has been effected on an application made in violation of Article 90(3); or

(vi) deleted.

(2) The provisions of Article 133(2) and (4) shall apply *mutatis mutandis* to a request for a trial under paragraph (1) of this Article.

(3) Where a trial decision that the registration of extension is to be invalidated has become final and conclusive, the registration of extension of the term shall be deemed to have never existed; however, where the registration of extension falls under Article 91(1)(iii), the extension of the term exceeding the period during which the patented invention could not be worked shall be deemed not to be effective as from the time when the trial decision conclusively invalidating the registration of an extension of term becomes final.

#### *Trial to Confirm the Scope of a Patent Right*

**135.**—(1) A patentee or an interested person may request a trial to confirm the scope of a patent right.

(2) Where a trial is requested to confirm the scope of a patent right under paragraph(1), the confirmation shall apply to each claim if the patent contains two or more claims.

#### *Trial for Correction*

**136.**—(1) A patentee may request a trial for corrections to specifications or drawing for only the following reasons:

- (i) to narrow a claim;
- (ii) to correct a clerical error; or
- (iii) to clarify an ambiguous description.

However, this provision shall not apply where an opposition to the patent is pending.

(2) In cases under paragraph (1), the claim shall neither be extended nor modified.

(3) In cases under paragraph (1)(i), the matters which are described in the claim after correction shall be regarded as having been patentable at the time of filing the patent application.

(4) Where a request for a trial for correction does not comply with any of the subparagraphs of paragraph (1) or under paragraph (2) and (3), the trial examiner shall notify the petitioner giving the reasons for refusal of the request and give the petitioner an opportunity to submit a response within a designated time limit.

(5) If a request for a for trial correction falls under any of the subparagraphs of paragraph (1), and complies with the provisions of paragraph (2) and (3), the trial examiner shall make a decision for the publication of the request.



(6) The provisions of Articles 69(1) (main sentence), 70, 72, 73, 74(1), (2) and (6), 75, and 87(3), (5) and (6) shall apply *mutatis mutandis* to the correction trial. In their application, the term “three months” in Article 69 and 87(5) shall read “two months”, and the term “decision of rejection and decision of maintenance on an opposition” in Article 74(6) shall read “decision on an opposition.”

(7) A trial for correction under paragraph (1) may be requested even after the patent right has been extinguished, except in cases where the patent has been revoked or invalidated by a trial decision.

(8) A patentee shall not request a trial for correction under paragraph (1) without the consent of an exclusive licensee, a pledgee or a nonexclusive licensee under Article 39(1), 100(4) or 102(1).

(9) Where a trial decision that the specification or drawing of a patented invention are to be corrected become final and conclusive, the patent application, the laying-open of the decision and the registration of the establishment of the patent right shall be deemed to have been made on the basis of such corrected specification or drawing.

#### *Trial for Invalidation of Correction*

**137.**—(1) An interested party or an examiner may request a trial for an invalidation of a correction, where the specification or drawing of a patented invention have been corrected in contravention to Article 136(1) to (3).

(2) The provisions of Article 133(2) and (4) shall apply *mutatis mutandis* to a request for a trial under paragraph (1).

(3) Where a trial decision that a correction of the specification or drawing is to be invalidated under paragraph (1) has become final and conclusive, the correction shall be deemed never to have been made.

#### *Trial for Granting Non-exclusive License*

**138.**—(1) If a patentee, or exclusive or non-exclusive licensee, desires to obtain permission to exercise the right provided for under Article 98, and if the other party concerned refuses to grant the permission without justifiable reasons or it is not possible to obtain such permission, the said patentee or exclusive or non-exclusive licensee may request a trial for the grant of a non-exclusive license having the scope necessary to work the patented invention.

(2) Where the request under paragraph (1) has been made, a non-exclusive license shall be granted only where the patented invention of the later application constitutes a substantial technical advance in comparison with the other party’s patented invention or registered utility model for which an application was filed prior to the filing date of the later application.

(3) If a person who has granted a non-exclusive license under paragraph (1) needs to work the patented invention of the person who has been granted such non-exclusive license,

and if the latter refuses to give permission or if it is impossible to obtain such permission, the former may request a trial for the grant of a non-exclusive license having the scope that necessary to work his patented invention.

(4) A non-exclusive licensee, who was granted a non-exclusive license under paragraph (1) or (3) of this Article, shall pay remuneration to the patentee, owner of the utility model right, owner of the design right or exclusive licensee thereof, provided that if payment is not possible for reasons beyond the control of the said non-exclusive licensee, the remuneration shall be deposited.

(5) A non-exclusive licensee under paragraph (4) shall not work the patented invention, registered utility model or registered design, or similar design without payment of remuneration or deposit thereof.

*Request for Joint Trial, etc.*

**139.**—(1) Where two or more persons request an invalidation trial under Article 133(1), 134(1) or 137(1) or a trial to confirm the scope of a patent right under Article 135(1), the request may be made jointly.

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

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

(4) Where there are ground for the suspension of trial proceedings which apply to one of the requesters under paragraph (1) or (3) or one of the defendants under paragraph (2), the suspension shall be effective against all of them.

*Formal Requirements of Request for Trial*

**140.**—(1) A person who desires to request a trial shall submit a written request to the President of the Industrial Property Tribunal, stating the following:

- (i) names and domiciles of the parties and the name of the agent (in case of a legal entity, the title, place of business and the name of its representative);
- (ii) identification of the trial case; and
- (iii) purpose of the request and the grounds therefor.

However, for trials under Article 140*bis*, the provisions of said Article shall apply.

(2) No amendment of a request for trial submitted under paragraph (1) may change the intent or purpose thereof; however, this provision shall not apply with respect to the basis for the request under paragraph (1)(iii).



(3) When a trial is requested to confirm the scope of a patent right under Article 135(1), the relevant specification and drawings shall be attached to the written request.

(4) A written request for a trial under Article 138(1) shall, in addition to the particulars referred to in paragraph (1), state:

- (i) the number and title of his patent which is required to be worked;
- (ii) the number, title and date of the other party's patent, registered utility model or registered design to be worked; and
- (iii) the scope, duration and remuneration for the non-exclusive license for a patented invention, a registered utility model or a design.

(5) When a trial for amendment under Article 136(1) is requested, the amended specification or drawings shall be attached to the written request for trial.

*Formal Requirements of Request for Trial on Ruling of  
Refusal, Revocation, or Decision of Rejection of Amendment*

**140bis.**—(1) A person, who desires to request a trial against a ruling of refusal, revocation, or a decision of rejection of amendment under Article 132<sup>ter</sup> or 132<sup>quater</sup>, shall submit a written request to the President of the Industrial Property Tribunal, specifying:

- (i) name and domicile of the petitioner and his agent (in the case of a legal entity, the title, place of business and the name of its representative);
- (ii) filing date and file number of the application (in the case of dissatisfaction with a decision of revocation, the registration date and number of the patent);
- (iii) title of the invention;
- (iv) date of the decision;
- (v) identification of the trial case; and
- (vi) purpose of the request and the grounds therefor.

(2) Where a request for a trial is made against a decision of revocation under Article 132<sup>ter</sup>, the President of the Industrial Property Tribunal shall notify the opponent regarding the purpose of the request.

*Rejection of Request for Trial*

**141.**—(1) Where a request for a trial does not comply with Articles 140(1) and (3) to (5) or 140<sup>bis</sup>(1), the presiding trial examiner shall order an amendment of the defect designating an adequate time limit therefor. This provision shall also apply where the prescribed fees have not been paid under Article 82.

(2) If the petitioner fails to amend the defect within the designated time limit under paragraph (1), the presiding trial examiner shall reject the request for trial by decision.

(3) A decision to reject a request for a trial under paragraph (2) shall be in writing and shall state the reasons therefor.

#### *Rejection of Request for Trial Containing Incurable Defects*

**142.** If a request for a trial contains unActful defects which cannot be corrected by amendment, such request may be rejected by a ruling without giving the defendant an opportunity to submit a written reply.

#### *Trial Examiners*

**143.**—(1) When a trial is requested, the President of the Industrial Property Tribunal shall direct the trial examiners to hear the case.

(2) The qualifications of the trial examiners shall be prescribed by Presidential Decree.

(3) Trial examiners shall conduct their official trial duties for the trial in an independent manner.

#### *Designation of Trial Examiners*

**144.**—(1) For each trial, the President of the Industrial Property Tribunal shall designate trial examiners constituting a collegial body under Article 146.

(2) When any trial examiner designated in accordance with paragraph (1) is unable to participate in the trial, the President of the Industrial Property Tribunal shall appoint another trial examiner to take his place.

#### *Presiding Trial Examiner*

**145.**—(1) The President of the Industrial Property Tribunal shall select one of the trial examiners designated under Article 144 (1) as the presiding trial examiner.

(2) The presiding trial examiner shall preside over all matters relating to the trial.

#### *Collegial Body for Trial*

**146.**—(1) A trial shall be conducted by a collegial body of three or five trial examiners.

(2) The collegial body referred to in paragraph (1) shall make its decisions by a majority vote.

(3) The consultations of the trial examiners shall not be open to the public.

*Submission of Response, etc.*

**147.**—(1) When a trial has been requested, the presiding trial examiner shall transmit a copy of the written request to the defendant and shall give him an opportunity to submit a response within a designated time limit.

(2) Upon receipt of the response under paragraph (1), the presiding trial examiner shall transmit a copy of the response to the petitioner.

(3) The presiding trial examiner may directly examine the parties in relation to the trial.

*Exclusion of Trial Examiner*

**148.** A trial examiner shall be precluded from exercising his functions in a trial where:

- (i) the trial examiner or his present or former spouse is a party, intervenor, or opponent;
- (ii) the trial examiner is or was a blood relative or a member of the household, of a party, intervenor, or opponent;
- (iii) the trial examiner is or was a legal representative of a party, intervenor, or opponent;
- (iv) the trial examiner has become a witness or expert witness or was an expert witness;
- (v) the trial examiner is or was an agent of a party, intervenor, or opponent;
- (vi) the trial examiner participated as an examiner or trial examiner in an examination or a trial decision relating to the case; or
- (vii) the trial examiner has a direct interest.

*Request for Exclusion*

**149.** Where there are ground for preclusion under Article 148, a party or intervenor may request for the exclusion of a trial examiner.

*Challenge of Trial Examiner*

**150.**—(1) Where there are circumstances wherein the participation of a trial examiner would prejudice the fairness of the proceedings in a trial, such trial examiner may be challenged by a party or intervenor.

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

*Indication of Grounds for Exclusion or Challenge*

**151.**—(1) A person who presents a motion for exclusion or challenge under Articles 149 or 150 shall submit a document to the President of the Industrial Property Tribunal stating the grounds therefor. However, in an oral trial examination, an oral challenge may be made.

(2) The underlying causes for exclusion or challenge shall be substantiated within three days from the date the motion was presented.

*Decision on Request for Exclusion or Challenge*

**152.**—(1) A decision on a request for exclusion or challenge shall be made by a trial.

(2) The trial examiner subject to the exclusion or challenge motion shall not participate in the trial of the request but may, however, state his opinion.

(3) A decision made under paragraph (1) shall be in writing and shall state the reasons therefor.

(4) No appeal shall be made against a decision made under paragraph (1) of this Article.

*Suspension of Proceedings*

**153.** When a motion for exclusion or challenge has been presented, the trial proceedings shall be suspended until a decision thereon has been made; however, this provision shall not apply to matters requiring urgent attention.

*Trial Proceedings, etc.*

**154.**—(1) The trial proceedings under Articles 133(1), 134(1) and 137(1) shall be conducted by oral hearings; however, the presiding trial examiner may, upon request of a party or intervenor or *ex officio*, conduct the trial proceedings by documentary examination.

(2) Trial proceedings other than those under paragraph (1) shall be conducted by documentary examination; however, the presiding trial examiner may, upon request of a party or intervenor or *ex officio*, conduct the trial proceedings through oral hearings.

(3) Oral hearings shall be conducted in public; however, this provision shall not apply where public order or morality is liable to be injured thereby.

(4) Where the trial proceedings are conducted by oral hearings in accordance with the provisions of paragraph (1) or (2), the presiding trial examiner shall designate the date and place thereof and transmit a document containing such information to the parties and intervenors; however, this provision shall not apply where the parties or intervenors to case have already been notified.

(5) With respect to trial proceedings by oral hearings under the provisions of paragraphs (1) or (2), an official, designated by the President of the Industrial Property Tribunal shall, under the direction of the presiding trial examiner, prepare a protocol setting forth the essence of the proceedings and other necessary matters in time for the date of each trial proceeding.

(6) The presiding trial examiner and the official who has prepared the protocol under paragraph (5) shall sign the protocol and affix their seals thereto.

(7) The provisions of Articles 142, 143 and 145 to 149 of the Code of Civil Procedure shall apply *mutatis mutandis* to the protocol under paragraph (5).

(8) The provisions of Articles 133, 271 and 339 of the Code of Civil Procedure shall apply *mutatis mutandis* to a trial.

#### *Intervention*

**155.**—(1) Any person having the right to request a trial under Article 139(1) may intervene in the trial before the conclusion of the trial examination.

(2) An intervenor under paragraph (1) may continue a trial even after the request for the trial has been withdrawn by the original party.

(3) Any person having an interest in the result of a trial may intervene in the trial, before the conclusion of the trial examination in order to assist one of the parties.

(4) An intervenor under paragraph (3) may initiate and take part in any procedure relating to the trial.

(5) Where there are grounds for suspension of a trial proceeding applicable to the intervenor under paragraphs (1) or (3), the suspension shall also be effective against the original party.

#### *Request for Intervention and Decision*

**156.**—(1) A person desiring to intervene in a trial shall submit, in writing, a request for intervention to the presiding trial examiner.

(2) The presiding trial examiner shall transmit copies of the request for intervention to the parties and other intervenors and give them an opportunity to submit written opinions within a designated time limit.

(3) Where a request for intervention is made, the decision thereon shall be made by a trial.

(4) The decision under paragraph (3) shall be in writing and shall state the reasons therefor.

(5) No appeal shall be made against the decision under paragraph (3).

### *Taking of Evidence and Preservation Thereof*

**157.**—(1) With respect to a trial, evidence may be taken or preserved upon request of a party, intervenor, interested person or *ex officio*.

(2) The provisions of the Code of Civil Procedure relating to the taking and preservation of evidence shall apply *mutatis mutandis* to any taking and preservation thereof under paragraph (1). However, the trial examiner may not impose a fine for negligence, order compulsory appearance, or require the deposit of money as security.

(3) A request to preserve evidence shall be made to the President of the Industrial Property Tribunal prior to a request for trial and to the presiding trial examiner of the case while the trial is pending.

(4) Where a motion for preservation of evidence has been made under paragraph (1) prior to a request for trial, the President of the Industrial Property Tribunal shall designate a trial examiner to be responsible for the preservation of evidence.

(5) Where evidence has been taken or preserved *ex officio* under paragraph (1), the presiding trial examiner shall notify the parties, intervenors, and interested persons thereof and shall give them an opportunity to submit written opinions within a designated time limit.

### *Continuation of Trial Proceedings*

**158.** Notwithstanding the failure of a party or intervenor to take any proceedings within the time limit prescribed by Act, or designated in accordance with the Patent Act, or failure to appear on the designated date in accordance with Article 154(4), the presiding trial examiner may proceed with the trial proceedings.

### *Ex Officio Trial Examination*

**159.**—(1) Grounds which have not been pleaded by a party or intervenor in a trial may be examined; however, in such cases, the parties or intervenors shall be given an opportunity to state their opinions regarding such grounds, within a designated time limit.

(2) In a trial, no examination may be made on the purpose of a claim not requested by the petitioner.

### *Combination or Separation of Trial or Ruling*

**160.** The trial examiner may combine the examination of two or more trial proceedings where one or both of the parties thereto are the same, or, may examine them separately.



### *Withdrawal of Request for Trial*

**161.**—(1) A request for trial may be withdrawn by the petitioner before the trial decision has become final and conclusive; however, the consent of the defendant for the withdrawal shall be obtained where a response has already been submitted.

(2) When a request for a trial for invalidating a patent under Article 133(1) or for confirming the scope of a patent right under Article 135 has been made with regard to two or more claims, the request may be withdrawn for each of the claims.

(3) When a request for a trial is withdrawn under paragraph (1), it shall be deemed never to have been made.

### *Ruling on Trial*

**162.**—(1) Except as otherwise provided for, when a trial ruling has been rendered, the trial shall be closed.

(2) The trial ruling under paragraph (1) shall be in writing, signed and sealed by the trial examiners who have rendered it, and shall state the following:

(i) the number of the trial;

(ii) the name and domicile of the parties, intervenors and agents (in the case of a legal entity, the title, the place of business and the name of its representative);

(iii) the identification of the trial case;

(iv) the text of the ruling (including the scope, duration and remuneration in trial cases under Article 138);

(v) the reasons for the decision (including the purpose and a summary of the reason for the request); and

(vi) the date of the ruling.

(3) When a case has been thoroughly examined and is ready to be ruled, the presiding trial examiner shall notify the closure of the trial examination to the parties and intervenors.

(4) Even after notification of the closure of the trial examination under paragraph (3), the presiding trial examiner may, if necessary, reopen the examination upon the motion of a party or an intervenor or *ex officio*.

(5) The decision shall be rendered within twenty days following the date on which notification of the closure of the trial examination is served under paragraph (3).

(6) When a trial decision or a ruling has been rendered, the presiding trial examiner shall transmit a certified copy of the trial decision or the ruling to the parties, intervenors, and persons who have requested intervention to the trial, but have been rejected.

### Res Judicata

**163.** When a trial decision or ruling has become final and conclusive and has been registered pursuant to the Patent Act, no person may demand another trial on the basis of the same facts and evidence.

### *Suspension of Trial or Litigation Proceedings*

**164.**—(1) Proceedings of a trial may, if necessary, be suspended until the decision on a patent opposition relevant to the trial or the trial decision of another trial becomes final and conclusive or litigation proceedings thereon are concluded.

(2) The court may, if considered necessary in the litigation proceedings, suspend the litigation proceedings until a trial decision on the patent becomes final and conclusive.

### *Costs of Trial*

**165.**—(1) The imposition of costs in connection with a trial under Articles 133(1), 134(1), 135 and 137(1) shall be decided by a trial decision in the event the trial is terminated by a trial decision, or by a decision in the trial where the trial is terminated in a manner other than by a trial decision.

(2) The provisions of Articles 89 to 94, 98(1) and (2), 99, 101, 102 and 106 of the Code of Civil Procedure shall apply *mutatis mutandis* to the costs in connection with the trial under paragraph (1).

(3) The costs in connection with the trial under Article 132<sup>ter</sup>, 132<sup>quater</sup>, 136 or 138 shall be borne by the petitioner or the opponent.

(4) The provisions of Article 93 of the Code of Civil Procedure shall apply *mutatis mutandis* to the costs borne by the requester or the opponent under paragraph (3).

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

(6) The extent, amount and payment of the costs of a trial, as well as the payment of the costs for performing any procedural acts in the trial, shall be governed by the relevant provisions of the Act of Civil Procedure Costs unless they are incompatible.

(7) The payment which a party has paid or will pay to a patent attorney who representing the party in the trial shall be deemed an element of the costs in connection with a trial to determine the extent of the costs by the Commissioner of the Korean Industrial Property Office. In this regard, even if two or more patent attorneys have represented a person for the trial, it shall be deemed to have been represented by one patent attorney.

*Title of Liability of Costs, Remuneration or Compensation*

**166.** A final and conclusive ruling on the amount of the costs of a trial, compensation or remuneration payable under the Patent Act shall have the same effect as an enforceable title of liability; the legal writ, which has the force of execution, shall be given by an official of the Industrial Property Tribunal.

*[Without Title]*

**167.** Deleted.

*[Without Title]*

**168.** Deleted.

*[Without Title]*

**169.** Deleted.

*Mutatis mutandis Application of Provisions on Examination to  
Trial against Ruling of Refusal*

**170.**—(1) The provisions of Articles 47(2)(iii), 51, 63 and 66 shall apply *mutatis mutandis* to a trial against a ruling of refusal by an examiner. In this case, the term “where an applicant has requested a trial under Article 132*quater* against a decision to reject an amendment” shall read “where an applicant has brought an action before the court under Article 186(1), and “until the trial decision has become final and conclusive” shall read “until the judgement has become final and conclusive.”

(2) Articles 51(1) and (5), and 63 which are applicable *mutatis mutandis* under paragraph (1) shall apply in the cases where grounds for rejection different from those of the examiner’s original ruling of refusal have been found.

*Special Provisions on Trial against Ruling of Refusal or  
Decision of Rejection of Amendment*

**171.**—(1) In the case of a trial against a ruling of refusal by an examiner under Article 173, the selection of the trial examiners of the trial case shall be made only when notification has been made under Article 175(2).

(2) Articles 147(1) and (2), 155 and 156 shall not be applicable to a trial against a ruling of refusal or revocation by an examiner under Article 132*ter* and to a trial against a decision of rejection of an amendment under Article 132*quater*.

*Effect of Examination or Opposition Proceedings*

**172.** Proceedings previously taken during the course of an examination or an opposition shall also remain effective in a trial against a ruling of refusal or revocation by an examiner.

*Reexamination Prior to Trial*

**173.**—(1). Where an amendment of the specification or drawings attached to the application which is the subject of the request has been made within thirty days after a request for a trial against a ruling of refusal under Article 132*ter*, the President of Industrial Property Tribunal shall notify the Commissioner of the Korean Industrial Property Office before proceeding with the trial.

(2) Where a notification referred to in paragraph (1) has been made, the Commissioner of the Korean Industrial Property Office shall have the examiner reexamine the application.

*Mutatis Mutandis Application of Provision on Examination to the Reexamination Prior to Trial*

**174.**—(1) The provisions of Articles 51, 57(2), 78 and 148(i) to (v) and (vii) shall apply *mutatis mutandis* to the reexamination under Article 173.

(2) The provisions of Articles 47(2)(iii) and 63 shall apply *mutatis mutandis* to the reexamination under Article 173 if grounds for rejection different from those of the examiner's original ruling of refusal are found.

(3) The provisions of Articles 66 and 67 shall apply *mutatis mutandis* to the reexamination under Article 173 if the request for trial is deemed to have merit.

*Termination of Reexamination*

**175.**—(1) If the examiner desires to make a decision to grant a patent as a result of reexamination under Article 173, he shall cancel his previous ruling of refusal against which a trial was requested.

(2) If the examiner cannot make a decision to grant a patent as a result of reexamination under Article 173, he shall report the result of his reexamination to the Commissioner of the Korean Industrial Property Office without making a ruling of refusal under Article 62. The Commissioner of the Korean Industrial Property Office shall notify the President of the Industrial Property Tribunal after receipt of the report.

*Reversal of Decision and Remand*

**176.**—(1) Where the trial examiners have deemed that the request for a trial under Articles 132*ter* or 132*quater* were well-grounded, they shall reverse the examiner's ruling of refusal, revocation or rejection of an amendment.

(2) Where a ruling of refusal or revocation of a patent is reversed in a trial, a trial decision may be made to remand the case to the Examination Bureau.

(3) In ruling on a trial under paragraphs (1) and (2) of this Article, the reasons constituting the basis for the reversal shall bind the examiner with respect to the case.

*[Without Title]*

177. Deleted.

## CHAPTER VIII RETRIAL

### *Request for Retrial*

**178.**—(1) Any party may request a retrial against a trial decision which has become final and conclusive.

(2) The provisions of Articles 422 and 424 of the Code of Civil Procedure shall apply *mutatis mutandis* to a request for retrial under paragraph (1).

### *Request for Retrial on Account of Collusion*

**179.**—(1) Where the parties in a trial acted in collusion for the purpose of causing a trial decision to be rendered which damages the rights or interests of a third party, such third party may request a retrial against the trial decision which has become final and conclusive.

(2) In the case of a request for a retrial under paragraph (1), the parties of the trial shall be joint defendants.

### *Time Limit for Request for Retrial*

**180.**—(1) A retrial shall be requested within thirty days from the date on which the petitioner becomes aware of the grounds for the retrial after the trial ruling became final and conclusive.

(2) Where a retrial is requested by reason of defects in a power of attorney, the time limit provided for in paragraph (1) shall be counted from the day following the date on which the petitioner or his legal representative becomes aware that the trial ruling had been rendered, by means of a transmittal of the certified copy of such ruling.

(3) No request for a retrial shall be made after the expiration of three years from the date on which the trial ruling became final and conclusive.

(4) Where grounds for a retrial arise after the trial ruling has become final and conclusive, the time limit prescribed in paragraph (3) shall be counted from the day following the date on which the grounds first arose.

(5) Paragraphs (1) and (3) shall not apply to a request for a retrial made on the grounds that the trial ruling conflicts with a final and conclusive trial ruling previously rendered.

*Restriction on Effects of Patent Rights Restored by Retrial*

**181.**—(1) Patent rights shall not be effective to any product that was imported into, manufactured or acquired in good faith, in the Republic of Korea after the trial ruling became final and conclusive but before a request for a retrial has been registered, in any of the following cases:

(i) where the patent right whose patent or registration of term extension was concluded to be invalid (including a patent right, the revocation of which was concluded by a trial decision of revocation), has been restored by a retrial;

(ii) after a trial ruling that a product was outside the scope of the patent right became final and conclusive, where a ruling to the contrary at a retrial has become final and conclusive; or

(iii) where the establishment of a patent right or the extension of a patent term with respect to a patent application or application for registration of extension of patent term, previously refused by a trial ruling, has been registered through retrial.

(2) Patent right under the provisions of paragraph (1) of this Article shall not extend to the following acts:

(i) working of the invention in good faith after a trial ruling became final and conclusive but before the registration of a request for retrial;

(ii) in the case of a patent for an invention of a product, acts of manufacturing, assigning, leasing, importing, or offering for assigning or leasing such articles as to be used exclusively for the manufacture of the products, in good faith, after trial decision became final and conclusive but before the registration of a request for retrial; and

(iii) in the case of a patent for an invention of a process, acts of manufacturing, assigning, leasing, importing, offering for assigning or leasing such articles as to be used exclusively for the working of the process, in good faith, after a trial decision became final and conclusive but before the registration of a request for retrial.

*Non-exclusive License for Prior User of Patent Right Restored  
by Retrial*

**182.** For cases which fall under any of the subparagraphs of Article 181(1), any person who has, in good faith, commercially or industrially worked the invention in the Republic of Korea, or has been making preparations therefor, after a trial ruling became final and conclusive but prior to the registration of a request for retrial, such person shall have a non-exclusive license on the patent right to the extent of the invention and of the purpose of business which is being worked or of which the preparations for working are being made.

*Non-exclusive License for Person Deprived of a Non-exclusive License by Retrial*

**183.**—(1) Where, after a decision to grant a non-exclusive license under Article 138(1) or (3) has become final and conclusive, a decision to the contrary is rendered at a retrial, any person who has, in good faith, commercially or industrially worked the invention in the Republic of Korea or has been making preparations therefor under a non-exclusive license, prior to the registration of a request for retrial, such person shall have a non-exclusive license on the patent right or on the exclusive license existing at the time the decision at the retrial becomes final and conclusive, the said license being limited to the purpose of his business and to the scope of the invention under the original non-exclusive license.

(2) The provisions of Article 104(2) shall apply *mutatis mutandis* to the case referred to under paragraph (1).

*Mutatis Mutandis Application of Provisions on Trial to Retrial*

**184.** The provisions relating to a trial shall apply *mutatis mutandis* to a request for a retrial against the decision of trial decision, unless they are not compatible.

*Mutatis Mutandis Application of Provisions of the Code of Civil Procedure*

**185.** The provision of Article 429(1) of the Code of Civil Procedure shall apply *mutatis mutandis* to a request for retrial.

CHAPTER IX  
LITIGATION

*Action on a Trial Decision, etc.*

**186.**—(1) The Patent Court of Korea shall have original jurisdiction over any action on a trial decision, rejection of amendment under Article 51(1) applying *mutatis mutandis* to Article 170(1) (including the cases applying *mutatis mutandis* to Article 184), or dismissal of a request for a trial or retrial.

(2) The action prescribed in paragraph (1) may be brought by a person who is a party, intervenor or any person who has requested for intervention in the trial but has been rejected.

(3) The action prescribed in paragraph (1) may be brought within thirty days from the date of receipt of a certified copy of the trial decision or ruling.

(4) The time limit prescribed in paragraph (3) shall not be changed.

(5) With respect to a peremptory period as referred to in paragraph (4) of this Article, the presiding trial examiner may, *ex officio*, determine any additional period for the benefit of a person residing in an area that is remote or difficult to access.

(6) An action may not be brought unless it relates to matters for which a trial may be requested.

(7) An action under paragraph (1) on a trial decision on remuneration under Article 162(2)(iv) and a trial decision or ruling on trial costs under Article 165(1) may not be brought independently.

(8) Any person who has received a ruling from the Patent Court may appeal to the Supreme Court.

#### *Qualification for Defendant*

**187.** In an action under Article 186(1), the Commissioner of the Korean Industrial Property Office shall be the defendant. However, in the case of an action on decisions of trial under Articles 133(1), 134(1), 135(1), 137(1), 138(1) and (3) or retrial, the petitioner or the defendant thereof shall be the defendant.

#### *Notification of Institution of Action and Transmittal of Document*

**188.**—(1) When an action under the provision of Article 187(1) is instituted, the Patent Court shall notify without delay the President of the Industrial Property Tribunal accordingly.

(2) When an action under the provision of Article 187(1) has been concluded, the Patent Court shall transmit a certified copy of the judgement on the action to the President of the Industrial Property Tribunal.

#### *Exclusion or Challenge of Technical Hearing Officials*

**188bis.**—(1) The provisions of Article 148 of the Patent Act, Articles 38 to 41, 43 and 44 of the Code of Civil Procedure shall apply *mutatis mutandis* to the exclusion or challenge of technical hearing officials under the provisions of Article 54bis of the Court Constitution Act.

(2) A decision of an action regarding the exclusion or challenge of technical hearing officials under paragraph (1) shall be rendered by the court in which the officials participate.

(3) The technical hearing officials may be excluded with the consent of the President of the Industrial Property Tribunal if the reasons for exclusion or challenge thereof are deemed to be well-grounded.

#### *Revocation of Trial Decision or Ruling*

**189.**—(1) Where the Patent Court has deemed that an action under Article 186(1) was well-grounded, it shall revoke the trial decision or ruling by judgement.

(2) Where a reversal of trial decision or ruling becomes final and conclusive under paragraph (1), the trial examiner shall review the case and make a trial decision or ruling.



(3) The reasons for a judgement on an action under paragraph (1) which constitute the basis for the revocation shall bind the Industrial Property Tribunal with respect to the case.

*Action Against Decision on Amount of Compensation or Remuneration*

**190.**—(1) A person who is dissatisfied with a decision or ruling regarding the amount of compensation or remuneration under Articles 41(3) or (4), 106(3), 110(2)(ii), or 138(4), may bring an action before the Court.

(2) An action under paragraph (1) shall be filed within thirty days from the date of receipt of a certified copy of the decision or ruling.

(3) The time limit prescribed in paragraph (2) shall not be changed.

*Defendant in an Action Relating to Compensation or Remuneration*

**191.** In an action under Article 190, the following persons shall be the defendants:

(i) the government agency or applicant liable for payment of compensation in the case of compensation under Article 41(3) or (4);

(ii) the government agency, patentee, exclusive licensee or non-exclusive licensee liable for payment of compensation in the case of compensation under Article 106(3); or

(iii) the non-exclusive licensee, exclusive licensee, patentee or owner of a utility model or design registration in the case of remuneration under Article 110(2)(ii) or 138(4).

CHAPTER X  
INTERNATIONAL APPLICATIONS UNDER THE PATENT  
COOPERATION TREATY

**Part I**  
**International Application Procedure**

*Persons Capable of International Application*

**192.** Any person who falls under any of the following subparagraphs may file an international application with the Commissioner of the Korean Industrial Property Office:

(i) a national of the Republic of Korea;

(ii) a foreigner who has a residence or place of business in the Republic of Korea;

(iii) a person who does not fall under subparagraph (i) or (ii) but who files an international application under the name of a representative falling under subparagraph (i) or (ii); or

(iv) a person who meets the requirements prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

#### *International Application*

**193.**—(1) A person desiring to file an international application shall submit to the Commissioner of the Korean Industrial Property Office a request, description, claims, drawings (where required) and an abstract prepared in the Korean language or any language prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

(2) The request shall contain:

(i) a petition to the effect that the international application be processed according to the Patent Cooperation Treaty;

(ii) the designation of the contracting States in which protection for the invention is desired on the basis of the international application;

(iii) if the applicant wishes to obtain a regional patent referred to in Article 2(iv) of the Patent Cooperation Treaty, an indication to that effect;

(iv) the name, or title, and the domicile, or place of business, and the nationality, of the applicant;

(v) the name and domicile or place of business of the agent (if any);

(vi) the title of the invention; and

(vii) the name and domicile, or place of business, of the inventor (where the national Act of a designated State requires that these indications be furnished).

(3) The description under paragraph (1) shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out easily by a person skilled in the art to which the invention pertains.

(4) The claims under paragraph (1) shall clearly and concisely define the matter for which protection is sought and be fully supported by the description.

(5) Other necessary matters which are not prescribed in paragraphs (1) to (4) concerning an international application shall be prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

#### *Recognition, etc. of Filing Date of International Application*

**194.**—(1) The Commissioner of the Korean Industrial Property Office shall deem the date of receipt of the international application as the international filing date under Article 11 of the Patent Cooperation Treaty (hereinafter referred to as an “international filing date”), unless:

(i) the applicant does not meet the requirements prescribed in Article 192;



- (ii) the international application is not in the language prescribed under Article 193(1);
- (iii) the international application does not contain a description or claim(s); or
- (iv) the elements listed in Article 193(2)(i) and (ii) or the name or title of the applicant are not indicated.

(2) If an international application falls under any of the subparagraphs of paragraph (1), the Commissioner of the Korean Industrial Property Office shall invite the applicant to amend the defect, in writing, within a designated time limit.

(3) If an international application refers to a drawing or drawings which is or are not included in that application, the Commissioner of the Korean Industrial Property Office shall notify the applicant accordingly.

(4) The Commissioner of the Korean Industrial Property Office shall deem the international filing date as the date of receipt of the amendment in writing when the invited applicant under paragraph (2) has complied with the invitation within the designated time limit, or the date of receipt of the drawings when the invited applicant under paragraph (3) has furnished the drawings within the time limit prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

If the invited applicant under paragraph (3) has not furnished the drawings within the time limit prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy then reference to the said drawings shall be considered nonexistent.

#### *Invitation to Amendment*

**195.** The Commissioner of the Korean Industrial Property Office shall invite the applicant to make amendments, in writing, within a designated time limit, if the international application does not:

- (i) contain the title of the invention;
- (ii) contain an abstract;
- (iii) comply with Articles 3 or 197(3); or
- (iv) comply with the requirements prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

#### *International Application Considered to Have Been Withdrawn*

**196.**—(1) An international application shall be considered to have been withdrawn if:

- (i) the applicant has failed to make an amendment within the time limit designated under Article 195;

(ii) a fee has not been paid within the time limit prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy, and Article 14(3)(a) of the Patent Cooperation Treaty therefore becomes applicable; or

(iii) with regard to an international application to which an international filing date has been recognized under Article 194, the said application is found to fall under any of the subparagraphs of the provisions under Article 194(1), within the time limit prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

(2) If part of a fee has not been paid within the time limit prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy, and Article 14(3)(b) of the Patent Cooperation Treaty therefore becomes applicable, the designation of the State or States in respect of which the fee has not been paid shall be considered to have been withdrawn.

(3) If an international application, or part of the States designated, is considered to have been withdrawn under paragraphs (1) or (2), the Commissioner of the Korean Industrial Property Office shall notify the applicant accordingly.

#### *Representative, etc.*

**197.**—(1) Where two or more applicants jointly file an international application, the procedure under Articles 192 to 196 and 198 may be initiated by a common representative of the applicants.

(2) Where two or more applicants jointly file an international application and do not designate a common representative, a representative may be designated as their common representative as prescribed in the Ordinance of the Ministry of Commerce, Industry and Energy.

(3) Where an applicant intends to allow an agent to initiate a procedure for him under paragraph (1), he shall appoint a patent attorney as his agent unless the procedure is initiated by a legal representative under Article 3.

#### *Fees*

**198.**—(1) An applicant for an international application shall pay the required fees.

(2) Fees, proceedings and time limits for payments under paragraph (1) shall be prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

#### *International Search and International Preliminary Examination*

**198bis.**—(1) The Korean Industrial Property Office shall perform duties as an international searching authority and as an international preliminary examining authority for an international application in accordance with a convention concluded with the International Bureau, as prescribed in Article 2(xix) of the Patent Cooperation Treaty.



(2) Details concerning the performance of duties as prescribed in paragraph (1) shall be prescribed by the Ordinance of Ministry of Commerce, Industry and Energy.

## Part II Special Provisions on International Patent Applications

### *Patent Application Based on International Application*

**199.**—(1) An international application for which an international filing date has been recognized under the Patent Cooperation Treaty, and which designates the Republic of Korea as a designated State in order to obtain a patent, shall be considered to be a patent application filed on its international filing date.

(2) Article 54 shall not apply to an international application considered to be a patent application under paragraph (1) (hereinafter referred to as an “international patent application”).

### *Special Provision Concerning Presumption of Novelty of Inventions*

**200.** Notwithstanding Article 30(2), any person desiring application of Article 30(1)(i) or (iii) to the invention claimed in an international patent application may submit to the Commissioner of the Korean Industrial Property Office a written statement to that effect and a document proving that the invention falls under Article 30(1)(i) or (iii) within the time limit prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

### *Translation of International Patent Application*

**201.**—(1) The applicant for an international patent applied in any foreign language shall submit to the Commissioner of the Korean Industrial Property Office a Korean translation of the description, claims, drawings (only text matter thereof) and abstract filed on the international filing date within one year and eight months from the priority date as defined in Article 2(xi) of the Patent Cooperation Treaty (hereinafter referred as “priority date”) or two years and six months from the priority date in case where the said applicant has requested an International Preliminary Examination under Article 33 of the Patent Cooperation Treaty within one year and seven months from the priority date and elected the Republic of Korea as an elected State under the Article 31(4)(a) of the Patent Cooperation Treaty (hereinafter referred to as “domestic time limit for submitting documents”). However, in cases where an applicant for an international patent has amended the claims under Article 19(1) of the Patent Cooperation Treaty, only the Korean translation of the amended claims need be submitted.

(2) If the translation of the description and claims under paragraph (1) have not been submitted within the domestic time limit for submitting documents, the international patent application shall be deemed to be withdrawn.

(3) An applicant who has submitted the translation referred to in paragraph (1) may submit a new translation to replace the prior translation only within the designated domestic



time limit for submitting documents; however, this provision shall not apply where the applicant has made a request for examination.

(4) Matters which were disclosed in the description, claims and text matter of drawings of an international patent application filed on the international filing date, but which were not disclosed in the translation under paragraph (1) or (3) (hereinafter referred to as a “translated version”) submitted within the domestic time limit for submitting documents (or the date of the request for examination where the applicant has made such a request within the said time limit; hereinafter referred to as “relevant date”) shall be deemed not to have been disclosed in the description, claims and the text matter of the drawings of said international patent application filed on the international filing date.

(5) An application of an international patent application submitted on the international filing date shall be deemed to be an application submitted under Article 42(1).

(6) The translated version of the description, claims, drawings and abstract of an international patent application (the description, claims, drawings and abstract submitted on the international filing date, in case of an international patent application made in the Korean language) shall be deemed to be the description, claims, drawings and abstract submitted under Article 42(2).

(7) Article 204(1) and (2) shall not apply in case where a Korean translation of the amended claims has been submitted pursuant to the provision of paragraph (1).

(8) Where the Korean translation for only the amended claims has been submitted pursuant to the provision of paragraph (1), the claims submitted at the international filing date shall not be recognized.

#### *Special Provisions on Claim of Priority*

**202.**—(1) Articles 55(2) and 56(2) shall not apply to an international patent application.

(2) For the purpose of Article 55(4), “description or drawings originally attached to the earlier application” shall read “description, claims and drawings (only text matter thereof) submitted on the international filing date under Article 201(1), and the translated version of said documents under Article 201(4) or drawings (except the text matter thereof) of the international application submitted on the international text matter thereof of the international application submitted on the international filing date” and “laying open for public inspection” shall read “international publication under Article 21 of the Patent Cooperation Treaty.”

(3) For the purposes of Articles 55(1), (3) and (4) and 56(1), where the earlier application under Article 55(1) of the Patent Act is the international patent application or international utility model application under Article 57(2) of the Utility Model Act, “description or drawings originally attached to a patent or utility model application” in Article 55(1) and (3) shall read “description, claims and drawings of an international application submitted on the international filing date under Article 201(1) of the Patent Act or Article 59(1) of the Utility Model Act,” “description or drawings originally attached to the earlier application” in Article 55(4) shall read “description, claims or drawings of an



international application concerning an earlier application submitted on the international filing date under Article 201(1) or Article 59(1) of the Utility Model Act,” “laying open of the earlier application” for public inspection in Article 55(4) shall read “international publication concerning said earlier application under Article 21 of the Patent Cooperation Treaty” and “at the expiration of one year and three months from the filing date” in Article 56(1) shall read “at the relevant date under Article 201(4) of the Patent Act or Article 59(4) of the Utility Model Act or at the expiration of one year and three months from the international filing date under 201(1) of the Patent Act or Article 59(1) of the Utility Model Act, whichever date expires later,” respectively.

(4) For the purposes of Articles 55(1), (3) and (4) or 56(1), where the earlier application under Article 55(1) is an international patent application recognized as a patent application or a utility model application under Article 214(4) of the Patent Act or Article 71(4) of the Utility Model Act, “description or drawings originally attached to the application” in Article 55(1) and (3) shall read “description, claims or drawings of an international application as of the date regarded as the international filing date under Article 214(4) of the Patent Act or Article 71(4) of the Utility Model Act” and “description or drawings originally attached to the earlier application” in Article 55(4) shall read “description, claims or drawings of an international application concerning an earlier application as of the date regarded as the international filing date under Article 214(4) of the Patent Act or Article 71(4) of the Utility Model Act” and “at the expiration of one year and three months from the filing date of that earlier application” in Article 56(1) shall read “within one year and three months from the date regarded as the international filing date under Article 214(4) of the Patent Act or Article 71(4) of the Utility Model Act or at the time of making a decision under Article 214(4) of the Patent Act or Article 71(4) of the Utility Model Act, whichever date expires later,” respectively.

#### *Submission of Document*

**203.** An applicant for an international patent may submit, within the designated domestic time limit for submitting documents to the Commissioner of the Korean Industrial Property Office, a document stating:

- (i) the name and domicile of the applicant (the title, place of business and name of its representative, in the case of a legal entity);
- (ii) the name and domicile or place of business of the agent, if any;
- (iii) the date of submission;
- (iv) the title of the invention;
- (v) the name and domicile, or place of business of the inventor; and
- (vi) the international filing date and the international application number.

*Amendment after Receipt of the International Search Report*

**204.**—(1) If the claims of an international patent application have been amended after receipt of the international search report under Article 19(1) of the Patent Cooperation Treaty, the applicant of the international patent application shall submit to the Commissioner of the Korean Industrial Property Office a Korean translation of such an amendment no later than the relevant date.

(2) Where a translation of the amendment has been submitted under paragraph (1), the claims shall be deemed to have been amended under Article 47(1) by the translation.

(3) Where a statement under Article 19(1) of the Patent Cooperation Treaty has been submitted to the International Bureau under Article 2(xix) of the said Treaty (hereinafter referred to as the “International Bureau”), the applicant of an international patent application shall submit to the Commissioner of the Korean Industrial Property Office a Korean translation of such statement.

(4) If an applicant of an international patent application has not followed the procedure under paragraph (1) or (3) before the relevant date, the amendment or statement under Article 19(1) of the Patent Cooperation Treaty shall be deemed not to have been made.

(5) The time limit for an amendment prescribed in Article 47(1) shall not apply to an amendment under paragraph (2).

*Amendment Before Establishment of the International Preliminary Examination Report*

**205.**—(1) If the description, claims and drawings of an international patent application have been amended under Article 34(2) of the Patent Cooperation Treaty, the applicant of an international patent application shall submit to the Commissioner of the Korean Industrial Property Office a Korean translation of such amendment no later than the relevant date.

(2) When a translation of the amendment has been submitted under paragraph (1), the description and drawings shall be deemed to have been amended under Article 47(1) by the translation.

(3) If an applicant of an international patent application has not followed the procedure under paragraph (1) prior to the relevant date, the amendment under Article 34(2)(b) of the Patent Cooperation Treaty shall be deemed not to have been made.

(4) The time limit for an amendment prescribed in Article 47(1) shall not apply to an amendment under paragraph (2).

*Special Provision on Patent Administrator for Nonresidents*

**206.**—(1) Notwithstanding the provisions of Article 5(1), a nonresident applicant of an international patent application may, prior to the relevant date, initiate a procedure relating to a patent application without a patent administrator.



(2) Nonresidents who have submitted a translation of an application under paragraph (1) shall appoint a patent administrator and report that fact to the Commissioner of the Korean Industrial Property Office within the time limit prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

(3) The international application shall be deemed to have been withdrawn where the appointment of a patent administrator is not reported within the time limit prescribed under paragraph (2).

*Special Provision on the Time and Effect of Laying-Open of Application*

**207.**—(1) In the case of the laying-open of an international patent application, “after one year and six months from the filing date of an application for a patent (from the date prescribed in Article 47(1)(ii) to (iv), if the application contains a priority claim)” in Article 64(1) shall read “within the time limit under Article 201(1) (where the applicant has made a request for examination of the international patent application within said period and the international publication under Article 21 of the Patent Cooperation Treaty has been made, within one year and six months from the priority date or the date of the request for examination, whichever date expires later).”

(2) The applicant of an international patent application may, after the domestic laying open and after having given a warning in the form of a document describing the contents of the invention claimed in the international patent application, demand of a person who has commercially or industrially worked the invention, after the warning but before the registration of establishment of a patent right, the payment of compensation in an amount equivalent to what he would normally receive for the working of the invention. Even in the absence of a warning, the same demand may be made of a person who commercially or industrially worked the invention before the domestic laying-open and who had known that the invention was the one claimed in the international patent application. Provided, however, that the applicant shall not claim the right for compensation before the registration of the establishment of a patent right.

*Special Provision on Amendment*

**208.**—(1) Notwithstanding the provisions of Article 47(1), no amendment to an international patent application (except an amendment under Article 204(2) and 205(2)) may be made until the fees prescribed under Article 82(1) have been paid, a translation of the application (except in the case of an international patent application made in the Korean language) under Article 201(1) has been submitted, and the relevant date has passed.

(2) With regard to an amendment to an international patent application, “from the date specified in any of the following subparagraphs” in Article 47(1) and “from any of the dates specified in any of the subparagraphs of paragraph (1)” in Article 47(2) shall read “from the priority date.”

(3) With regard to the scope of the amendment to an international patent application, “the features disclosed in the description or drawing originally attached to the application” in



Article 48 shall read “the features disclosed both in the description, claims or drawings (only text matter thereof) of the international patent application submitted in the international filing date and in the translated version thereof or the features disclosed in the drawings (except text matter thereof) of the international patent application.”

(4) Notwithstanding paragraph (3), in applying Article 51(1), which concerns the rejection of an amendment to an international patent application, an amendment enlarging, restricting or changing the claims within the scope of the features disclosed in the translated version of the description, claims or text matter of the drawings of the international patent application, or in the drawings (except text matter thereof) of the international patent application shall be deemed not to change the intent or purpose of the specification.

(5) Article 49 shall not apply to an amendment of an international patent application.

#### *Restriction on Timing of Dual Application*

**209.** Notwithstanding the provisions of Article 53(1) of this Act, a dual application as a patent application on the basis of an international application is deemed to be a utility model registration application filed on the international application date under Article 57(1) of the Utility Model Act and may not be filed until the fees under Article 30(1) of the Utility Model Act have been paid, and a translation of the application under Article 59(1) of the Utility Model Act (except for the case of international utility model registration application made in the Korean language) has been submitted (with respect to an international application considered to be a utility model application under Article 71(4) of the Utility Model Act, until the decision under said provision has been made).

#### *Restriction on Time of Request for Examination*

**210.** Notwithstanding Article 59(2), an applicant of an international patent application may not make a request for examination of his application until the proceedings (except for the case of international patent application made in the Korean language) under Article 201(1) have been taken and the fees under Article 82(1) have been paid. A person other than the applicant of an international patent application may not make a request for examination of the international patent application until the period under Article 201(1) has lapsed.

#### *Regulation Concerning Submission of Documents Cited in the International Search Report, etc.*

**211.** The Commissioner of the Korean Industrial Property Office may require an applicant of an international patent application to submit copies of the references cited in the international search report under Article 18 of the Patent Cooperation Treaty and the International Preliminary Examination Report under Article 35 of said Treaty, designating a time limit therefor.

*Special Provision on Ruling of Revocation*

**212.** With regard to an opposition to the grant of a patent for an international application, “on the ground that falls under any of the following subparagraphs” in Article 69 shall read “on the ground that the international patent application has been filed with respect to an invention other than that disclosed both in the description, claims or drawings (text matter thereof) of an international application submitted on the international filing date and in the translated version thereof, or disclosed in the drawings (except text matter thereof) submitted on the international filing date, or that falls under any of the following subparagraphs.”

*Special Provision on Invalidation Trial of Patent*

**213.** With regard to an invalidation trial of an international patent application, “in the following cases” in Article 133(1) shall read “where a patent has been granted for an invention other than that disclosed both in the description, claims or drawings (text matter thereof) of an international application submitted on the international filing date and in the translated version thereof, or disclosed in the drawings (except text matter thereof) submitted on the international filing date, or in the following cases.”

*International Application Considered to be a Patent Application  
by Decision*

**214.—(1)** An applicant of an international application may, where the receiving Office referred to in Article 2(xv) of the Patent Cooperation Treaty has made a refusal referred to in Article 25(1)(a) of the Treaty or has made a declaration referred to in Article 25(1)(a) or (b) of the Treaty or the International Bureau has made a finding referred to in Article 25(1)(a) of the Treaty with respect to the international application (only in the case of a patent application) which contains the designation of the Republic of Korea as a designated State referred to in Article 4(1)(ii) of the Treaty, request the Commissioner of the Korean Industrial Property Office as provided in the Ordinance of the Ministry of Commerce, Industry and Energy to make a decision referred to in Article 25(2)(a) of the Treaty within the time limit prescribed by the Ordinance.

(2) A person who intends to make a request under paragraph (1) shall submit to the Commissioner of the Korean Industrial Property Office a Korean translation of the description, claims and drawings (limited to the text matter thereof) as well as other documents relating to the international application provided by the Ordinance of the Ministry of Commerce, Industry and Energy.

(3) Where a request under paragraph (1) has been made, the Commissioner of the Korean Industrial Property Office shall decide whether the refusal, declaration or finding referred to therein was justified under the provisions of the Patent Cooperation Treaty and the Regulations thereunder.

(4) Where the Commissioner of the Korean Industrial Property Office has made a decision under paragraph (3) to the effect that the refusal, declaration or finding under paragraph (1) was not justified under the provisions of the Patent Cooperation Treaty and the Regulations thereunder, the international application concerned shall be considered to be a patent application filed on the date which would have been recognized as the international filing date if the said refusal, declaration or finding had not been made in respect of the said international application.

(5) The provisions of Articles 199(2), 200, 201(4) to (8), 202(1) and (2), 208, 210, 212 and 213 shall apply *mutatis mutandis* to an international application considered to be a patent application under paragraph (4).

(6) In the case of the laying open of an international application considered to be a patent application under paragraph (4), “filing date of an application for a patent” in Article 64(1) shall read “priority date referred to in Article 201(1).”

## CHAPTER XI SUPPLEMENTARY PROVISIONS

### *Special Provisions for Patent or Patent Right with Two or More Claims*

**215.** In the case of applying Articles 65(6), 74(3), 85(1)(i), 101(1)(i), 104(1)(i), (iii) and (v), 119(1), 133(2) and (3), 136(7), 139(1), 181, 182 of the Patent Act and Article 40(1)(ii), (iv) and (v) of the Utility Model Act to a patent or patent right with two or more claims, a patent shall be deemed to have been granted, or a patent right to have been established, for each claim.

### *Inspection of Documents, etc.*

**216.—(1)** A person who desires to receive a certificate for a patent or a trial, a certified copy or extract of documents, or inspect or copy the Patent Register or documents may request the Commissioner of the Korean Industrial Property Office to that effect.

(2) The Commissioner of the Korean Industrial Property Office shall not grant the request referred to in paragraph (1) if it relates to a patent application that has not been published or laid open for public inspection, or if it relates to matters liable to contravene public order or morality.

### *Prohibition of Opening or Removal of Documents Relating to Patent Application, Examination, Opposition, Trial, Retrial or the Patent Register*

**217.—(1)** The removal of documents relating to a patent application, examination, opposition, trial, retrial or the Patent Register shall be prohibited.



(2) A response shall not be given to a request for an expert opinion, testimony or an inquiry as to the contents of a case that is in the process of patent application, examination, opposition, trial, retrial or as to the contents of an Examiner's decision, trial decision or ruling.

*Agency for Computerizing Work of Patent Documents*

**217bis.**—(1) Where it is considered necessary to deal effectively with patent, procedures the Commissioner of the Korean Industrial Property Office may entrust any person who meets the standards as determined by the Ordinance of the Ministry of Commerce, Industry and Energy with the computerizing work for documents relating to patent applications, examinations, patent oppositions, trials, retrials or the Patent Register through an electronic data processing system.

(2) Article 217(1) shall not apply in the case where any documents relating to patent applications, examinations, patent oppositions, trials, retrials or the Patent Register are removed for the purpose of entrusting the patent for documents computerizing work.

(3) A person who is or was an officer or employee of the person who has been entrusted with the computerizing work of patent documents pursuant to paragraph (1) (hereinafter referred to as the "agency of computerizing patent documents") shall not divulge or appropriate an invention disclosed in a pending application to which he had access during the course of his duties.

(4) The Commissioner of the Korean Industrial Property Office may pursuant to paragraph (1) computerize a written application for a patent or other documents, as prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy, which fail to be submitted with such electronic documents as prescribed in Article 28~~ter~~(1), and may record them in a file of a computer system operated by the Korean Industrial Property Office or the Industrial Property Tribunal.

(5) The contents written in a file under paragraph (4) of this Article shall be deemed to be the same as those entered in the documents concerned.

(6) The method of carrying out the computerizing work of patent documents as referred to in paragraph (1) and other matters necessary for carrying out the computerizing work of patent documents, shall be determined by the Ordinance of the Ministry of Commerce, Industry and Energy.

*Transmittal of Documents*

**218.** In addition to the provisions in the Patent Act, matters relating to the transmittal of documents and procedures of transmittal shall be prescribed by Presidential Decree.

*Service by Public Notification*

**219.**—(1) In cases where service of documents cannot be made because the domicile or place of business of a person to be served is unclear, service shall be made by public notification.

(2) Service by public notification shall be implemented by publishing a notice in the Patent Gazette to the effect that the documents to be served will be delivered at any time to the person to be served.

(3) The initial service by public notification shall come into force after the expiry of two weeks from the date it is published in the Patent Gazette; however, a subsequent service by public notification on the same party shall come into force from the date following its publication in the Patent Gazette.

*Service to Nonresidents*

**220.**—(1) For a nonresident having a patent administrator, documents to be served to him shall be served to his patent administrator.

(2) For a nonresident without a patent administrator, documents to be served to him shall be sent to him by registered airmail.

(3) When documents have been sent by registered airmail under the provision of paragraph (2), such documents shall be deemed to have been served on the mailing date.

*Patent Gazette*

**221.**—(1) The Korean Industrial Property Office shall publish the Patent Gazette.

(2) The Patent Gazette may be published by the electronic media under the conditions as determined by the Ordinance of the Ministry of Commerce, Industry and Energy.

(3) In publishing the Patent Gazette by the electronic media, the Commissioner of the Korean Industrial Property Office shall make public matters regarding the fact of publication of the Patent Gazette, its main contents, and service by public notification through computerized network.

*Submission of Documents, etc.*

**222.** The Commissioner of the Korean Industrial Property Office or examiner may require a party concerned to submit documents and articles necessary for dealing with proceedings other than those relating to trial or retrial.

*Patent Indication*

**223.** A patentee or an exclusive or non-exclusive licensee may indicate an identification of the patent upon a patented product in the case of an invention of a product or in the case of

an invention of process, on the manufactured product. If it is not possible to place such an indication on the product, the identification may be made on the container or package thereof.

#### *Prohibition of False Indication*

**224.** No person shall be allowed to perform any of the following acts:

(i) marking with an indication of a patent having been granted or patent application having been filed, or any sign likely to cause confusion therewith, on an article for which a patent has not been granted, a patent application is not pending, or upon an article manufactured by a process for which a patent has not been granted or a patent application is not pending, or a container or package thereof;

(ii) assigning, leasing or displaying an article which has been marked with an indication referred to in subparagraph (i);

(iii) for the purpose of manufacture, use, assignment or lease of an article referred to in subparagraph (i), marking with an indication upon advertisements, signboards or tags that a patent has been granted, a patent application had been filed for it, that it has been produced by a process for which a patent has been granted, a patent application is pending, or marking with any sign likely to cause confusion therewith; or

(iv) for the purpose of use, assignment or lease of a process for which a patent has not been granted or a patent application is not pending, marking with an indication, on advertisements, signboards or tags, that a patent has been granted, a patent application had been filed for the process, or marking with any sign likely to cause confusion therewith.

#### *Restriction on Objection*

**224bis.** No objection may be raised against a decision to reject an amendment, decision to grant a patent decision to revoke a patent, trial decision, dismissal of a request for trial or retrial under the Administrative Trial Act, and no objection may be raised against any disposition against which no objection may be raised under this Act.

## CHAPTER XII PENAL PROVISIONS

#### *Offense of Infringement*

**225.—(1)** Any person who infringes a patent right or exclusive licensee shall be liable to imprisonment with labor not exceeding five years or to a fine not exceeding 50,000,000 won.

(2) Prosecution for offenses under paragraph (1) shall be initiated upon filing of a complaint by an injured party.

### *Offense of Perjury*

**226.**—(1) Where a witness, expert witness or interpreter, having taken an oath under the Act, has made a false statement or given a false expert opinion or interpreted falsely before the Industrial Property Tribunal, he shall be liable to imprisonment with labor not exceeding five years or to a fine not exceeding 5,000,000 won.

(2) Any person who has committed an offense under paragraph (1) who confesses it, before the examiner's decision to an opposition or a trial decision becomes final and conclusive may be partially or totally exempted from the application of the sentence.

### *Offense of False Marking*

**227.** Any person who violates the provisions of Article 224 shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20,000,000 won.

### *Offense of Fraud*

**228.** Any person who has obtained a patent, a decision on an opposition to the grant of a patent, the registration of an extension of the patent term, or a trial decision by means of a fraudulent or any other unjust act shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 5,000,000 won.

### *Offense of Divulging Secrets*

**229.** Where any present or former official of the Korean Industrial Property Office or the Industrial Property Tribunal has divulged or appropriated an invention disclosed in a pending application to which he had access during the course of his duties, such official shall be liable to imprisonment with labor not exceeding two years or to a fine not exceeding 3,000,000 won.

### *Officers and Employees of Computerized Patent Documents Processing Agency as Public Officials; Irrebuttable Presumption*

**229bis.** A person who is or was an officer or employee of any patent documents computerizing agency shall be deemed to be one who is or was an employee of the Korean Industrial Property Office for purposes of applying Article 229.

### *Dual Liability*

**230.** Where a representative of a legal entity or an agent, employee or any other servant of a legal or natural person has committed an act in violation of Articles 225(1), 227 or 228 with regard to the business of the legal or natural person, the legal or natural person, in addition to the offender, shall be liable to the fine prescribed in those Articles.



*Confiscation, etc.*

**231.**—(1) Any article which is the subject of an infringing act under Article 225(1), or any article arising out of such act, shall be confiscated or, upon request of the injured party, a judgement shall be rendered to the effect that such article shall be delivered to the injured party.

(2) Where the article is delivered up to the injured party under paragraph (1), that person may claim compensation of damages in excess of the value of the article.

*Administrative Fine*

**232.**—(1) Any person who has committed an act in violation of any act of the following subparagraphs shall be liable to an administrative fine not exceeding 500,000 won under the following circumstances:

(i) where a person who has taken an oath under Article 271(2) or 339 of the Code of Civil Procedure has made a false statement before the Industrial Property Tribunal;

(ii) where a person was ordered by the Industrial Property Tribunal to submit or show documents or other things with respect to taking evidence or to the preservation of evidence, and has failed to comply with the order without justifiable reasons;

(iii) where a person has failed to comply with an order to report under Article 125 on matters relating to the working of a patented invention without justifiable reasons; or

(iv) where a person was summoned by the Industrial Property Tribunal as a witness, expert witness or interpreter and has failed to comply with the subpoena, or has refused to take an oath, to make a statement, to testify, to give an expert opinion or to interpret, without justifiable reasons.

(2) The administrative fine referred to in paragraph (1) shall be imposed and collected by the Commissioner of the Korean Industrial Property Office as prescribed by Presidential Decree.

(3) Any person who objects to the imposition of an administrative fine under paragraph (2) may lodge a protest to the Commissioner of the Korean Industrial Property Office within thirty days from the date of notification of the imposition.

(4) The Commissioner of the Korean Industrial Property Office shall, upon receipt of a protest under paragraph (3), notify the competent court without delay, which shall adjudicate the case of the administrative fine according to the provisions of the Act on Procedure for Non-Litigation Cases.

(5) Where no objection has been raised within the period prescribed in paragraph (3) and where the fine has not been paid, the Commissioner of the Korean Industrial Property Office shall collect it in accordance with the rules concerning collection of national taxes in arrears through the head of the competent tax office.



## ADDENDA

### *Date of Entry into Force*

1. This Act shall enter into force on January 1, 1999. Provided, however, that Articles 193(1) and 198*bis*, the amended provisions concerning the effect of specification, claims, drawings and abstracts of an international patent application made in the Korean language of Article 201(6), the amended provisions concerning the exemption of submission of translations with respect to an international patent application made in the Korean language of Article 208(1) and the amended provisions concerning the exemption of submission of translations with respect to an international patent application made in the Korean language of Article 210, shall enter into force on the day when a convention which the government of the Republic of Korea concludes with the International Bureau in connection with the appointment of an international searching authority enters into force, and the amended provisions of Articles 6, 11, 29, 36, 49, 53, 55, 56, 59, 69, 87, 88, 102, 104, 133, 202, 209 and 215 of this Act, and those of Articles 21 and 22 of the Design Act in Article 5(2) of this addenda shall enter into force on July 1, 1999.

### *General Transitional Measures*

2. The previous provisions shall apply to a patent application made under the previous provisions at the time when the Act enters into force, and the patent registration, patent right, opposition to a patent, trial, review and litigation related thereto.

### *Application of Disposition of Procedures Related to Filing of Patent Application by Means of Electronic Documents*

3. The amended provisions of Articles 28*ter* to 28*quinquies* and 217*bis*(5) shall apply to a patent application which is filed from January 1, 1999.

### *Application of Requirements for Patents*

4. The amended provisions of Article 29(3) shall apply in a case where an invention for which a patent application is made after this Act enters into force (hereinafter referred to as a “later-filed invention” in this Article) is the same as a device described in the specifications or drawings appended to a written application for utility model registration, which was filed before the enforcement of this Act and which was laid open after the filing date of the patent application for a later-filed invention.

### *Amendment of other Acts*

5.—(1) The following provisions of the Design Act shall be amended as follows:

“Articles 3 to 28 of the Patent Act” in Article 4 shall be amended to “Articles 3 to 28*quinquies* of the Patent Act;



21 and 22 shall be deleted;

“Article 218 of the Patent Act” in Article 81 shall be amended to “Article 217*bis* of the Patent Act”; and

“Articles 213 of the Patent Act” in Article 89 shall be amended to “Articles 229*bis* and 231 of the Patent Act.”

(2) The following provisions of the Trademark Act shall be amended as follows:  
“Article 28 of the Patent Act” in Article 5 shall be amended to “Articles 28 to 28*quinquies* the Patent Act”; and

“Article 218 of the Patent Act” in Article 92 shall be amended to “Article 217*bis* of the Patent Act.”

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