

**Patent Law****Law No. 950, Promulgated on Dec. 31, 1961
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TABLE OF CONTENTS

	<i>Article</i>
Chapter I:	
General Provisions	
Purpose.....	1
Definitions	2
Capacity of Minors, etc.....	3
Associations, etc., Other than a Legal Entity;	4
Patent Administrator for Nonresidents.....	5
Scope of Powers of Attorney	6
Proof of Powers of Attorney	7
Non-extinguishment of Powers of Attorney.....	8
Independence of Representation	9
Replacement of Agents, etc.....	10
Representation of Two or More Persons	11
<i>Mutatis Mutandis</i> Application of Provisions of the Code of Civil Procedure.....	12
Venue of Nonresidents.....	13
Calculation of Time Limits	14
Extension of Time-Limits, etc.....	15
Invalidation of Procedure	16
Subsequent Completion of Procedure	17
Succession of Procedural Effects	18
Continuation of Procedure by Successor.....	19
Interruption of Procedure	20
Resumption of an Interrupted Procedure.....	21
Request for Continuation	22
Suspension of Procedure	23
Effects of Interruption or Suspension.....	24
Capacity of Foreigners	25
Effects of Treaty	26
[Without Title]	27
Effective Date of Submitted Documents.....	28
Entry of Identification Number.....	28bis
Procedure for Filing Patent Applications by Means of Electronic Documents	28ter
Report on Use of Electronic Documents and Electronic Signature	28quater
Notification, etc., through a Communication Network .	28quinquies
Chapter II:	
Requirements for Patents and Patent Application	
Requirements for Patents	29
Inventions not Deemed to be Publicly Known, etc.	30
Patent for Plant Invention.....	31
Unpatentable Inventions.....	32
Persons Entitled to Obtain a Patent	33
Patent Application Filed by an Unentitled Person; Protection of Lawful Holder of the Right.....	34
Patent Granted to an Unentitled Person; Protection of Lawful Holder of the Right	35
First-to-File Rule.....	36
Transfer of the Right to Obtain a Patent.....	37



	Succession to the Right to Obtain a Patent.....	38
	In-Service Inventions	39
	Remuneration for In-Service Inventions	40
	Inventions Necessary for National Defense, etc.....	41
	Patent Application.....	42
	Abstract.....	43
	Joint Applications	44
	Scope of One Patent Application	45
	Amendment of Procedure	46
	Amendment of Patent Application.....	47
	[Without Title]	48
	Treatment of an Amendments to a Dual Application, etc.....	49
	[Without Title]	50
	Rejection of an Amendment.....	51
	Division of a Patent Application	52
	Dual Application.....	53
	Priority Claim Under Treaty	54
	Priority Claim Based on Patent Application, etc.	55
	Withdrawal of an Earlier Application, etc.....	56
Chapter III:	Examination	
	Examination by Examiner.....	57
	Search for Prior Art, etc.	58
	Cancellation of the Designation of a Specialized Search Organization.....	58bis
	Request for Examination of a Patent Application	59
	Procedure for a Request for Examination	60
	Preferential Examination.....	61
	Decision of Refusal of Patent.....	62
	Notification of Reasons for Refusal	63
	Laying Open of Application.....	64
	Effects of Laying Open of Application	65
	Decision to Grant a Patent.....	66
	Formalities for Decision of Patentability	67
	<i>Mutatis Mutandis</i> Application of Provisions Concerning Trial to Examination.....	68
	Opposition to the Grant of a Patent	69
	Amendment of Grounds for Opposition, etc.	70
	Collegial Body for Examination and Decision.....	71
	Examination <i>Ex officio</i> in Examination of Opposition..	72
	Joint or Separate Oppositions.....	73
	Decision on Opposition.....	74
	Manner of Decision on Opposition	75
	Withdrawal of Opposition.....	76
	Correction of Patent in an Opposition.....	77
	Suspension of Examination or Litigation Proceedings..	78
	<i>Mutatis Mutandis</i> Application of Provisions Concerning Trials to Opposition	78bis
Chapter IV:	Patent Fees and Patent Registrations, etc.	
	Patent Fees	79
	Payment of Patent Fees by Interested Party	80
	Late Payment of Patent Fees	81
	Recovery of a Patent application or Patent Right by Late Payment of the Patent Fees	81bis
	Official Fees.....	82
	Reduction or Exemption of Patent Fees or Official Fees.....	83
	Refund of Patent Fees, etc.....	84
	Patent Register	85



	Issuance of Certificate of Patent Registration	86
Chapter V:	Patent Right	
	Registration of Establishment of Patent Right and	
	Publication of Registration.....	87
	Term of Patent Right.....	88
	Extension of Term of Patent Right.....	89
	Application for Registration of Extension of Term of	
	Patent Right.....	90
	Decision of Refusal on Registration of Extension of	
	the Term of Patent Right	91
	Decision etc., on Registration for Extending Term of	
	Patent Right.....	92
	<i>Mutatis Mutandis</i> Application of Provisions.....	93
	Effects of Patent Right	94
	Effects of Patent Right the Term of Which Has Been	
	Extended	95
	Limitations on Patent Right	96
	Scope of Protection of Patented Invention	97
	Relation to Patented Invention, etc. of Another Person.	98
	Assignment and Co-ownership of a Patent Right.....	99
	Exclusive License	100
	Effects of Registration of a Patent Right and an	
	Exclusive License	101
	Non-exclusive License	102
	Non-exclusive License by Prior Use	103
	Non-exclusive License Due to Working Prior to	
	Registration of Request for Invalidation Trial.....	104
	Non-exclusive License After Expiration of a Design	
	Right	105
	Expropriation of Patent Right	106
	Adjudication for Grant of Non-exclusive License	107
	Submission of Response	108
	Solicitation of Opinion from the Intellectual Property	
	Rights Dispute Committee	109
	Formality of Adjudication.....	110
	Transmittal of Certified Copies of Adjudication.....	111
	Deposit of Remuneration	112
	Lapse of Adjudication	113
	Cancellation of Adjudication	114
	Restriction on Reason for Objections to Adjudication ..	115
	Cancellation of Patent Right	116
	[Without Title]	117
	Effects of Registration of Non-exclusive License.....	118
	Restriction on Abandonment of Patent Right, etc.	119
	Effects of Abandonment	120
	Pledge	121
	Non-exclusive License Incidental to Transfer of Patent	
	Right by Exercise of a Pledge Right	122
	Subrogation of Pledge Right	123
	Extinguishment of Patent Right in Absence of	
	Successor	124
	Report on Working of Patent	125
	The title of Execution on Amount of Compensation	
	and Remuneration	125bis
Chapter VI:	Protection of Patentee	
	Injunction, etc., Against Infringement.....	126
	Acts Deemed to be Infringement	127
	Presumption, etc., of Amount of Damage	128
	Presumption of the Patented Process to Manufacture ...	129



	Presumption of Negligence	130
	Recovery of Reputation of Patentee, etc.	131
	Submission of Documents.....	132
Chapter VII:	Trial	
	Intellectual Property Tribunal	132bis
	Trial Against a Decision of Refusal or Revocation of a Patent, etc.....	132ter
	[Without Title]	132quater
	Invalidation Trial of Patent	133
	Correction of Patent During Invalidation Trial of Patent	133bis
	Invalidation Trial of Registration for Extension of Term of Patent Right.....	134
	Trial to Confirm the Scope of a Patent Right	135
	Trial for Correction	136
	Trial for Invalidation of Correction.....	137
	Trial for Granting Non-exclusive License.....	138
	Request for Joint Trial, etc.	139
	Formal Requirements of Request for Trial.....	140
	Formal Requirements of Request for Trial on Decision of Refusal of Patent or Revocation of Patent, etc.....	140bis
	Rejection of Request for Trial	141
	Rejection of Request for Trial Containing Incurable Defects	142
	Trial Examiners.....	143
	Designation of Trial Examiners	144
	Presiding Trial Examiner	145
	Collegial Body for Trial.....	146
	Submission of Response, etc.....	147
	Exclusion of Trial Examiner	148
	Request for Exclusion	149
	Challenge of Trial Examiner.....	150
	Indication of Grounds for Exclusion or Challenge.....	151
	Decision on Request for Exclusion or Challenge.....	152
	Suspension of Proceedings.....	153
	Refrainment of Trial Examiner	153bis
	Trial Proceedings, etc.....	154
	Intervention	155
	Request for Intervention and Decision	156
	Taking of Evidence and Preservation Thereof	157
	Continuation of Trial Proceedings	158
	<i>Ex officio</i> Trial Examination	159
	Combination or Separation of Trial or Ruling.....	160
	Withdrawal of Request for Trial	161
	Ruling on Trial.....	162
	<i>Res Judicata</i>	163
	Trials and Litigation.....	164
	Costs of Trial.....	165
	Title of Enforcement of Costs or Remuneration	166
	[Without Title]	167
	[Without Title]	168
	[Without Title]	169
	<i>Mutatis Mutandis</i> Application of Provisions on Examination to Trial against Ruling of Refusal to Grant of Patent	170
	Special Provisions for a Trial against a Ruling of Refusal to Grant of Patent.....	171
	Effect of Examination or Opposition Proceedings	172
	Reexamination Prior to Trial.....	173



	<i>Mutatis Mutandis</i> Application of Provisions on Examination to the Reexamination Prior to Trial.....	174
	Termination of Reexamination.....	175
	Reversal of Ruling of Refusal, etc.....	176
	[Without Title]	177
Chapter VIII:	Retrial	
	Request for Retrial	178
	Request for Retrial on Account of Collusion	179
	Time Limit for Request for Retrial.....	180
	Restriction on Effects of Patent Rights Restored by Retrial	181
	Non-exclusive License for Prior User of Patent Right Restored by Retrial.....	182
	Non-exclusive License for Person Deprived of a Non-exclusive License by Retrial	183
	<i>Mutatis Mutandis</i> Application of Provisions on Trial to Retrial	184
	<i>Mutatis Mutandis</i> Application of Provisions of the Code of Civil Procedure.....	185
Chapter IX:	Litigation	
	Action on a Trial Decision, etc.....	186
	Qualification for Defendant	187
	Notification of Institution of Action and Transmittal of Document.....	188
	Revocation of Trial Decision or Ruling	189
	Action Against Decision on Amount of Compensation or Remuneration.....	190
	Defendant in an Action Relating to Compensation or Remuneration.....	191
Chapter X:	International Applications under the Patent Cooperation Treaty	
Part I:	International Application Procedure	
	Persons Capable of International Application.....	192
	International Application	193
	Recognition, etc. of Filing Date of International Application.....	194
	Invitation to Amendment	195
	International Application Considered to have Been Withdrawn	196
	Representative, etc.	197
	Fees.....	198
	International Search and International Preliminary Examination.....	198bis
Part II:	Special Provision on International Patent Applications	
	Patent Application Based on International Application	199
	Special Provision Concerning Presumption of Novelty of Inventions	200
	Translation of International Patent Application	201
	Special Provisions on Claim of Priority	202
	Submission of Documents.....	203
	Amendment after Receipt of the International Search Report	204
	Amendment Before Establishment of the International Preliminary Examination Report.....	205
	Special Provision on Patent Administrator for Nonresidents	206
	Special Provision on the Time and Effect of Laying-Open of Application	207



	Special Provision on Amendment	208
	Restriction on Timing of Dual Application	209
	Restriction on Time of Request for Examination	210
	Regulation Concerning Submission of Documents Cited in the International Search Report, etc	211
	Special Provision on Ruling of Revocation of Grant of Patent	212
	Special Provision on an Invalidation Trial of a Patent ..	213
	International Application Considered to be a Patent Application by Decision	214
Chapter XI:	Supplementary Provisions	
	Special Provisions for Patent or Patent Right with Two or More Claims	215
	Special Provisions for Registration of Patent Application with Two or More Claims	215bis
	Inspection of Documents, etc.	216
	Prohibition of Opening or Removal of Documents Relating to Patent Application, Examination, Opposition, Trial, Retrial or the Patent Register	217
	Agency for Computerizing Work of Patent Documents	217bis
	Transmittal of Documents	218
	Service by Public Notification	219
	Service to Nonresidents	220
	Patent Gazette	221
	Submission of Documents, etc.	222
	Patent Indication	223
	Prohibition of False Indication	224
	Restriction on Objection	224bis
Chapter XII:	Penal Provisions	
	Offense of Infringement	225
	Offense of Perjury	226
	Offense of False Marking	227
	Offense of Fraud	228
	Offense of Divulging Secrets	229
	Officers and Employees of Special Searching Agency as Public Officials; Irrebutable Presumption	229bis
	Joint Liability	230
	Confiscation, etc	231
	Administrative Fine	232
Addendum:		
	Date of Entry into Force	1
	General Transitional Measures	2
	Application of Disposition of Procedures Related to Filing of Patent Application by Means of Electronic Documents	3
	Application of Requirements for Patents	4
	Amendment of other Laws	5
Addendum:		
	Date of Entry into Force	1
	Application of Requirements for Patents	2
	General Transitional Measures	3



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 Law 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 the procedure for filing an application, requesting an examination, or any other patent-related procedure (hereinafter referred to as “patent-related procedure”) 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 patent-related opposition, trial, or retrial procedures initiated by another party.

(3) Patent-related procedures, 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 said procedures are ratified by a person having such power of representation or competence.



Associations, etc., Other than a 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 association or foundation 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 a nonresident (or a representative thereof if a legal entity) is sojourning in the Republic of Korea, initiate any patent-related procedure, nor appeal any decision taken by an administrative agency in accordance with this Law 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 a “patent administrator”).

(2) The patent administrator shall, within the scope of powers 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 Law or any decree thereunder.

(3) Deleted.

(4) Deleted.

Scope of Powers of Attorney

6. An agent who is instructed to initiate a patent-related procedure before the Korean Intellectual 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, abandon 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^{ter}, 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 patent-related procedure before the Korean Intellectual Property Office shall present written proof of his power of attorney.

Non-extinguishment of Powers of Attorney

8. A power of attorney of an agent of a person initiating a patent-related procedure 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 patent-related procedure have been designated, each of them shall independently represent the principal before the Korean Intellectual Property Office or the Intellectual Property Tribunal.

Replacement of Agents, etc.

10.—(1) If the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner considers that a person initiating a patent-related procedure 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 Intellectual Property Office or the presiding trial examiner considers that the agent of a person initiating a patent-related procedure 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 Intellectual 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 Intellectual Property Office or the presiding trial examiner may invalidate any action taken before the Korean Intellectual Property Office or the Industrial Property Tribunal by the person initiating the patent-related procedure 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 patent-related procedure, 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 Intellectual 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}.

(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 Law, the provisions of Part I, Section 2, Subsection 4 of the Code of Civil Procedure shall apply *mutatis mutandis* to agents under this Law.

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 Intellectual 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 Law, 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 for executing a patent-related procedure falls on an official holiday, including Labor Day, designated by the Labor Day Designation Law, said period shall expire on the working day following such holiday.

Extension of Time-Limits, etc.

15.—(1) The Commissioner of the Korean Intellectual 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} upon a request or *ex officio*.

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

(3) When a presiding trial examiner or an examiner has designated a date for initiating a patent-related procedure under the Patent Law, 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, the Commissioner of the Korean Intellectual Property Office or the President of the Industrial Property Tribunal may invalidate the procedure relating to the patent. However, where a person who has been notified to make an amendment for not paying the fees for a request for examination under Article 82(2) fails to pay said fees for the request for examination, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may invalidate the amendment to the specification attached to the patent application.

(2) When a patent-related procedure has been invalidated under paragraph (1), if the delay of the time is deemed to have been caused by reasons not imputable to a person who received an invitation to amend, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual property Tribunal may revoke a disposition of invalidation at the request of a person who received an invitation to amend within fourteen days from the date on which the reasons for the delay ceased to exist. However, this provision shall not apply where one year has elapsed after the designated period expires.

Subsequent Completion of Procedure

17. If a person who initiated a patent-related procedure has failed to observe the time limit for requesting a trial under Article 132^{ter}, or the time limit for demanding a retrial under Article 180(1) for reasons beyond his control, he may subsequently complete the procedure that he failed to conduct within fourteen days after said reason ceases to exist. However, this provision shall not apply in a case where one year has elapsed after 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 Intellectual Property Office or the Intellectual Property Tribunal, the Commissioner of the Korean Intellectual 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 patent-related procedure pending before the Korean Intellectual Property Office or the Intellectual 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 Intellectual Property Office or the Intellectual 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 Law; 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 opposing party.

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

(3) The Commissioner of the Korean Intellectual 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 Intellectual Property Office or the trial examiner shall decide, upon request for continuation, whether to permit resumption of the interrupted procedure after a certified copy of the decision 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 Intellectual 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 Intellectual 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 Intellectual Property Office or the trial examiner is unable to carry out his duties due to it natural disaster or other unavoidable circumstances, the procedure pending in the Korean Intellectual Property Office or the Intellectual 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 Intellectual Property Office or the Intellectual Property Tribunal on account of impediments of indefinite duration, the Commissioner of the Korean Intellectual Property Office or the trial examiner may order its suspension by decision.

(3) The Commissioner of the Korean Intellectual 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 Intellectual Property Office or the presiding trial examiner shall so notify the parties involved.

Effects of Interruption or Suspension

24. The interruption or suspension of a patent-related procedure pending in the Korean Intellectual 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 Law, such special provisions shall prevail.

[Without Title]

27. Deleted.

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 Intellectual Property Office or the Intellectual Property Tribunal under the provisions of the Patent Law, or any decree thereunder, shall be effective as of the date on which they are delivered to the Korean Intellectual Property Office or the Intellectual Property Tribunal.

(2) Where applications, demands or other documents are submitted by mail to the Korean Intellectual Property Office or the Intellectual Property Tribunal, they are deemed to be delivered to the Korean Intellectual Property Office or the Intellectual 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 provided for by the Ordinance of the Ministry of Commerce, Industry and Energy from among persons who initiates a procedure for patent (excluding any 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 Intellectual Property Office or the Intellectual Property Tribunal.

(2) If any person makes an application under paragraph (1), the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual 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 Intellectual Property Office or the President of the Intellectual Property Tribunal shall, *ex officio*, grant an 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 Law or any decree thereunder, a domicile (a place of business if 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 patent-related procedure may, pursuant to the methods prescribed by 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 Intellectual Property Office or the President of the Intellectual Property Tribunal under this Law into electronic documents, and may present them by means of any communication network or on 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 Law.



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

28quater.—(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 Intellectual Property Office or the President of the Intellectual Property Tribunal, and shall affix his electronic signature so that the presenters may be discerned.

(2) Electronic documents as presented under Article 28ter 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 Communication Network

28quinquies.—(1) If the Commissioner of the Korean Intellectual Property Office, the President of the Intellectual 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 Article 28quater(1), he may do so through a communication network.

(2) The notification of any pertinent documents given through a communication 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 Intellectual Property Office or the Intellectual Property Tribunal.

(4) Matters necessary for the classification and the methods of such notification as given through a communication 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 having Intellectual applicability 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 or inventions made available to the public through electric telecommunication lines as prescribed by Presidential Decree.

(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), a patent shall not be granted where the invention for which a patent application is filed is identical to an invention or device described in the specification or drawings initially attached to another patent application laid open or published after grant for public inspection after the filing of said patent application, or identical to a utility model application published after grant for public inspection after the filing of said patent application. This provision shall not apply, however, in cases where the inventor of the concerned patent application 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 that is deemed to be a patent application under Article 199(1) of this Law or which is deemed to be a utility model registration application under Article 57(1) of the Utility Model Law (including an international application considered to be a patent application under Article 214(4) of this Law or a utility model application under Article 71(4) of the Utility Model Law), 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 not Deemed to be Publicly Known, etc.

30.—(1) If a patentable invention falls under any of the following subparagraphs, it shall be recognized as being novel where Articles 29(1) or (2) apply to the invention claimed

in the patent application; 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 any one of the following acts on the invention:

(a) conducting tests on the invention;

(b) publishing the invention in printed matter;

(c) publishing the invention through electric telecommunication lines as prescribed by Presidential Decree; or

(d) presentation of the invention in writing before an academic organization as prescribed by Ordinance of the Ministry of Commerce, Industry and Energy.

(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.

(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 Intellectual 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 Law; however, employees of the Korean Intellectual Property Office and the Intellectual Property Tribunal shall not 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 Lawful 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 the provision of Article 33(1) as prescribed in Article 62(ii), a subsequent application filed by the lawful 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 lawful holder of the right more than thirty days after the date on which the application filed by the unentitled person was rejected.

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

35. If a decision to revoke a patent becomes final for lack of entitlement to obtain a patent under the provision of Article 33(1) as prescribed in Article 69(1)(ii) or a decision of invalidation becomes final due to a lack of entitlement under the provision of Article 33(1) as prescribed in Article 133(1)(ii), a subsequent application filed by the lawful 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 cases 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, or a utility model application is rejected, 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 Intellectual 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) Succession to the right to obtain a patent after the filing of the patent application shall not be effective unless a notice of change of applicant is filed, except in cases 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 Intellectual Property Office accordingly without delay.

(6) Where two or more notifications of change of applicant 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 an “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) Notwithstanding paragraph (1), an in-service invention made by a public official shall pass to the State or a local governmental entity and the patent right shall thereby revert to the State or a local governmental entity.

(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 Law, 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 Intellectual 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 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 and the employee’s contributions to the creation of the invention. In such cases, matters relating to the payment of remuneration shall be prescribed by Presidential Decree or by Ordinance of the local governmental entity.

(3) If the State or a local governmental entity succeeds to an in-service invention made by a public official, the State shall provide reasonable remuneration to the public official. In such cases, matters relating to the payment of remuneration shall be prescribed by Presidential Decree or by Ordinance of the local governmental entity.

(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 Intellectual Property Office is considered necessary for national defense, the Government may refuse to 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 losses arising from its prohibition of the filing of a patent application in a foreign patent office or from the maintenance of 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 Intellectual Property Office stating the following:

(i) the name and the domicile of the applicant (if a legal entity, the title and place of business);

(ii) the name and the domicile, or place of business, of the agent, if any (the title, place of business and the name of the designated patent attorney if the agent is a patent corporation);

(iii) Deleted.

(iv) the title of the invention;

(v) the name and the domicile of the inventor.

(vi) Deleted.

(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 Intellectual Property Office or the President of the Intellectual Property Tribunal may order an amendment to a patent-related procedure, designating a time limit if said 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 Law 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 amend the specification or drawings attached to a patent application before the examiner issues a certified copy of a decision to grant a patent under Article 66. However, in cases that fall under any of the following subparagraphs, an applicant may amend the application within the time limit prescribed in the subparagraphs:

- (i) where an applicant receives notification of the reasons for refusal under Article 63 (hereinafter referred to as a “notice of the reasons for refusal”) for the first time or receives a notice of the reasons for refusal that does not apply under paragraph (ii), the time limit designated for submission of arguments against the notice of the reasons for refusal thereof;
- (ii) where an applicant receives a notice of the reasons for refusal of an amendment made in response to a notice of the reasons for refusal issued under paragraph (i), the time limit designated for submission of arguments in response to said notice; or
- (iii) where an applicant requests a trial against a decision of refusal of a patent under Article 132^{ter}, the time limit shall be thirty days from the filing date of the request.

(2) An amendment to a specification or drawings under paragraph (1) shall be within the scope of the features disclosed in the specification or drawing(s) originally attached to the application.

(3) An amendment to the claims made under paragraphs (1)(ii) and (iii) shall be limited to the scope prescribed in any of the following subparagraphs. Where an amendment is made under paragraph (iii), it shall be limited to that which is indicated by the examiner in the notice of the reasons for refusal.

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

(4) An amendment under paragraph (3)(i) shall meet the following requirements:

(i) An amendment to a specification or drawings shall neither essentially expand nor modify the scope of the claims; and

(ii) The matters described in the claims after amendment shall be regarded as having been patentable at the time of the filing of the patent application.

[Without Title]

48. Deleted.

Treatment of an Amendments to a Dual Application, etc.

49.—(1) Deleted.

(2) If a dual application, as prescribed Article 53, is recognized to extends beyond the scope described in the claims of the utility model registration in the specification that was initially attached to the application for utility model registration after registration of the patent right has been established, said dual application shall be deemed to have been filed on the date when the application in writing was submitted.

[Without Title]

50. Deleted.

Rejection of an Amendment

51.—(1) Where an amendment under Article 47(1)(ii) deemed to be in violation of paragraphs (2) to (4) of said Article, the examiner shall reject the amendment by decision.

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

(3) No appeal shall be made against a decision to reject under paragraph (1). However, this provision shall not apply in an appeal against the final rejection of the patent under Article 132^{ter}.

Division of a 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(1).

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

(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) A person who files a divisional application under paragraph (1) shall indicate the purpose thereof and the patent application that forms the basis of the division.

(4) 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 Intellectual 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 from the filing date of the application for utility model registration to 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 Law or Article 5(3) of the Utility Model Law is applicable when the application for patent falls under another patent application under Article 29(3) of this Law or a patent application under Article 5(3) of the Utility Model Law;

(ii) in cases where Article 30(2) is applicable;

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

(iv) in cases 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 Intellectual 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 under paragraph (3) shall submit to the Commissioner of the Korean Intellectual Property Office the documents prescribed in paragraph (i) or the written statement prescribed in paragraph (ii). However, the written statement referred to in paragraph (ii) shall be submitted only in cases where the country is prescribed by Ordinance of the Ministry of Commerce, Industry and Energy:



(i) a written statement setting forth the filing date of the application and a copy of the specification and drawings certified by the government of the country where the initial application was filed; or

(ii) a written statement setting forth the file number of the application in the country where the initial application was filed.

(5) Documents under paragraph (4) shall be submitted within one year and four months from the earliest among the dates prescribed in the following subparagraphs:

(i) the date on which the application was first filed in a country that 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 that is to be the basis for claiming a priority right in cases where a patent application contains other priority claims in accordance with paragraph (3).

(6) Where a person who has claimed the right of priority under 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.

(7) A person who is eligible to claim the right of priority under paragraph (1) and is in compliance with the requirements of paragraph (2) may amend or add said priority claims within one year and four months from the earliest date prescribed under paragraph (5).

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 Law or a divisional application under Article 16(2) of the Utility Model Law or a dual application under Article 17 of the Utility Model Law;

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

(iv) where an examiner’s decision to grant or refuse a patent, 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 Law 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 Intellectual 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), 47(4)(ii), 96(1)(iii), 98, 103, 105(1) and (2), 129 and 136(4) (including cases that apply *mutatis mutandis* to Article 77(3) or 133*bis*(3)) of the Patent Law, Articles 8(3), (4) and 39 of the Utility Model Law, or Articles 45 and 52(3) of the Design Law.

(4) For inventions which are amongst those described in the specification or 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 Intellectual 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 Law and the principal sentence of Article 5(3) of the Utility Model Law. 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 Law or which is deemed to be a utility model registration application under Article 57(1) of the Utility Model Law (including an international application considered to be a patent application or a utility model application under Article 214(4) of the Patent Law or Article 71(4) of the Utility Model Law), “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 Law shall read “an invention or device described in the specification, claim or drawings of the international application as of the international filing date.”

(5) A person who is eligible to claim the right of priority under paragraph (1) and who is in compliance with the requirements referred to in paragraph (2) may amend or add said

priority claims within one year and four months from the filing date of the earlier application (the earliest filing date in cases where there are two or more earlier application).

Withdrawal of an Earlier Application, etc.

56.—(1) If an application is filed claiming priority from an earlier application under Article 55(1), the earlier application shall be deemed to have been withdrawn at the time that priority is claimed if the earlier application is utility model application and at the expiration of one year and three months from the filing date of the earlier application if the earlier application is a patent 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, withdrawn, or rejected;
- (ii) in the case where an examiner's decision of patentability, 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 Law.

(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 Intellectual 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 for Prior Art, etc.

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

(2) If it is deemed necessary for the process of examination, the Commissioner of the Korean Intellectual 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 Intellectual Property Office.

(3) Necessary matters concerning the designation of specialized search organizations, such as a standard for designation and implementation procedures for searching documents under paragraph (1), shall be prescribed by Presidential Decree.

Cancellation of the Designation of a Specialized Search Organization

58bis. Where a specialized search organization falls under any of the following subparagraphs, the Commissioner of the Korean Intellectual Property Office may cancel the designation of said search organization or order suspension of its business operations within a designated time limit. However, if a specialized search organization falls under subparagraph (i), the Commissioner of the Korean Intellectual Property Office must cancel its designation:

(i) where the search organization has obtained designation through false or unfair means; or

(ii) where the standard for designation is improper under Article 55(3).

Request for Examination of a 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 Intellectual 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 Intellectual Property Office, stating the following:



- (i) the name and the domicile of the person making the request (if 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 Intellectual 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 Intellectual 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. The Commissioner of the Korean Intellectual Property Office may direct the examiner to examine one application in preference over another if the former falls under any of the following subparagraphs:

- (i) where 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
- (ii) where the Commissioner of the Korean Intellectual Property Office deems it necessary to urgently process a patent application as prescribed by Presidential Decree.

Decision of Refusal of Patent

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

- (i) where the invention is not patentable under Articles 25, 29, 31, 32, 36(1) to (3), or 44;
- (ii) where the application is filed by a person who does not have the right to obtain a patent therefor under the provision of Article 33(1) of where the invention is not patentable under the proviso of Article 33(1);
- (iii) where it is in violation of a treaty;
- (iv) where it has not satisfied the requirements prescribed under Article 42(3) to (5) or 45; or
- (v) where the application is amended in violation of Article 47(2).

Notification of Reasons for Refusal

63. Where an examiner intends to render a decision to refuse a patent under Article 62, he or she shall notify the applicant of the reasons and give the applicant an opportunity to submit a written statement of applicant's arguments and shall designate a time limit for such submission. However, this provision shall not apply if the examiner intends to reject an amendment under Article 51(1) as it applies under Article 47(1)(ii).

Laying Open of Application

64.—(1) Under Ordinance of the Ministry of Commerce, Industry and Energy, the Commissioner of the Korean Intellectual Property Office shall lay open a patent application in the Patent Gazette one year and six months from the date prescribed under any of the following subparagraphs or upon request from the applicant even before the expiration of one year and six months from said date. However, this provision shall not apply where the application has already been published in accordance with Article 87(3):

(i) where a patent application contains a priority claim under Article 54(1), the priority date shall apply;

(ii) where a patent application contains a priority claim under the provisions of Article 55(1), the filing date of the earlier application shall apply as prescribed in Article 55(1);

(iii) the earliest filing date among the filing dates of two or more applications that are the basis for claiming a priority right in a patent application under Article 54(1) or 55(1); or

(iv) where a patent application does not fall under any of subparagraphs (i) to (iii), the filing date of the patent application shall apply.

(2) Any person may, at the time the application is laid open under paragraph (1), furnish the Commissioner of the Korean Intellectual 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 patent right.

(3) The right to demand compensation as provided in paragraph (2) shall be exercised only after the registration of the 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 Law, 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 involved patent right.”

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

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 of Patentability

67.—(1) A decision to either grant or refuse a patent (hereinafter referred to as a “decision of patentability”) shall be made in writing and shall state the reasons therefor.

(2) Where a decision of patentability has been rendered, the Commissioner of the Korean Intellectual 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) Any person can file an opposition to the granting of a patent with the Commissioner of the Korean Intellectual Property Office on the grounds that the patent falls under any one of the following subparagraphs from the date of publication of the registration of the patent to three months from date of registration of the patent right. Where the patent contains two or more claims, an opposition may be filed against each claim:

- (i) where the patent has been granted contrary to the provisions of Article 25, 29, 31, 32, 36(1) to (3) or 44;
- (ii) where the application is filed by a person who does not have the right to obtain a patent under the provision of Article 33(1) or where the invention is not patentable under the proviso of Article 33(1);
- (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);
- (iv)*bis* where the application is amended in the violation of Article 47(2); or
- (v) where the establishment of the patent has been registered in violation of the proviso of Article 87(2).

(2) A person who files an opposition (hereinafter referred to as “the opponent”) shall submit a written opposition together with the relevant evidence stating the following:

- (i) the name and the domicile of the opponent (if the opponent is a legal entity, its title and place of business);
 - (i)*bis* if the opponent has an agent, the name and the domicile or place of business of the agent (if the agent is a patent corporation, its title, place of business and the name of the appointed patent attorney);
 - (ii) the identification of the patent to which the opposition is made; or
 - (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 designated under Article 71(3) 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 Intellectual Property Office shall designate examiners constituting a collegial body for each opposition.

(3) The Commissioner of the Korean Intellectual 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), 146(2) and (3) 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 an opposition, grounds that have not been pleaded by the patentee or the opponent may also be considered. However, in such cases, the patentee and the opponent shall both be given an opportunity to state their 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.

Joint or Separate Oppositions

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

(2) Deleted.

(3) Deleted.

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(1), where the opponent fails to submit the grounds and evidence within the time limit for opposition under Article 69(1), the presiding examiner may reject the opposition by decision.

(3) Where it is deemed that the opposition has legitimate grounds, a collegial body shall render a decision to revoke the patent (hereinafter referred to as a “decision to revoke a patent”).

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



(5) Where it is deemed that the opposition has no grounds, a collegial body shall render a decision to maintain a patent (hereinafter referred to as a “decision of maintenance of a patent”).

(6) No appeal shall be made against a decision of rejection or a decision of maintenance of a patent rendered in an 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 and the opponent (if the opponent is a legal entity, its title and place of business);
- (ii)*bis* if the patentee or opponent has an agent, the name and the domicile or place of business of the agent (if the agent is a patent corporation, its title, place of business and the name of the appointed patent attorney);
- (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 or after a notification stating the applicant’s argument has been made under the latter part of 72(1).

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

Correction of Patent in an Opposition

77.—(1) A patentee may make a request for correction of the specification or drawings of a patented invention within the period designated under Article 70(2) or the latter part of 72(1) where it falls under any of the subparagraphs of Article 47(3).

(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 (5), (7) to (9), 139(3) and 140(1), (2) and (5) shall apply *mutatis mutandis* to request for correction under paragraph (1). In such cases,



“before issuance of a notification of closure of the trial examination under Article 162(3) (where the trial examination is reopened under Article 162(4), before a subsequent notification of the closure of the trial examination is issued under Article 162(3))” in Article 136(9) shall read “within the designated period where there is a notification issued under Article 136(5)”.

(4) Where a decision is rendered to allow correction of the specification or drawings of a patented invention, Commissioner of the Korean Intellectual Property Office shall publish the contents of the correction in the Patent Gazette.

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 proceedings 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, 148(i) to (v), (vii), 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 a patent right, or a patentee under Article 87(1), shall pay the 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 a patent right may make late payment 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 a person wishing to register 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.

Recovery of a Patent application or Patent Right by Late Payment of the Patent Fees

81bis.—(1) If a patentee or any person wishing to register a patent right has failed to observe the time limit for late payment of the patent fees under Article 81(1) due to unavoidable circumstances, he may make late payments of the patent fees within fourteen days after said reason ceases to exist. However, this provision shall not apply where six months has elapsed after said period expires under Article 81(1).

(2) Where late payment of the patent fees is submitted in accordance with paragraph (1), notwithstanding the provision of Article 81(3), the patent application shall be deemed not to have been abandoned and the concerned patent right shall be deemed to have continued retroactively from the date on which the period for payment of the patent fees expired.

(3) The effects of a patent application or a patent right under paragraph (2) shall not extend to another person's working of the patented invention from the date of expiration of the extended period for late payment of the patent fees to the date of submittal of late payment of the patent fees (hereinafter referred to as an "the term of limited effect").

(4) During the term of limited effect, a person who has been commercially or industrially working or preparing to work an invention in good faith under a patent application or patent right in accordance with paragraph (2) in the Republic of Korea, shall have a non-exclusive license on that patent right under the patent application. Said license shall be within the scope of the object of the invention or business that he/she is working or preparing to work.

(5) A person who has been granted a non-exclusive license in accordance with paragraph (4) shall pay reasonable remuneration to the patentee or exclusive licensee.

Official Fees

82.—(1) A person initiating a patent-related procedure shall pay the official fees.



(2) Where the number of claims is increased because 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 Intellectual 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 Law, or a person prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy, the Commissioner of the Korean Intellectual 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 a 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 Intellectual 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 of a patent or a decision of 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) When Patent fees and official fees have been paid incorrectly, the Commissioner of the Korean Intellectual Property Office shall issue a notification to the party who paid said Patent fees and official fees.

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

Patent Register

85.—(1) The Commissioner of the Korean Intellectual Property Office shall keep the Patent Register at the Korean Intellectual 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 a patent right has been registered, the Commissioner of the Korean Intellectual 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 Intellectual 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 Intellectual 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 enter into effect upon establishment of registration thereof.

(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 Intellectual Property office shall register the patent right. However, in cases that fall under any of the following subparagraphs, 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 Law 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 Intellectual 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 Intellectual 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 commence upon registration of the patent right under Article 87(1) and be in force for twenty years from the filing date of the patent application.

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



(3) Deleted.

(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 term of patent right under paragraph (1) of this Article shall commence upon registration of the patent right and be in force for twenty years from the filing date of the utility model application that is 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 laws 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 the term of a patent right to the Commissioner of the Korean Intellectual Property Office stating each, of the following:

(i) the name and domicile of the applicant for registration of extension (if the applicant is a legal entity, the title and location of place of business);

(ii) the name and domicile, or location of place of business, of the agent, if designated (the name, location of office and designated attorneys name, if the agent is a patent corporation);

(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 a 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 decision of refusal for registration of extension of term 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 Intellectual Property office shall publish the information prescribed in paragraph (1) in the Patent Gazette.

(6) An applicant for registration of an extension may make an amendment to the matter of paragraph (1)(iii) to (vi) in the application for registration of an extension (except the patent number (Subparagraph iii) of the patent right to be extended) if said amendment is made before the examiner transmits a certified copy of decision for registration or refusal of the extension.

Decision of Refusal on Registration of Extension of the Term of Patent Right

91.—(1) The examiner shall make a decision to refuse an extension of the 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.

Decision etc., on Registration for Extending Term of Patent Right

92.—(1) Where the examiner finds no reason under any of the subparagraphs of Article 91(1) to refuse an application for an extension of the term of a patent right, he or she shall render a decision to grant said extension.

(2) When a decision of extension has been made under paragraph (1), the Commissioner of the Korean Intellectual 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 (if the patentee is a legal entity, the title and location of place of business);
- (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 Law 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 or trademark right under an application for registration for a design right or trademark 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, or trademark 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 (except through confusion), or restriction on the disposal; or of an exclusive license; or

(iii) the establishment, transfer (except through inheritance or other general succession) modification, extinguishment (except through confusion), 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 Intellectual 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 Law 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 Law, Article 53 of the Utility Model Law, or Article 70 of the Design Law 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 or through inheritance or other general succession.

(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 for the invention 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 Law 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 Law, as applied under Article 61 of the Design Law, 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 Intellectual 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 (1) 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 Intellectual 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 Intellectual Property Rights Dispute Committee

109. Before making an adjudication, the Commissioner of the Korean Intellectual Property Office shall solicit an opinion from the Intellectual Property Rights Dispute Committee established under Article 29 of the Invention Protection Law.

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 Intellectual 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 Intellectual 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 lawful 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 under Article 3(1) of the Administrative Trial Law or a revocation action has been brought under the Administration Litigation Law as to the adjudication, 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 Intellectual 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.

[Without Title]

117. Deleted.

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), 81*bis*(4), 103 to 105, 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 Law 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 Intellectual 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.

The title of execution on amount of compensation and remuneration

125bis. A final and conclusive ruling by the commissioner of the Korean Intellectual Property Office on the amount of the compensation or remuneration to be paid under the Patent Law shall have the same effect as an enforceable title of execution; the legal writ, which has the force of execution, shall be given by an official of the Korean Intellectual Property Office.

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 from a person who has intentionally or negligently infringed a patent right or exclusive license for damages caused by the infringer's transfer of infringing articles, the amount of damages may be calculated as the number of transferred articles multiplied by the profit per unit of the articles that the patentee or exclusive licensee might have sold in the absence of said infringement. Provided that, said compensation may not exceed an amount calculated as follows: the estimated profit per unit multiplied by the number of products that the patentee or exclusive licensee could have produced subtracted by the number of articles actually sold. However, where the patentee or exclusive licensee was unable to sell his or her product for reasons other than infringement, a sum calculated according to the number of articles subject to said circumstances shall be deducted.

(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 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.

(3) 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.

(4) Notwithstanding paragraph (3), where the amount of actual damages exceeds the amount referred to in paragraph (3), 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.

(5) In litigation relating to a patent right or exclusive license, where the court recognizes that the nature of the facts of the case make it difficult to provide evidence proving the amount of damage that has occurred, notwithstanding paragraphs (1) to (4), the court may determine a reasonable amount on the basis of an examination of the evidence and on a review of all the arguments.



Presumption of the Patented Process to Manufacture

129. Where one product is identical to another product manufactured by a patented process, the former shall be presumed to have been manufactured by the patented process of the latter except where any one of the following subparagraphs applies:

(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 or inventions made available to the public through electronic telecommunication lines prescribed by Presidential Decree prior to the filing of the patent application.

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 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 III
TRIAL

Intellectual Property Tribunal

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

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

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

Trial Against a Decision of Refusal or Revocation of a Patent, etc.

132ter. Where a person has received a decision of refusal of a patent, revocation of a patent, or a decision of refusal of an application for extension of the term of a patent right under Article 91, such person may request a trial within thirty days from the date of receipt of the certified copy of the decision.

[Without Title]

132quater. Deleted.

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, 32, 36(1) to (3), 42(3), (4), or 44;
- (ii) where a patent has been granted to a person who is not entitled to obtain the patent under Article 33(1);
- (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
- (iv)*bis* where an application has been amended in violation of Article 47(2);
- (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.

Correction of Patent During Invalidation Trial of Patent

133bis.—(1) Under Article 133(1), a defendant may request corrections to the specification or drawing(s) of a patented invention during the course of an invalidation trial for reasons provided under Article 47(3) within the term designated under Article 147(1) or 159(1).

(2) When the corrections have been requested under Paragraph(1), the presiding trial examiner shall transmit a copy of the written request to the defendant.

(3) The provisions of Article 136(2) to (5), (7) to (11), 139(3) and 140(1), (2), (5) shall apply *mutatis mutandis* to a request for correction. In their application, the provision “before issuance of a notification of closure of the trial examination under Article 162(3) (Where the trial examination is reopened under Article 162(4), before a subsequent notification of the closure of the trial examination is issued under Article 162(3))” in Article 136(9) shall read “within the designated term where it would be noticed under Article 136(5)”.

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 subparagraph (1)(iii), an extension of the term exceeding the period during which the patented invention could not be worked shall be deemed to be not effective.

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 to correct the specification or a drawing(s) for reasons provided under, Article 47(3). However, this provision shall not apply where an opposition to the patent or an invalidation trial against the patent is pending before the Korean Intellectual Property Office or the Intellectual Property Tribunal.

(2) A correction to the specification or a drawing(s) under Paragraph (1) shall be limited in scope to the subject matter disclosed in the specification or drawing(s) of the patented invention. However, where a clerical error is corrected under Article 47(3)(ii), it shall be limited to the scope of the subject matter of the specification or drawing(s) originally attached to the application.

(3) Where paragraph (1) applies, the claim shall neither be substantially extended nor modified.

(4) Where Article 47(3)(i) and (ii) apply under paragraph (1), the matters which are described in the claim after correction shall be regarded as having been patentable at the time of the filing of the patent application.

(5) Where a request for a trial for correction under paragraph (1) does not comply with any of the subparagraphs of Article 47(3), extends beyond the scope of paragraph (2), or is in violation of paragraph (3) or (4), the trial examiner shall notify the petitioner and provide reasons for the refusal of the request and give the petitioner an opportunity to submit a response within a designated time limit.

(6) 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 trial decision.

(7) 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 Articles 39(1), 100(4) or 102(1).

(8) Where a trial decision allowing the specification or drawing(s) of a patented invention to be corrected becomes final and conclusive, the patent application, the

laying-open of the decision, and the registration of the patent right shall be deemed to have been made on the basis of such corrected specification or drawing(s).

(9) A petitioner may amend the corrected specification or drawing attached to the written request prescribed in Article 140(5) only before issuance of a notification of closure of the trial examination under Article 162(3) (where the trial examination is reopened under Article 162(4) before a subsequent notification of the closure of the trial examination is issued under Article 162(3)).

(10) Where a decision has been rendered to allow correction of the specification or drawing(s) of the patented invention, the President of Korean Intellectual Property Tribunal shall notify the Commissioner of Korean Intellectual Property Office of the corrected subject matter.

(11) In cases where a notification is issued under paragraph (10), the Commissioner of Korean Intellectual Property Office shall publish it in Patent Gazette.

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 correction of the specification or drawing of a patented invention under Article 77(1), 133*bis*(1) or 136(1) has been made in violation of any of the following:

- (i) any subparagraph of Article 47(3); or
- (ii) Article 136(2) to (4) (including the case of application in Article 77(3) or 133*bis* (3)).

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

(3) A defendant in an invalidation trial under paragraph (1) may request corrections to the specification or drawing(s) of a patented invention for reasons provided under any subparagraph of Article 47(3) within the term designated under Article 159(1).

(4) The provisions of Article 133*bis* (2) and (3) shall apply *mutatis mutandis* to a request for correction under paragraph (3). In such cases, “Article 133(1)” in Article 133*bis* (2) shall read “Article 137 (1).”

(5) Where a trial decision to correct the specification or a drawing(s) 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 important technical advance having substantial economical value 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 Intellectual Property Tribunal, stating the following:



(i) names and domiciles of the parties (if a legal entity, the title and location of place of business);

(i)*bis* the name and domicile, or location of place of business of the agent, if designated (the name, location of office and designated attorneys name, if the agent is a patent corporation);

(ii) identification of the trial case; and

(iii) purpose of the request and the grounds therefor.

(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 explanation and the necessary drawings which can be compared with the patented invention 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 Decision of
Refusal of Patent or Revocation of Patent, etc.*

140bis.—(1) A person who desires to request a trial against a decision of refusal or revocation of a patent under Article 132*ter* shall, notwithstanding the provision of Article 140(1), submit a written request to the President of the Intellectual Property Tribunal and specify:

(i) name and domicile of the petitioner (if the petitioner is a legal entity, the title and location of the place of business);

(i)*bis* the name and domicile, or location of place of business, of the agent, if designated (the name, location of office and designated attorneys name, if the agent is a patent corporation);

(ii) filing date and file number of the application (in the case of dissatisfaction with a decision of revocation of patent, 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.

However, in the case of Article 173, the grounds of the request among subparagraph (vi) may not be specified.

(2) Where a request for a trial is made against a decision of revocation of patent under Article 132^{ter}, the President of the Intellectual Property Tribunal shall notify the opponent regarding the purpose of the request.

(3) If it has been notified under Article 175(2) that the request not specified subparagraph (vi) according to the proviso of paragraph (1), the President of Korean intellectual Property Tribunal shall designate a period within which he shall amend the grounds of the request.

Rejection of Request for Trial

141.—(1) The presiding trial examiner shall order an amended submission within a specified time limit where any of the following subparagraphs apply.

- (i) where a request for a trial does not comply with Articles 140(1) and (3) to (5) or 140^{bis}(1);
- (ii) where a procedure relating to a trial falls under any of the following cases:
 - (a) where the procedure is not in compliance with the provisions of Article 3(1) or 6;
 - (b) where fees required in accordance with Article 82 have not been paid; or
 - (c) where the procedure is not in compliance with the formalities specified in the Patent Law or Presidential Decree thereof.

(2) Where a person who has been ordered to make an amended submission under paragraph (1) fails to do so within the specified time limit, 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 unlawful 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 Intellectual 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 Intellectual 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 Intellectual Property Tribunal shall appoint another trial examiner to take his place.

Presiding Trial Examiner

145.—(1) The President of the Intellectual 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 a decision to grant a patent, a decision on an opposition or a trial decision relating to the case; or
- (vii) the trial examiner has a direct interest.

Request for Exclusion

149. Where there are grounds 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 Intellectual 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.

Refrainment of Trial Examiner

153bis. Where the provisions of Article 148 or 150 apply to a trial examiner, he may refrain from trial proceedings relating to the case with consent from the President of the Intellectual Property Tribunal.

Trial Proceedings, etc.

154.—(1) Trial proceedings shall be conducted by oral hearing or documentary examination; however, where requested by the concerned party, trial proceedings shall be conducted by oral hearing except where it is recognized that a decision can be made on the basis of a documentary examination alone.

(2) Deleted.

(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), 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), an official, designated by the President of the Intellectual 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 Intellectual 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 Intellectual 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 law, or designated in accordance with the Patent Law, 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 and 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) Where a request for a trial or a request for each of the claims is withdrawn in accordance with the provision of paragraph (1) or (2), said request 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 and intervenors (if a legal entity, the title and the place of business);
- (ii)*bis* the name and domicile or place of business of the agent, if any (the title, place of office and name of designated patent attorney if the agent is a patent corporation);
- (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 has become final and conclusive pursuant to the Patent Law, with regard to the case, no person may demand the trial again on the basis of the same facts and evidence; however, this provision shall not apply where the final and conclusive trial decision is a decision of rejection.

Trials and Litigation

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.

(3) Where an action relating to the infringement of a patent right or exclusive license is instituted, the relevant Court shall notify the President of the Intellectual Property Tribunal accordingly. This provision shall also apply where the litigation proceedings have been terminated.

(4) Where a trial for invalidating a patent, etc. is requested in response to a legal action against an infringement of a patent right or exclusive license under paragraph (3), the President of the Intellectual Property Tribunal shall notify the relevant Court under paragraph (3) accordingly. This provision shall also apply where a decision of rejection, a request for trial, or a withdrawal of a request has occurred.

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^{ter} and 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 President of the Intellectual Property Tribunal shall decide upon the total costs of a trial upon request by an interested party and 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 Law 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 Intellectual

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 Enforcement of Costs or Remuneration

166. A final and conclusive ruling on the costs of a trial decided by the President of the Intellectual Property Tribunal or on the compensation to be paid under the Patent Law, as decided by the trial examiner, 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 Intellectual Property Tribunal.

[Without Title]

167. Deleted.

[Without Title]

168. Deleted.

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169. Deleted.

*Mutatis Mutandis Application of Provisions on Examination to
Trial against Ruling of Refusal to Grant of Patent*

170.—(1) The provisions of Articles 47(1)(i),(ii), 51, 63 and 66 shall apply *mutatis mutandis* to a trial against a ruling of refusal to grant a patent by an examiner. In such cases, in Article 51(1) the expressions “Article 47(1)(ii)” shall read “Article, 47(1)(ii) or (iii)”, and “an amendment” shall read “an amendment (under Article 47(2), excluding an amendment that was filed before a request for a trial against a ruling of refusal to grant a patent under Article 132ter)”; and “under 47(1)(ii)” in Article 63 shall read “under 47(1)(ii) or (iii) (under 47(2), excluding that which was submitted a request for trial against a ruling of refusal to grant a patent under Article 132ter)”.

(2) Article 63, which applies *mutatis mutandis* under paragraph (1), shall apply in cases where grounds for rejection have been found that are different from those in the examiner’s original ruling of refusal to grant a patent.

Special Provisions for a Trial against a Ruling of Refusal to Grant of Patent

171.—(1) The selection of the trial examiners for a trial against a ruling of refusal to grant a patent under Article 173 shall be made only when notification has been given under Article 175(2).

(2) Articles 147(1) and (2), 155 and 156 shall not apply to a trial against a ruling of refusal to grant a patent, a ruling of refusal against registration of an extension of the term of a patent right, or revocation by an examiner.

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 to grant a patent, a ruling of refusal against registration of an extension of the term of a patent right, or a revocation issued by an examiner.

Reexamination Prior to Trial

173.—(1) Where a person who received a ruling of refusal to grant a patent under Article 62 has requested a trial under Article 132^{ter} and made an amendment of the specification or drawings attached to the application which is the subject of the request within thirty days after the request, the President of Intellectual Property Tribunal shall notify the Commissioner of the Korean Intellectual Property Office before proceeding with the trial.

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

Mutatis Mutandis Application of Provisions 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. In such cases, in Article 51(1), the expressions “Article 47(1)(ii)” shall read “Article 47(1)(ii) or (iii)”, and “an amendment” shall read “an amendment (under Article 47(2), excluding an amendment that was filed before a request for a trial against a ruling of refusal to grant a patent under Article 132^{ter})”.

(2) The provisions of Articles 47(1)(i) and (ii) and 63 shall apply *mutatis mutandis* to the reexamination under Article 173 if grounds for rejection have been found that are different from those of the examiner’s original ruling of refusal to grant a patent. In such cases, “under 47(1)(ii)” in Article 63 shall read “under 47(1)(ii) or (iii) (in case under 47(2), excluding that which was submitted before a request for a trial against a ruling of refusal to grant a patent under Article 132^{ter})”.

(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 a reason for refusal of an application is resolved as a result of reexamination under Article 173(2), the examiner shall reverse his ruling of refusal to grant a

patent and make a decision to grant a patent. In such cases, a request for a trial against a ruling of refusal to grant a patent shall be deemed as having been extinguished.

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

Reversal of Ruling of Refusal etc.

176.—(1) Where the trial examiner(s) has deemed that the request for a trial under Articles 132^{ter} was well grounded, he shall reverse the examiner's ruling of refusal to grant a patent, refusal to grant an extension of term of a patent right, or revocation of a patent.

(2) Where a ruling of refusal, refusal against a registration of an extension of term of a patent right or revocation of a patent is reversed in a trial, a trial decision may be made to remand the case to the Examination Division.

(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 of a patent), 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 against a trial decision 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 Intellectual 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 brought under the provision of Article 186(1) is instituted or an appeal filed under the provision of Article 186(8), the Patent Court shall notify, without delay, the President of the Intellectual 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 judgment on the action to the President of the Intellectual Property Tribunal.

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 judgment.

(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 judgment on an action under paragraph (1) which constitute the basis for the revocation shall bind the Intellectual 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 and ruling or an adjudication 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 and ruling or adjudication.

(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 Intellectual 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 Intellectual 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 law 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 Intellectual 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 Intellectual 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 Intellectual Property Office shall notify the applicant accordingly.

(4) The Commissioner of the Korean Intellectual 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 Intellectual 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 Intellectual 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 Intellectual 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 Intellectual 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 Intellectual 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 Law is the international patent application or



international utility model application under Article 57(2) of the Utility Model Law, “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 Law or Article 59(1) of the Utility Model Law,” “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 Law,” “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 Law or Article 59(4) of the Utility Model Law or at the expiration of one year and three months from the international filing date under Article 201(1) of the Patent Law or Article 59(1) of the Utility Model Law, 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 Law or Article 71(4) of the Utility Model Law, “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 Law or Article 71(4) of the Utility Model Law” 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 Law or Article 71(4) of the Utility Model Law” 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 Law or Article 71(4) of the Utility Model Law or at the time of making a decision under Article 214(4) of the Patent Law or Article 71(4) of the Utility Model Law, whichever date expires later,” respectively.

Submission of Documents

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

- (i) the name and domicile of the applicant (the title and place of business if the applicant is a legal entity);
- (ii) the name and domicile or place of business of the agent, if any (the title, place of office and name of designated patent attorney if the agent is a patent corporation);
- (iii) Deleted



- (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 Intellectual 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 Intellectual 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) Deleted.

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 Intellectual 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 patent-related procedure 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 Intellectual 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 date falling under any of the following subparagraphs” 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 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 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) Deleted.

(3) With regard to the scope of an amendment made to an international patent application, “the features disclosed in the specification or drawing(s) originally attached to the application” in Article 47(2) shall read “the features disclosed in the description, claims or drawing(s) (only the textual matter therein) in the international patent application submitted on the international filing date and in the translated version thereof, or the features disclosed in the drawing(s) (except the textual matter therein) in the international patent application.”

(4) Deleted.

(5) Deleted.

Restriction on Timing of Dual Application

209. Notwithstanding the provisions of Article 53(1) of this Law, 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 Law and may not be filed until the fees under Article 30(1) of the Utility Model Law have been paid, and a translation of the application under Article 59(1) of the Utility Model Law (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 Law, 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 Intellectual 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 of Grant of Patent

212. Where an opposition to the grant of a patent for an international application is brought, “the features disclosed in the specification, claims, or drawing(s) originally attached to the application” in Article 47(2) under the provision of Article 69(1)(iv)*bis* shall read “the

features disclosed in the specification, claims or drawing(s) (only the textual matter therein) in the international patent application submitted on the international filing date and in the translated version thereof, or the features disclosed in the drawing(s) (except the textual matter therein) in the international patent application.”

Special Provision on an Invalidation Trial of a Patent

213. Where an invalidation trial is brought against an international patent application, “the features disclosed in the specification, claims, or drawing(s) originally attached to the application” in Article 47(2) as applied under Article 133(1)(iv)*bis* shall read “the features disclosed in the specification, claims or drawing(s) (only the textual matter therein) in the international patent application submitted on the international filing date and in the translated version thereof or the features disclosed in the drawing(s) (except the textual matter therein) in the international patent application”.

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 if 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 Intellectual 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 Intellectual 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 Intellectual 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 Intellectual 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. Where Articles 65(6), 74(4), 84(1)(ii), 85(1)(i) (only in the case of extinguishment), 101(1)(i), 104(1)(i), (iii) or (v), 119(1), 133(2) or (3), 136(6), 139(1), 181, 182 of the Patent Law and Article 40(1)(ii), (iv) or (v) of the Utility Model Law apply 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.

Special Provisions for Registration of Patent Application with Two or More Claims

215bis.—(1) Where a person who has received a decision to grant a patent for a patent application with two or more claims has paid the registration fees, said person may abandon individual claims.

(2) Matters necessary for abandonment of claims under paragraph (1) shall be prescribed by Ordinance of the Ministry of Commerce, Industry and Energy.

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 Intellectual property Office to that effect.

(2) The Commissioner of the Korean Intellectual 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. However, this provision shall not apply in cases where documents relating to a patent application or examination are removed under 58(1) or (2).

(2) A response shall not be given to a request for an expert opinion, testimony or an inquiry as to the contents of a pending patent application, examination, opposition, trial, or retrial that is in process, 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 Intellectual property Office may entrust any person who meets the standards as determined by Ordinance of the Ministry of Commerce, Industry and Energy with the digitization of documents relating to patent applications, examinations, patent oppositions, trials, retrials or the Patent Register through an electronic information processing system and the technology of utilizing the electronic information 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 Intellectual 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 an electronic information processing system operated by the Korean Intellectual Property Office or the Intellectual 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, Industrial and Energy.

Transmittal of Documents

218. In addition to the provisions in the Patent Law, 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 Intellectual 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 information and communication media, the Commissioner of the Korean Intellectual 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 Intellectual 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 other Law, and no objection may be raised against any disposition against which no objection may be raised under this Law.

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 seven years or to a fine not exceeding 100 million 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 law, has made a false statement or given a false expert opinion or interpreted falsely before the Intellectual Property Tribunal, he shall be liable to imprisonment with labor not exceeding five years or to a fine not exceeding 10 million 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 million 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 20 million won.

Offense of Divulging Secrets

229. Where any present or former official of the Korean Intellectual Property Office or the Intellectual 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 million won.

*Officers and Employees of Special Searching Agency as Public Officials;
Irrebutable Presumption*

229bis. A person who is or was an officer or employee of any special searching agency or patent documents computerizing agency shall be deemed to be one who is or was an employee of the Korean Intellectual 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 person, in addition to the offender, shall be liable to a fine as prescribed in one of the following subparagraphs; the natural person shall be liable to a fine prescribed under the pertinent Article:

- (i) in the case of Article 225(1): fine not exceeding 300 million won;
- (ii) in the case of Article 227 or 228: fine not exceeding 60 million won.

Confiscation, etc.

231.—(1) Any article that 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 judgment 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 Intellectual Property Tribunal;
- (ii) where a person was ordered by the Intellectual 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 Intellectual 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 Intellectual 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 Intellectual Property Office within thirty days from the date of notification of the imposition.

(4) The Commissioner of the Korean Intellectual 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 Law 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 Intellectual 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.

ADDENDUM

Date of Entry into Force

1. This Law 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 Law, and those of Articles 21 and 22 of the Design Law 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 law 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 that 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 Law 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 Law and which was laid open after the filing date of the patent application for a later-filed invention.

Amendment of other Laws

5.—(1) The following provisions of the Design Law shall be amended as follows:

“Articles 3 to 28 of the Patent Law” in Article 4 shall be amended to “Articles 3 to 28~~quinq~~ues of the Patent Law”;

Articles 21 and 22 shall be deleted;

“Article 218 of the Patent Law” in Article 81 shall be amended to “Article 217~~bis~~ of the Patent Law”; and “Article 213 of the Patent Law” in Article 89 shall be amended to “Articles 229~~bis~~ and 231 of the Patent Law.”

(2) The following provisions of the Trademark Law shall be amended as follows:

“Article 28 of the Patent Law” in Article 5 shall be amended to “Articles 28 to 28~~quinq~~ues the Patent Law”; and “Article 218 of the Patent Law” in Article 92 shall be amended to “Article 217~~bis~~ of the Patent Law.”

ADDENDUM*Date of Entry into Force*

1. This Law shall enter into force on July 1, 2001. The amended provisions of Articles 56(1), 84(2), (3), the exception provision under 217(1) and 229~~bis~~, however, shall enter into force on the day when this Law is promulgated.

Application of Requirements for Patents

2. The amended provisions of Article 29(1)(ii) and 30(1)(i)(c) shall apply to a patent application that is filed for the first time after the enforcement of this Law.

General Transitional Measures

3. The previous provisions shall apply to an examination, patent registration, patent right, opposition to a patent, trial, retrial and litigation related to a patent application which is made under the previous provisions at the time when the law enters into force. This provision shall not apply, however, in cases that fall under any of the following subparagraphs.

(i) where an opposition to a patent is made, Article 136(9) as applied *mutatis mutandis* under amended Article 77(3) shall apply.

(ii) where a patent application or patent right is deemed to have retroactive effect, amended Article 81~~bis~~ shall apply.

(iii) where a trial to invalidate a patent is requested, amended Article 133~~bis~~(1), (2), amended Articles 136(3) to (5), (7) to (11), 139(3), 140(1), (5) and 136(1) as applied *mutatis mutandis* under amended Article 133~~bis~~(3) shall apply.



(iv) where a trial against ruling of refusal of patent application is requested, the exception proviso of amended Article 140*bis*(1) and (3) shall apply.

(v) where individual claims of a patent application with two or more claims are abandoned, amended Article 215*bis* shall apply.
