

**Enforcement Decree of the Patent Act****As last amended by Presidential Decree No. 16417, June 30, 1999**

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**Chapter I****General Provisions and Patent Application***Performance of Procedure by Nonresident*

**1.** For the purpose of Article 5(1) of the Patent Act (hereinafter referred to as the Act), the term case as prescribed by the Presidential Decree means any case where a nonresident (in

the case of a juristic person, its representative) who has appointed a patent administrator, sojourns in Korea.

#### *Deposition of Micro-Organism*

2.—(1) Any person who desires to make a patent application for an invention related to a micro-organism, shall deposit such micro-organism with a depository as determined by the Commissioner of the Korean Industrial Property Office or an organization which has acquired a status as an international depository under Article 7 of the Budapest Treaty relating to International Approval on Micro Organism Deposition for Patent Procedure (hereinafter referred to as the international depository), and append documents certifying the fact (in case of deposition with the international depository, a copy of the latest deposition certificate of those issued under Article 7 of the Rules of the said Budapest Treaty) to the patent application: provided, that if a person who has an ordinary knowledge in the field of technology to which the invention belongs, can obtain easily such micro-organism, it may not be required to deposit such micro organism.

(2) If a new deposition number is given to the deposition of micro-organism as referred to in paragraph (1) after a patent application is filed, the patent applicant or patentee shall report it without delay to the Commissioner of the Korean Industrial Property Office.

#### *Entry in Patent Specifications of Invention related to Micro-Organism*

3. Any person who desires to make a patent application for an invention related to a micro-organism, shall enter in the specification as prescribed in Article 42 (2) of the Act, the name of the depository or international depository, number and date of deposition when he has deposited the micro-organism under the text of Article 2 (1), and the method of obtaining it, when he did not deposit it under the proviso of Article 2 (1).

#### *Apportionment of Samples of Micro-Organism*

4.—(1) Any person who desires to embody an invention related to micro-organism deposited under Article 2 for the purpose of a test or research, may have samples of such micro-organism apportioned by the depository or international depository, in any of the following cases:

1. Where the patent application for the invention related to the micro-organism is published or notified publicly; and

2. Where it is required for preparing a written opinion as prescribed in Article 63 of the Act (including the case where it is applicable *mutatis mutandis* under Articles 170 (3) and 174 (2) of the Act).

(2) No person who has samples of micro-organism apportioned under paragraph (1), shall allow another person to use the micro-organism.



### *Claim Drafting Rule*

5.—(1) In a description of the requests for patent as prescribed in Article 42 (5) of the Act (hereinafter referred to as the claims), the description may be divided into the independent claim (hereinafter referred to as the independent claim) and the dependent claim embodying the independent claim by limiting or adding to it (hereinafter referred to as the dependent claim). In this case, the claims shall be described as independent claims, but may be described as dependent claims embodying the independent claims by limiting or adding to them.

(2) The independent claim shall be described in a proper number according to the nature of the invention.

(3) [Deleted by revision as of June 30, 1999]

(4) A dependent claim shall depend on one or more independent or other dependent claims and shall disclose claim number(s) on which it depends.

(5) Any dependent claim referring to two or more claims shall mention alternatively the number of referred claims.

(6) No dependent claim referring to two or more claims may refer to another dependent claim to which two or more claims are referred.

(7) No independent claim or dependent claim referring to other dependent claims shall be mentioned ahead of referred independent claim or other dependent claims.

(8) Each claim shall begin in a new line, and bear a serial number in the Arabic figures according to the order to be described.

### *Requirement for Single Patent Application*

6.—(1) The requirements for a single patent application as prescribed in Article 45(2) of the Act shall fall under any of the following subparagraphs:

1. Application containing description of one independent claim concerning a thing or process;

2. In case where one independent claim concerning a thing is described, application describing selectively any of the following independent claims or all of them:

(a) One independent claim concerning a process producing such thing;

(b) One independent claim concerning the method to use such thing;

(c) One independent claim concerning the method to handle such thing;

(d) One independent claim concerning machine, instrument, equipment and other things producing the thing;



(e) One independent claim concerning a thing utilizing only the specified nature of such thing; and

(f) One independent claim concerning a thing to handle such thing.

3. In case where one independent claim concerning a process is described, application describing an independent claim concerning machine, instrument, equipment and other things used directly in embodiment of such process.

(2) In cases as referred to in subparagraphs of paragraph (1), if it is impossible to describe comprehensively the invention only with a single independent claim, it may be described with two or more independent claims only in such case where it falls under a group of inventions as prescribed in Article 45 (1) of the Act.

#### *Invention Subject to Application for Registration of Patent Right Duration Extension*

7. For the purpose of Article 89 of the Act, the term invention as prescribed by the Presidential Decree means any of the following inventions:

1. Invention of medicines which is subject to the item license under Article 26 (1) of the Pharmaceutical Affairs Act for the purpose of embodying the patented invention; and

2. Invention of agricultural chemicals or raw materials of agricultural chemicals which are to be registered under Articles 8 (1), 16 (1) and 17 (1) of the Agrochemicals Control Act for the purpose of embodying the patented invention.

## **Chapter II Examination and Trial Examination**

### *Qualification for Examiners, etc*

8.—(1) A person qualifying for the post of examiner shall be a general government official of Grade V or higher in the Korean Industrial Property Office or any agency affiliated therewith and who has completed the examiner training course at the International Intellectual Property Training Center of the National Institute of Professional Administration.

(2) A person qualifying for the post of trial examiner shall be a general government official of Grade IV or higher in the Korean Industrial Property Office or any agency affiliated therewith, who falls under any of the following subparagraphs, and who has completed the trial examiner training course at the International Intellectual Property Training Center of the National Institute of Professional Administration.

1. Person who has served as examiner at the Korean Industrial Property Office for two or more years;

2. Person who has been engaged in affairs concerning the industrial administration or science and technology (including any research) for ten or more years, and meanwhile



engaged in affairs of examination or trial examination at the Korean Industrial Property Office or any agency affiliated therewith for three or more years; and

3. Person whose total term of office is not less than two years having served as examiner at the Korean Industrial Property Office, having been engaged in affairs of trial as state public official of Grade IV or higher in the general service at the Patent Tribunal and having served as technical examiner in the Patent Court.

(3) Any person eligible for a presiding trial examiner shall be a state public official of Grade III or higher in the general service of the Korean Industrial Property Office or any agency affiliated therewith, who falls under any of the following subparagraphs:

1. Person who has served as trial examiner at the Patent Tribunal for two or more years; and

2. Person who has been engaged in affairs concerning the industrial administration or science and technology (including any research) for fifteen or more years, and meanwhile engaged in affairs concerning the examination or trial at the Korean Industrial Property Office for three or more years and has completed the training courses for the trial examiner as referred to in paragraph (2).

(4) Any person eligible for the Director of the Patent Tribunal shall be a person qualified as a trial examiner.

(5) Notwithstanding the provisions of paragraphs (1) through (4), any person who is a public official falling under the grade of position as the examiner, trial examiner, presiding trial examiner or the Director of the Patent Tribunal as referred to in paragraphs (1) through (4), and is qualified for a patent attorney, may be appointed as an examiner, trial examiner, presiding trial examiner or the Director of the Patent Tribunal.

(6) Matters necessary for the training of the examiner and the trial examiner as referred to in paragraphs (1) and (2) shall be determined separately by the Commissioner of the Korean Industrial Property Office.

#### *Requirements for Designation of Specialized Research Institution*

**8-2.**—(1) The Commissioner of the Korean Industrial Property Office may, under Article 58 (3) of the Act, designate a corporation which possesses literature, manpower, equipment, etc. necessary for research on any advanced technology related to the patent, as a specialized research institution as prescribed in Article 58 (1) of the Act (hereinafter referred to as specialized research institution).

(2) If the specialized research institution designated under paragraph (1) carries out any service other than the research work, it shall not be permitted to make the research work to become unfair due to such service.

(3) Any person who desires to be designated as a specialized research institution, shall file an application for designation as specialized research institution with the Commissioner



of the Korean Industrial Property Office together with documents specifying the actual situation of literature, manpower, equipment, etc. which he possesses.

*Procedure, etc. of Entrustment with Data Research*

**8-3.**—(1) With respect to the patent application which is deemed required for a data research on the advanced technology under Article 58 (1) of the Act, the Commissioner of the Korean Industrial Property Office may entrust a specialized research institution with a data research by field of technology.

(2) The head of the specialized research institution shall, upon receiving an entrustment with data research from the Commissioner of the Korean Industrial Property Office under paragraph (1), notify rapidly in writing the results of research to the Commissioner of the Korean Industrial Property Office.

(3) If the Commissioner of the Korean Industrial Property Office deems that the results of research as referred to in paragraph (2) is insufficient for grasping the advanced technology on the patent application, he may entrust the head of the specialized research institution with a research with the range, etc. of research fixed.

(4) The provisions of paragraph (2) shall be applicable *mutatis mutandis* to the case of research as referred to in paragraph (3).

*Subject of Expedited Examination*

**9.** Under Article 61 of the Patent Act, the term “patent application as prescribed by Presidential Decree” refers to a patent application which is designated by the Commissioner of Korean Industrial Property Office and falls under any of the following subparagraphs:

1. an application relating to an invention in the field of national defense;
2. an application for an invention which is useful in the prevention of pollution;
3. an application for an invention directly related to the promotion of exports;
4. an application arising from the duties of the national or local government;
5. an application which is filed by a company confirmed to be a “venture business company” under Article 25 of the Special Action Act for Promoting Venture Business;
6. an application directed to a product resulting from a national project for supporting new technological development or the product of a national product quality certification project;
7. an application which serves as a basis for claiming priority for a foreign application (limited to the application which is pending in a foreign patent office);
8. an application for an invention which the applicant is currently working or preparing to work.



*Decision of Expedited Examination*

10.—(1) A person who wishes to petition for an expedited examination shall submit a document of request for expedited examination to the Commissioner of the Korean Industrial Property Office, as prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

(2) The Commissioner of the Korean Industrial Property Office shall, upon receiving an application for preferential examination under paragraph (1), decide whether the preferential examination is conducted or not.

(3) Matters necessary for the decision on preferential examination as referred to in paragraph(2) shall be determined by the Commissioner of the Korean Industrial Property Office.

**Chapter III**

**Confidential Treatment, etc. of Patent Application Related to National Defense**

*Criteria for Classification of Patent Application Related to National Defense*

11. The Commissioner of the Korean Industrial Property Office shall determine the criteria for classification necessary for selection of applications to be treated as confidential ones under Article 41 (1) of the Act (hereinafter referred to as the criteria for classification) after consulting with the Minister of National Defense.

*Procedure for Confidential Treatment*

12.—(1) If a patent application filed by a person having a domicile or business place in Korea is conformed to the criteria for classification as prescribed in Article 11, the Commissioner of the Korean Industrial Property Office shall refer the Minister of National Defense to whether or not it is required to classify and treat such application as confidential one.

(2) In case where the Commissioner of the Korean Industrial Property Office has made a reference to the Minister of National Defense under paragraph (1), he shall notify it to the inventor, the applicant and the attorney of the patent application, and a person who is deemed to be learned of the invention (hereinafter referred to as the inventor, etc.), and request them to maintain the confidence thereof.

(3) The Minister of National Defense shall, upon receiving a reference under paragraph (1), make a reply within two months, and if it is deemed necessary to treat the patent application as confidential one, he shall request the Commissioner of the Korean Industrial Property Office to classify and treat it as confidential one.

(4) The Commissioner of the Korean Industrial Property Office shall, upon receiving a request to classify and treat any patent application as confidential one under paragraph (3), take any necessary measure in conformity with the confidential service rules, and order the

inventor, etc. of the patent application to classify and treat it as confidential one, and if he is not requested so, he shall notify the inventor, etc. of the patent application of a cancellation of the request for maintenance of confidence as referred to in paragraph (2).

(5) The Commissioner of the Korean Industrial Property Office shall, upon receiving a reply of the Minister of National Defense under paragraph (3), issue without delay an order to classify and treat the patent application as confidential one, or notify a cancellation of the request for maintenance of confidence under paragraph (4).

#### *Cancellation, etc. of Confidential Treatment*

**13.**—(1) With respect to a patent application which is ordered to be classified and treated as confidential one under Article 12 (4), the Commissioner of the Korean Industrial Property Office shall take necessary measures after consulting twice or more times each year with the Minister of National Defense on the cancellation of confidence, extension of confidential maintenance period or whether or not the confidential classification is modified.

(2) The inventor, etc. who is ordered to classify and treat the patent application as confidential one under Article 12 (4), may request the Commissioner of the Korean Industrial Property Office to release it from confidential treatment, to modify the confidential classification or to publish or license the invention for which a patent is applied, in a specified limit.

#### *Compensation*

**14.**—(1) With respect to a patent application which is classified and treated as confidential one under Article 12 (3), the patent applicant may request to the Minister of National Defense for a compensation for any loss sustained by the confidential treatment under Article 12 (4) (hereinafter referred to as the compensation).

(2) If a patent applicant requests a compensation under paragraph (1), he shall submit a written request for compensation and documentary evidence establishing the loss.

(3) The Minister of National Defense shall, upon receiving a request for compensation under paragraph (1), determine and pay the amount of compensation, and he may, if necessary, consult with the Commissioner of the Korean Industrial Property Office.

#### *Prevention of and Approval for Filing a Patent Application in Foreign Countries*

**15.**—(1) If an invention for which a patent is applied by a person having the domicile or business office in Korea, is demanded by the Commissioner of the Korean Industrial Property Office to be maintained as confidential one under Article 12 (2), or is ordered to be classified and treated as confidential one under paragraph (4) of the said Article, it may be applied for patent in any foreign country only in case where it is permitted by the Commissioner of the Korean Industrial Property Office.





(2) A person who seeks to petition for the approval to file a patent application with a foreign country shall submit the petition to the Commissioner of the Korean Industrial Property Office, as prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

*Consultation with Minister of National Defense*

**16.** If the Commissioner of the Korean Industrial Property Office desires to grant permission falling under any of the following subparagraphs, he shall consult in advance with the Minister of National Defense:

1. Permission on a publication or license of an invention classified and treated as confidential one under Article 13 (2) in a specified limit; and
2. Permission on a patent application to a foreign country under Article 15 (2).

**Chapter IV**  
**Supplemental Rules**

*Documents to be Served*

**17.** Documents to be served under Article 218 of the Act shall be a notice on disposition of invalidation as prescribed in Article 16 (1) of the Act and a copy of decision as prescribed in Article 214 (3) of the Act.

*Delivery of Documents, etc.*

**18.—**(1) Except in case where the documents to be served under the Act or Article 17 are received by the party or his representative at the Korean Industrial Property Office or the Patent Tribunal, such documents shall be sent by a registered mail.

(2) In case where a party or his representative receives the documents at the Korean Industrial Property Office or the Patent Tribunal, a receipt specifying the date of receipt and the name of recipient shall be received and kept by the Korean Industrial Property Office, and in case where such documents are sent by a registered mail, the receipt of registered mail issued by the post office shall be kept by it.

(3) The delivery of the copy of a decision or ruling regarding an opposition to the grant of a patent, a trial, a retrial, an adjudication for the authorization of a non exclusive license and a cancellation of patent right shall be made by the particular delivery method as prescribed by the Postal Service Act.

(4) Except as otherwise provided by the Act or this Decree, a copy of the document concerned shall be delivered to the person to whom it is to be served, and if a protocol is prepared in lieu of presentation of the document to be served, a copy or abstract of such protocol shall be delivered.



(5) Any service to a person falling under the text of Article 3 (1) of the Act shall be made to his legal representative.

(6) If several persons exercise jointly the attorneyship, it shall be sufficient to serve it to one of them.

(7) Any service to a person who is put in a prison or detention house, shall be made to the head of such prison or detention house.

(8) The place to be served shall be the domicile or business office of the person to be served.

(9) If the person who receives the service, changes his place, he shall report it without delay to the Commissioner of the Korean Industrial Property Office.

(10) If the person to be served refuses to receive the service without any justifiable reason and it is thereby impossible to make a service, the service shall be considered to have been made on the day of sending.

(11) Sending, etc. of documents other than those to be served under the Act or Article 17, shall be made under the conditions as prescribed by the Commissioner of the Korean Industrial Property Office.

#### *Patent Gazettes*

**19.**—(1) The Patent Gazettes as prescribed in Article 221 of the Act shall be divided into a Patent Gazette for public notice and a Patent Gazette for publication.

(2) Publication of the registration of a patent in the Patent Gazette shall provide the following information:

1. the name and domicile of the patentee (in the case of a legal entity, the title, place of business and name of its representative);
2. the application number, the classification code and the filing date;
3. the name and domicile of the inventor;
4. the patent number and the registration date;
5. the date of publication of registration;
6. matters concerning claim of priority;
7. matters concerning dual application;
8. the specification, drawings and abstract attached to the patent application;
9. the number and date of a laid open application;
10. corrections according to Articles 77 and 136 of the Patent Act;



11. other matters recognized as being necessary by the Commissioner of the Korean Industrial Property Office.

(3) The following information is published in the Patent Gazette for the laying open of an application. However, subject matter liable to contravene public order or morality or to injure public health shall not be published.

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

2. the application number, the classification code and the filing date;

3. the name and domicile of the inventor;

4. the number of a laid open application and the date it was laid open;

5. the specification, drawings and abstract attached to the patent application;

6. matters concerning claim of priority;

7. matters concerning co-application;

8. the fact of a request for examination of an application as prescribed under Article 60(2) of the Patent Act. Provided, if such a fact was not published at the time of the laying open of the application, the laying open number and classification code, and the application number of the application shall be published with the fact of the request for examination in the Patent Gazette for the laying open of an application which will be later issued;

9. The information that under Article 64(2) of the Patent Act, any person may furnish the Commissioner of the Korean Industrial Property Office with information and evidence to the effect that the invention concerned is unpatentable;

10. other matters relevant to the laying open of a patent application.

#### *Imposition of Correctional Fine*

**20.**—(1) If the Commissioner of the Korean Industrial Property Office imposes a fine for negligence under Article 232 (2) of the Act, he shall investigate and confirm the offense, and notify in writing the person who is subject to the fine for negligence, of payment of it with the fact of offense and the amount of the fine for negligence specified.

(2) If the Commissioner of the Korean Industrial Property Office desires to impose a fine for negligence under paragraph (1), he shall give the person who is subject to the fine for negligence, an opportunity to state orally or in writing his opinion in a fixed period of ten or more days. In this case, if the person does not state his opinion in a designated period without any justifiable reason, he shall be considered to have no opinion.



(3) In determining the amount of the fine for negligence, the Commissioner of the Korean Industrial Property Office shall take into consideration the motive and consequence of the offense.

(4) The collectional procedures for a correctional fine shall be prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

### **Addenda**

#### *Date of Entry into Force*

- (1) This Decree shall enter into force on July 1, 1999.

#### *Subjects of Application*

- (2) The revised provisions of Article 9 shall apply to patent applications for which a request for an expedited examination is made after this Decree enters into force.