

**Utility Model Law****Law No. 952, Promulgated on Dec. 31, 1961
as last amended by Law No. 6412, Feb. 3, 2001**

TABLE OF CONTENTS

	<i>Article</i>
Chapter I:	General Provisions
	Purpose..... 1
	Definitions 2
	Invalidation of Procedure..... 3
	Scope of Powers of Attorneys..... 3bis
	Representation of Two or More Persons..... 3ter
	<i>Mutatis Mutandis</i> Application of Provisions of the Patent Law 4
Chapter II:	Requirements for Utility Models and Applications Therefor
	Requirements for Utility Models..... 5
	Devices Deemed to be Not Known, etc..... 6
	Unregistrable Devices 7
	First-to-File Rule..... 8
	Application for Utility Model Registration 9
	Scope of One Utility Model Application..... 10
	Amendment of Procedure 11
	Examination of Basic Requirement and Rejection of an Application..... 12
	Amendment of Utility Model Application, etc..... 13
	Scope of Allowable Amendment with Respect to Specification, etc..... 14
	Treatment to the Amendments of the Dual Application, etc..... 15
	Division of Utility Model Application 16
	Dual Application 17
	Priority Claim Based on Utility Model Application etc..... 18
	Withdrawal of Earlier Application, etc. 19
	<i>Mutatis Mutandis</i> Application of the Patent Law Provisions..... 20
Chapter III:	Technical Evaluation
	Request for Technical Evaluation of Utility Models.... 21
	Technical Evaluation by Examiner 22
	Publication of Request for Technical Evaluation 23
	Prior Art Search, etc..... 24
	Decision on Request for Technical Evaluation 25
	Manner of Decision on Request for Technical Evaluation 26
	Correction of Utility Model Registration in Technical Evaluation Proceedings..... 27
	Suspension of Technical Evaluation Proceedings 28
	<i>Mutatis Mutandis</i> Application of Patent Law Provisions..... 28bis
Chapter IV:	Registration Fees and Utility Model Registration, etc.
	Registration Fees..... 29
	Late Payment of Registration Fees..... 29bis



	Restoration of a Utility Model Right by Late Payment of the Registration Fees.....	29 ^{ter}
	Official Fees.....	30
	Refund of Registration Fees, etc.	31
	Utility Model Register	32
	Issuance of Utility Model Registration Certificate.....	33
	<i>Mutatis Mutandis</i> Application of Provisions of the Patent Law	34
Chapter V:	Utility Model Right	
	Registration of Establishment of Utility Model Right and Publication of Registration.....	35
	Term of Utility Model Right.....	36
	Effects of Utility Model Right	37
	Limitations on Utility Model Right.....	38
	Relation to Registered Utility Model, and the like, of Another Person's.....	39
	Non-exclusive License Due to Working Prior to Registration of Request for Invalidation Trial.....	40
	Non-exclusive License after Expiration of Design Right	41
	<i>Mutatis Mutandis</i> Application of Provisions of the Patent Law	42
Chapter VI:	Protection of Owner of Utility Model Right	
	Acts Deemed to be Infringement	43
	Presentation of a Copy of the Certificate of Decision of Maintenance for a Utility Model Registration	44
	Liability of the Owner of a Utility Model Right	45
	<i>Mutatis Mutandis</i> Application of Provisions of the Patent Law	46
Chapter VII:	Opposition to Registration of a Utility Model	
	Opposition to Registration of a Utility Model.....	47
	<i>Mutatis Mutandis</i> Application of Provisions of the Patent Law	48
Chapter VIII:	Trials, Retrials and Litigation	
	Trial for Invalidation of Utility Model Registration.....	49
	Correction of Utility Model Registration under Trial for Invalidation of Utility Model Registration	49 ^{bis}
	Trial to Confirm the Scope of a Utility Model Right ...	50
	Trial for Correction	51
	Trial for Invalidation of Correction.....	52
	Trial for Grant of Non-exclusive License	53
	Trial against Decision of Revocation of Utility Model Registration	54
	Trial Against a Decision of Rejection of a Utility Model Application	54 ^{bis}
	Formal Requirements of Request for Trial.....	55
	<i>Mutatis Mutandis</i> Application of Provisions of the Patent Law	56
Chapter IX:	International Applications under the Patent Cooperation Treaty	
	Utility Model Application Based on International Application.....	57
	Special Provision on Devices Deemed to be Novel	58
	Translation of International Utility Model Application.	59
	Special Provisions on Claim of Priority	60
	Submission of Identifying Document.....	61
	Submission of Drawings	62



	Amendment after Receipt of the International Search Report	63
	Amendment Before Establishment of the International Preliminary Examination Report.....	64
	Special Provision on Amendments.....	65
	Time Restrictions on Filing of Dual Application	66
	Special Provision on Decisions of Revocation of Utility Model Registrations.....	67
	Special Provision on Trial for Invalidation of Utility Model Registration.....	68
	Time Restriction on Request for Technical Evaluation of Utility Model	69
	Special Provisions on Payment of Registration Fee	70
	International Application Considered to be a Utility Model Application by Decision	71
	<i>Mutatis Mutandis</i> Application of Provisions of the Patent Law	72
Chapter X:	Supplementary Provisions	
	Utility Model Gazette.....	73
	Special Provisions for Utility Model Registration or Right with Two or More Claims	74
	Indication of Utility Model Registration	75
	Prohibition against False Indication	76
	<i>Mutatis Mutandis</i> Application of Provisions of the Patent Law	77
Chapter XI:	Penal Provisions	
	Offense of Infringement.....	78
	Offense of Perjury	79
	Offense of False Marking.....	80
	Offense of Fraud	81
	Offense of Divulging Secrets	82
	Officers and Employees of Specialized Search Organization etc. as Public Officials Irrefutable Presumption	83
	Dual Liability	84
	Confiscation, etc.....	85
	Administrative Fine.....	86
Addendum:		
	Date of Entry into Force.....	1
	Transitional Provision to Requirements for Utility Model.....	2
	General Transitional Measures.....	3

Chapter I General Provisions

Purpose

1. The purpose of this Law shall be to promote the progress of technology by protecting and encouraging practical devices and by striving for their utilization, so as to contribute to the development of industry.



Definitions

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

- (i) “device” means the creation of technical ideas utilizing rules of nature;
- (ii) “registered utility model” means a device for which a utility model has been granted; and
- (iii) “working” means acts of manufacturing, using, assigning, leasing, importing, or offering for assigning or leasing (including displaying for purpose of assignment or lease) an article to which a device has been applied.

Invalidation of Procedure

3.—(1) When a person who has been notified to make an amendment in accordance with Article 11 fails to do so within a designated time limit, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may invalidate an application, request for a motion, and other utility model-related procedures (hereinafter referred to as a “utility model-related procedures”).

(2) If a procedure has been invalidated under paragraph (1) and the failure to meet the time limit is deemed to have been caused by circumstances for which the principal is not responsible, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may revoke the disposition of invalidation upon a request made by the person who was notified to make the amendment, within fourteen days from the date on which the reasons for the delay cease to exist. However, this provision shall not apply if the request is made more than one year after the expiration of the time limit.

Scope of Powers of Attorneys

3bis. An agent, who is instructed to initiate a utility model-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 utility model, withdraw a petition or a request for a motion, make or withdraw a priority claim under Article 18(1), abandon a utility model right, request a trial, or appoint a sub-representative under Article 54 and 54bis.

Representation of Two or More Persons

3ter.—(1) Where two or more persons jointly initiate a utility model-related procedure, each of them shall represent the joint initiators except in actions under any of the following subparagraphs; however, this provision shall not apply in cases where those persons have appointed a common representative and have notified the appointment of the representative to the Korean Intellectual Property Office or the Intellectual Property Tribunal:

- (i) abandonment or withdrawal of a utility model application;

- (ii) claim or withdrawal of a priority claim under Article 18(1);
- (iii) withdrawal of a petition or a request; and
- (iv) request for a trial under Article 54 or 54bis.

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

Mutatis Mutandis Application of Provisions of the Patent Law

4. The provisions of Articles 3 to 5, 7 to 10, 12 to 15 and 17 to 28^{quinquies} of the Patent Law shall apply *mutatis mutandis* with respect to utility models. In such operation, a person who requests an examination of a patent application pursuant to Article 4 of the Patent Law shall be deemed a person who requests a technical evaluation of a utility model application.

Chapter II
Requirements for Utility Models and Applications Therefor

Requirements for Utility Models

5.—(1) A utility model may be granted for devices which are industrially applicable and which relate to the shape or structure of an article or a combination of articles, unless they fall under any of the following subparagraphs:

(i) devices publicly known or worked in the Republic of Korea prior to the filing of the utility model application; or

(ii) devices described in a publication distributed in the Republic of Korea or in a foreign country prior to the filing of the utility model application or made available to the public through electronic telecommunication lines under the Presidential Decree.

(2) Notwithstanding paragraph (1), where a device could easily have been made, prior to the filing of the utility model application, by a person having ordinary skill in the art to which the device pertains, on the basis of a device referred to in either subparagraph of paragraph (1), a utility model registration shall not be granted to that device.

(3) Notwithstanding paragraph (1), where a device for which a utility model application is filed is identical with a device or an invention described in the specification or drawings originally attached to another utility model application or a patent application, and where said other utility model application was filed prior to the aforesaid utility model application and published after registration for public inspection after the filing date of the aforesaid utility model application, or where a patent application was filed prior to the aforesaid utility model application and laid open or published after grant for public inspection after the filing date of the aforesaid utility model application, a utility model shall not be granted for the device of



said utility model application. This provision shall not apply, however, in cases where the inventor of the aforesaid utility model application and the inventor of said other utility model or patent application are the same person or where the applicant of the aforesaid utility model application and the applicant of said other utility model or patent application are the same person at the time of filing.

(i) <deleted>

(ii) <deleted>

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

Devices Deemed to be Not Known, etc.

6.—(1) If a device which belongs to a person having the right to obtain a utility model registration falls under any of the following subparagraphs, it shall not be deemed to fall under any of the subparagraphs in Article 5(1) where the provision of Article 5(1) or (2) applies; provided that, the utility model application therefor is filed within six months of the applicable date:

(i) where a person having the right to obtain a utility model registration has caused his device to fall within the terms of any of the subparagraphs in Article 5(1) by performing any of the following acts:

(a) an experiment;

(b) publication of the device in printed matter;

(c) publication through electric telecommunication lines under Presidential Decree;

(d) presentation in writing at an academic organization under Ordinance of the Ministry of Commerce, Industry and Energy.

(ii) where the device falls under any of the subparagraphs in Article 5(1) against the intention of the person having the right to obtain a utility model registration;

(iii) where a person having the right to obtain a utility model registration has caused his device to fall within the terms of any of the subparagraphs of Article 5(1) by displaying the device at an exhibition.

(a) <deleted>

(b) <deleted>

(c) <deleted>

(d) <deleted>

(2) Any person desiring to take advantage of the provisions of paragraph (1)(i) or (1)(iii) shall submit, simultaneously with his utility model 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 utility model application, a document proving the relevant facts.

Unregistrable Devices

7. Devices falling under any of the following subparagraphs shall not be registrable, notwithstanding the provisions of Articles 5(1) and 5(2):

- (i) devices which are identical or similar to the national flag or decorations; or
- (ii) devices liable to contravene public order or morality, or to injure public health.

First-to-File Rule

8.—(1) Where two or more applications relating to the same device are filed on different dates, only the applicant having the earlier filing date may obtain a utility model registration for the device.

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

(3) Where a utility model application has the same subject matter as a patent application and the applications are filed on different dates, the applicant of the utility model application may obtain a utility model registration for the device only if the utility model application has the earlier filing date.

(4) Where a utility model application has the same subject matter as a patent application and the applications are filed on the same date, a utility model application may be registered only if an agreement, to the effect that only the utility model application is to be registered, is reached between the utility model applicant and the patent applicant. This provision shall not, however, apply to a utility model application (including a utility model application that is deemed to have been filed on the same date as the patent application under Article 17(3)) that is filed on the same date as the patent application; provided that, the utility model application is a dual application under Article 17.



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

(6) A utility model application or patent application filed by a person who is not the deviser, inventor or successor in title to the right to obtain a utility model registration or a patent shall, for the purposes of paragraphs (1) to (4), be deemed never to have been filed.

Application for Utility Model Registration

9.—(1) Any person desiring to obtain a utility model registration shall file a utility model application with the Commissioner of the Korean Intellectual Property Office stating the following:

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

(ii) the name and the domicile, or the location of the place of business of an agent, if any (if the agent is a patent corporation, its title, office location and the name of the appointed patent attorney);

(iii) <deleted>

(iv) the title of the device;

(v) the name and the domicile of the deviser; and

(vi) <deleted>

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

(i) the title of the device;

(ii) a brief explanation of the drawings;

(iii) a detailed description of the device; and

(iv) the claim(s).

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

(i) the claim(s) shall be supported by a detailed description of the device;

(ii) the claim(s) shall define the device clearly and concisely; and



(iii) the claim(s) shall define only the features indispensable for the constitution of the device.

(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 Industry and Energy.

Scope of One Utility Model Application

10.—(1) A utility model application shall relate to one device only. However, a group of devices so linked as to form a single general device concept may be the subject of a utility model application.

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

Amendment of Procedure

11. The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may order amendments to a utility model-related procedure, designating a time limit if such a procedure falls under any of the following subparagraphs:

(i) where the procedure has not complied with the provisions of 3(1) of the Patent Law as applied *mutatis mutandis* under 3*bis* or 4 of this Law;

(ii) where the procedure has not complied with the formalities specified in the Utility Model Law or the Presidential Decree thereof;

(iii) where a registration fee for the first year has not been paid in violation of the provision of Article 29(2) of this Law; or

(iv) where fees required in accordance with Article 30 have not been paid.

Examination of Basic Requirement and Rejection of an Application

12.—(1) The Commissioner of the Korean Intellectual Property Office shall have utility model applications examined by an examiner to determine whether the utility model application falls any of the following subparagraphs:

(i) where the device in the utility model application is related to the shape or the structure of an article or a combination of articles;

(ii) where the device in the utility model application is registrable under Article 7 of this Law;



(iii) where the utility model application was drafted pursuant to the provisions of Article 9(5) of this Law, or meet the requirements pursuant to the provisions of Article (10) of this Law;

(iv) where the specification or drawing(s) attached to the utility model application contain essential elements or the descriptions therein are substantially clear; or

(v) where an amendment to the specification or drawings attached to the utility model application was made pursuant to the provisions of Article 14.

(2) The examiner may order amendments to the specification and drawing(s) attached to a utility model application, designating a time limit, if the utility model application falls under any of the following subparagraphs:

(i) where the device in the utility model application is not related to the shape or the structure of an article or a combination of articles;

(ii) where the device in the utility model application is not registrable under Article 7 of this Law;

(iii) where the utility model application was not drafted pursuant to the provisions of Article 9(5) of this Law, or does not meet the requirements pursuant to the provisions of Article (10) of this Law;

(iv) where the specification or drawing(s) attached to the utility model application does not contain essential elements, or the descriptions therein are substantially unclear; or

(v) where the amendment with respect to the specification or drawing(s) attached to the utility model application was not made pursuant to the provisions of Article 14.

(3) Where a person who has been notified to make an amendment in accordance with paragraph (2) fails to do so within the designated time limit, the examiner shall reject the utility model application. In such instances, the decision of rejection shall be in writing and shall state the reasons therefor.

Amendment of Utility Model Application, etc.

13.—(1) A person who initiates utility model-related procedures application may amend the application only when the utility model application is pending in the Intellectual Property Office or the Intellectual Property Tribunal. However, a specification, drawings and an abstract attached to a utility model application may not be amended after a time limit from the filing date of the utility model application designated by the Ordinance of the Ministry of Industry and Energy.

(2) <deleted>

Scope of Allowable Amendment with Respect to Specification, etc.

14. An amendment with respect to the specification or drawing(s) under Article 12(2) and 13 of this Law shall be made within the scope of the features disclosed in the specification or drawings originally attached to a utility model application.

Treatment to the Amendments of the Dual Application, etc.

15.—(1) <deleted>.

(2) Where a dual application under Article 17 of this Law is determined to have escaped from the scope of the claims originally attached to a patent application after the registration of the utility model right, the dual application shall be deemed to have been filed at the time when said written dual application was submitted.

Division of Utility Model Application

16.—(1) An applicant who has filed a utility model application comprising two or more devices may divide the application into two or more applications within the time limit prescribed in Article 12(2) and the exception proviso of Article 13(1) of this Law.

(2) A divided utility model application under paragraph (1) (hereinafter referred to as a “divisional application”) shall be deemed to have been filed at the time the original utility model application was filed. However, the divisional application shall be deemed to have been filed on the date it was submitted where any of the conditions in the following subparagraphs applies:

(i) in cases where Article 5(3) of this Law or Article 29(3) of the Patent Law is applicable, when a divisional application falls under another utility model application prescribed in Article 5(3) of this Law or a utility model application prescribed in Article 29(3) of the Patent Law;

(ii) in cases where Article 6(2) of this law is applicable;

(iii) in cases where Article 18(2) of this Law is applicable; or

(iv) in cases where Article 54(3) of the Patent Law as applied *mutatis mutandis* under Article 20 of this Law is applicable.

(3) A person who files a divisional application under paragraph (1) shall indicate at the time of filing the purpose thereof and the utility model application that forms the basis of the division.

(4) Any person claiming the right of priority for a divisional application under Article 54 of the Patent Law, as applied *mutatis mutandis* under Article 20 of this Law, may file the documents as prescribed in paragraph (4) of Article 54 of the Patent Law with the Commissioner of the Korean Intellectual Property Office within three months after filing the

divisional application, regardless of the period prescribed in paragraph (4) of Article 54 of the Patent Law.

Dual Application

17.—(1) Any person who has filed a patent application may file a utility model application which is within the scope of the original specification attached to the patent application (hereinafter referred to as a “dual application”), if the utility model application is filed prior to the receipt of a certified copy of the decision to grant a patent under Article 66 of Patent Law. However, this provision shall not apply in the event more than 30 days (or the extended period when a period, for demanding a trial against a decision of refusal under Article 132^{ter} of Patent Law is extended pursuant to Article 15(1) of Patent Law as applied *mutatis mutandis* under Article 4 of this Law) have elapsed following the transmittal of the examiner’s first decision to reject the patent application.

(2) A person who initiates a dual application pursuant to paragraph (1) shall so specify at the time of filing the utility model application and identify the initial patent application and effects thereof.

(3) Where a dual application is carried out pursuant to paragraph (1), the utility model application shall be deemed to have been filed on the date the patent application was filed. However, if any of the following subparagraphs apply, the utility model application shall be deemed to have been filed on the date the dual application was submitted:

(i) in cases where Article 5(3) of this Law or Article 29(3) of the Patent Law is applicable, when the utility model application falls under another utility model application under Article 5(3) of this Law or a utility model application under Article 29(3) of the Patent Law;

(ii) in cases where Article 6(2) of this Law is applicable;

(iii) in cases where Article 18(2) of this Law is applicable;

(iv) in cases where Article 54(3) of the Patent Law as applied *mutatis mutandis* under Article 20 of this Law is applicable.

(4) Any person claiming the right of priority in accordance with paragraph (1) for a utility model application may file documents as prescribed in Article 54 of the Patent Law as applied *mutatis mutandis* under Article 20 of this Law, to the Commissioner of the Korean Intellectual Property Office within three months after filing the dual application, regardless of the provisions of Article 54(4) of the Patent Law.

Priority Claim Based on Utility Model Application etc.

18.—(1) A person desiring to obtain a utility model registration may claim the right of priority for a device claimed in a utility model application which has been disclosed in the specification or drawings originally attached to a utility model application or patent application (only for which he has the right to obtain a patent or a utility model registration,



hereinafter referred to as an “earlier application”), which he has filed earlier than the later utility model application. However, if any of the following subparagraphs apply, he may not claim the right of priority.

(i) where the later utility model application is filed after more than one year from the filing date of the earlier application;

(ii) where the earlier application falls under any of the following subparagraphs.

(a) a divisional application under Article 16(1) of this Law;

(b) a dual application under Article 17 of this Law;

(c) a divisional application under Article 52(1) of the Patent Law;

(d) a dual application under Article 53 of the Patent Law.

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

(iv) where an examiner’s decision as to whether to grant a patent or a trial or appellate trial decision rejecting the earlier application has become final and conclusive at the time the later utility model application is filed; or

(v) where earlier application has been registered under Article 35(2) of this Law at the time the later utility model application is filed.

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

(3) A person who meets the requirements of paragraph (1) for claiming priority claim under paragraph (1) can amend or add the right of priority within one year and four months from the filing date of the earlier application (where there are two or more earlier applications, the filing date of the earliest application).

(4) For devices described in a utility model application which claims the right of priority under paragraph (1), which are disclosed in the specification or drawings originally attached to the earlier application which is the basis for the priority claim (excluding those devices disclosed in an application which claims priority to an earlier application which also claims priority under paragraph (1) of this Article or which claims priority under Article 4D(1) of the Paris Convention for the Protection of Industrial Property), the utility model application shall be deemed to have been filed at the time when the earlier application was filed for purposes of Articles 5(1), 5(2) and 5(3) (principal sentence), 6(1), 8(1) to 8(4), 38(iii), 39, 41(1) and 41(2) of this Law; Article 136(4), 42 of the patent law applied by Article 77(3) of the Patent Law as applied *mutatis mutandis* Article 42 of this Law, Article 103 of the Patent Law as applied *mutatis mutandis* under Article 42 of this Law; Articles 36(3) and 98 of the Patent Law; and Articles 45 and 52(3) of the Design Law.



(5) For devices described in the specification or drawings originally attached to a utility model application which claims priority under paragraph (1), which are disclosed in the specification or drawings originally attached to the earlier application which is the basis for the priority claim (excluding those devices disclosed in an application which claims priority to an earlier application which also claims priority under paragraph (1) of this Article or which claims priority under Article 4D(1) of the Paris Convention for the Protection of Industrial Property), the laying open or publication for public inspection of the earlier application shall be deemed as effected at the time of laying open after registration of a utility model right was effected, for purposes of Article 5(3) of this Law or Article 29(3) of the Patent Law. For purposes of this paragraph, the “earlier application” is deemed to be an international application deemed to be a utility model application under Article 57(1) of this Law or an international application deemed to be a patent application under Article 199(1) of the Patent Law (including an international application considered to be a utility model application or a patent application under Article 71(4) of this Law or Article 214(4) of the Patent Law); and the phrase “a device or invention described both in the specification, claims or drawings of the international application as of the international filing date and in the translated version thereof” in Article 5(4) of this Law shall read “a device or invention described in the specification, claims or drawings of the international application as of the international filing date.”

Withdrawal of Earlier Application, etc.

19.—(1) The earlier application from which the right of priority is claimed under Article 18(1) shall be, deemed withdrawn at the expiration of one year and three months from the filing date of that earlier application in cases where the application is a patent application, or from the claimed priority date of the earlier application cases where said application is a utility model application. However, this provision shall not apply where that earlier application falls under any of the following subparagraphs:

- (i) where it has been abandoned, withdrawn, invalidated or rejected;
- (ii) where an examiner’s determination as to whether to grant a patent, a trial or an appellate trial decision rejecting the application has become final and conclusive;
- (iii) where priority claims based on the earlier application have been withdrawn; or
- (iv) where the earlier application has been registered under Article 35(2) of this Law.

(2) The applicant of a utility model application containing a priority claim under Article 18(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 utility model application containing a priority claim under Article 18(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.

*Mutatis Mutandis Application of the Patent Law Provisions*

20.—(1) The provisions of Articles 33, 37 to 41, 43 and 44 of the Patent Law shall apply, *mutatis mutandis*, with respect to the requirements for utility models and applications therefor. (a proviso deleted)

(2) The provision of Article 35 of the Patent Law shall apply *mutatis mutandis* with respect to utility models applications. In such cases, “for lack of entitlement to obtain a patent under the provision of Article 33(1)” shall read “for lack of entitlement to obtain a patent under the provision of Article 33(1) of the Patent Law as applied *mutatis mutandis* under Article 20 of this Law in Article 25(1)(i) or Article 47(1)(i)”.

(3) The provision of Article 54 of the Patent Law shall apply *mutatis mutandis* with respect to claiming priority by Treaty for utility models applications. In such cases, “a person who is in compliance with the requirements of paragraph (2)” in Article 54(7) shall read “before a person who is in compliance with the requirements of paragraph (2) obtains registration under Article 35(1)”, and “within one year and four months from the earliest date” shall read “within one year and four months from the earliest date and before registration pursuant to Article 35(1)”.

Chapter III Technical Evaluation

Request for Technical Evaluation of Utility Models

21.—(1) Any person may request a technical evaluation (deleted) of registered utility model to the Commissioner of the Korean Intellectual Property Office. Where the claims of registered utility model contains two or more claims, a request must be made for all claims.

(2) A request under paragraph (1) may be made even after the extinguishment of a utility model right. However, where a utility model registration is revoked by a decision of revocation under Article 74(3) of the Patent Law as applied *mutatis mutandis* under Article 48 of this Law, or invalidated by an invalidation trial under Article 49(1) of this Law, this provision shall not apply.

(3) A request under paragraph (1) shall not be withdrawn.

(4) A request under paragraph (1) may be made only one time. However, where an examiner cannot determine whether that utility model registration violates the provisions of Articles 5(3) and 5(4) or 8(1) to (4) under the exceptional proviso of Article 25(2), an additional request may be made only once, when the reason ceases to exist.

(5) Requisite procedures etc. for a request for technical evaluation of a utility model shall be prescribed by Presidential Decree.

Technical Evaluation by Examiner

22.—(1) When a request under Article 21(1) of this Law has been submitted, the Commissioner of the Korean Intellectual Property Office shall designate an examiner to technically evaluate the utility model.

(2) The provisions of Article 57(2) of the Patent Law shall be applied, *mutatis mutandis*, for the qualification of examiners.

Publication of Request for Technical Evaluation

23.—(1) When a request for a technical evaluation of a utility model application has been made prior to the publication of a registration of the utility model application, the Commissioner of the Korean Intellectual Property Office shall publish the request in the Utility Model Gazette simultaneously with the publication of the registration.

(2) When a request for a technical evaluation of a registered utility model is made after the publication of the registration, the Commissioner of the Korean Intellectual Property Office shall publish such facts in the Utility Model Gazette without delay.

(3) Where a request for a technical evaluation has been made by a person other than the owner of a utility model right, the Commissioner of the Korean Intellectual Property Office shall notify the owner of the utility model right of such facts.

Prior Art Search, etc.

24.—(1) If it is deemed necessary in a technical evaluation of a utility model, the Commissioner of the Korean Intellectual Property Office may rely on a specialized search organization for searching prior art documents (deleted)

(2) Requisite matters concerning the criteria for an assignment and the requisite matters pertaining to an assignment for a specialized search organization and implementing procedures for searching documents under paragraph (1) shall be prescribed by Presidential Decree.

(3) The provisions of Article 58(2) and 58*bis* of the Patent Law shall apply *mutatis mutandis* with respect to a technical evaluation of a utility model.

Decision on Request for Technical Evaluation

25.—(1) An examiner shall make a decision revoking a utility model registration (hereinafter referred to as a “decision of revocation for a utility model registration”), if any of the conditions specified in the following subparagraphs apply in view of the results of a technical evaluation:

(i) the utility model registration is in violation of the provisions of Article 25 of the Patent Law as applied *mutatis mutandis* under Article 4 of this Law; Articles 5, 7, 8(1) to

8(4), 9(3) and 9(4) of this Law; or Articles 44 of the Patent Law as applied *mutatis mutandis* under Article 20 of this Law;

(ii) in cases where a person is not entitled to obtain a patent pursuant to Article 33(1) of the Patent Law, as applied *mutatis mutandis* under Article 20 of this Law, or in cases where a patent cannot be granted pursuant to the exceptional proviso of Article 33(1);

(iii) the utility model registration is in violation of a treaty; or

(iv) after a registration of the utility model, the owner of the utility model right has become incapable of enjoying the utility model right under Article 25 of the Patent Law as applied *mutatis mutandis* under Article 4 of this Law, or the utility model right no longer complies with a treaty.

(v) the utility model registration is in violation of a proviso of Article 35(2).

(vi) in cases where the amendment is beyond the scope of the provisions of Article 14.

(2) If the utility model registration does not fall under any of the subparagraphs of paragraph (1) in view of the results of a technical evaluation, an examiner shall render a decision to maintain the utility model registration (hereinafter referred to as a “decision of maintenance for a utility model registration”). Where an examiner cannot determine whether the utility model registration violates provisions of Articles 5(3) and 5(4) or 8(1) to 8(4), he shall state such decision and reasons therefor.

(3) The examiner shall, when intending to make a decision of revocation for a utility model registration under paragraph (1), notify the requester of the technical evaluation and the owner of the utility model right of the reasons for revocation (only when the requester of the technical evaluation and the owner of the utility model right is not the same person), and provide the requester and owner with an opportunity to submit a written statement of arguments, designating a time limit for such submission.

(4) Where a decision of revocation for a utility model registration under paragraph (1) has become final and conclusive, the utility model right shall be deemed never to have existed. However, if a decision of revocation for a utility model registration under Article 25(1)(iv) has become final and conclusive, the utility model right shall be deemed not to have existed as of the time the utility model registration first became subject to paragraph (1)(iv).

(5) No appeal shall be made against the decision of maintenance for a utility model registration under paragraph (2).

Manner of Decision on Request for Technical Evaluation

26.—(1) The examiner’s decision on a request for technical evaluation shall be made in writing and shall state the reasons therefor.

(2) When an examiner's decision under paragraph (1) has been rendered, the Commissioner of the Korean Intellectual Property Office shall transmit a certified copy of the decision to the requester of the technical evaluation and the owner of the utility model right.

Correction of Utility Model Registration in Technical Evaluation Proceedings

27.—(1) An owner of a utility model right may request in writing correction of the specification or drawings in a utility model application (deleted), within the time limit designated under Article 25(3) of this Law.

(2) A request for correction under paragraph (1) may be made only for the following reasons:

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

(3) Where a request for correction under paragraph (1) has been made by a person other than the owner of the utility model right, the examiner shall transmit a copy of the written request for correction to the requester of a technical evaluation.

(4) The provisions of Articles 77(3) (deleted) of the Patent Law shall apply *mutatis mutandis* with respect to corrections for a utility model registration.

(5) When a decision of correction of the specification and/or drawing(s) is made, the Commissioner of the Korean Intellectual Property Office shall publish the contents of the correction in the Utility Model Gazette.

Suspension of Technical Evaluation Proceedings

28.—(1) Proceedings for a technical evaluation may, if necessary, be suspended until a decision on an opposition against a Utility model registration or a trial decision becomes final and conclusive.

(2) A presiding court may, if necessary, suspend a litigation proceeding until a decision on a technical evaluation becomes final and conclusive.

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

Mutatis Mutandis Application of Patent Law Provisions

28bis. The provisions of Articles 141, 142, 148(1) to (5), and 141(7) of the Patent Law shall apply *mutatis mutandis* with respect to technical evaluations of utility models.



Chapter IV Registration Fees and Utility Model Registration, etc.

Registration Fees

29.—(1) A person who wishes to register a utility model right or the owner of a utility model right under Article 35(1), shall pay registration fees.

(2) Registration fees for the first year of registration under paragraph (1) shall be paid simultaneously with an application for a utility model (a divisional application in case of a division under Article 16 of this Law or a dual application in case of a co-filing under Article 17 of this Law).

(3) Matters necessary for payment of registration fees, including procedures and time limits for payments under paragraph (1), shall be prescribed by the Ordinance of the Ministry of Industry and Energy.

Late Payment of Registration Fees

29bis.—(1) The owner of a utility model right in submit late payment of the registration fees within six months following the expiration of the payment period as prescribed under Article 29(3).

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

(3) If the owner of a utility model right does not pay the registration fees within the extended period provided for under paragraph (1), the concerned utility model right shall be deemed to have been extinguished retroactively to the time when the period for payment of the registration fees expired.

Restoration of a Utility Model Right by Late Payment of the Registration Fees

29ter.—(1) The owner of a utility model right may submit late payment of the registration fees within fourteen days from the date on which the reasons for the delay cease to exist; provided that, if payment is not possible within the period of late payment prescribed under Article 29bis(1) for reasons beyond his control. However, this provision shall not apply in cases where six months have elapsed since the expiration date of the period of late payment as prescribed under Article 29bis(1).

(2) When the owner of a utility model right submits late payment of the registration fees as prescribed under paragraph 1, the right of the utility model shall be deemed to have existed retroactively to the time when the period for payment of the registration fee prescribed under Article 29(3) expired.

(3) The effects of the utility model right under paragraph (2) shall not extend to the act of working the utility model by other persons from the date on which the time limit for



submission of payment of the registration fee expired to the date that late payment was made (hereinafter referred to as “the period of limited effect” in this provision).

(4) During the period of limited effect, any person who has, in good faith under, the utility model right prescribed in paragraph (2), commercially or industrially worked or prepared to work a device claimed in the utility model application, such person shall have a non-exclusive license for the utility model-right for the device claimed in said utility model application within the scope of the device and the purpose of business for which the utility model invention is being worked or being prepared to be worked.

(5) A person who has been granted a non-exclusive license under paragraph (4) shall pay reasonable remuneration to the owner of the utility model right or exclusive license.

Official Fees

30.—(1) A person initiating a utility model-related procedure registration or requesting a technical evaluation for a utility model, shall pay official fees.

(2) Matters necessary for payment of official fees, including procedures and time limits for payments under paragraph (1), shall be prescribed by the Ordinance of the Ministry of Industry and Energy.

Refund of Registration Fees, etc.

31.—(1) Registration fees and official fees which have been paid shall not be refunded. However, in the following cases, such fees shall be refunded upon request by the person who paid them:

(i) registration fees or official fees paid by mistake;

(ii) portions corresponding to the registration fees for years subsequent to the year in which a decision of revocation for a utility model registration has become final and conclusive under Article 25(1) of this Law or Article 74(3) of the Patent Law as applied *mutatis mutandis* under Article 48 of this Law, or a decision of invalidation for a utility model registration has become final and conclusive; or

(iii) registration fees paid for a utility model application which has been invalidated under Article 3(1) of this Law.

(2) Where registration fees or official fees were paid by mistake, the Commissioner of the Korean Intellectual Property Office shall notify such fact to the person who paid the fees.

(3) A refund of the registration fees and official fees under subparagraph (1)(i) may not be claimed where one year has elapsed from the date of notification of the fact that payment was made by mistake; and the refund of the portions corresponding to registration fees under subparagraphs (1)(ii) and (1)(iii) may not be claimed after one year has elapsed from the date when a decision of invalidation or revocation for a utility model registration becomes final and conclusive.



Utility Model Register

32.—(1) The Commissioner of the Korean Intellectual Property Office shall maintain a Utility Model Register at the Korean Intellectual Property Office and shall register the following matters:

(i) the establishment, transfer, extinguishment or restriction on disposal of a utility model right;

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

(iii) the establishment, transfer, extinguishment or restriction on disposal of a pledge on a utility model right or on an exclusive or non-exclusive license; and

(iv) matters equivalent to those stated in subparagraphs (1)(i) to (iii) as prescribed by Presidential Decree.

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

(3) Specifications and drawings of registered utility models and other documents prescribed by Presidential Decree are considered to be part of the Utility Model Register.

(4) Necessary matters relating to the procedures of registration and the maintenance of the register shall be prescribed by Presidential Decree.

Issuance of Utility Model Registration Certificate

33.—(1) When the establishment of a utility model right has been registered, the Commissioner of the Korean Intellectual Property Office shall issue a utility model registration certificate to the owner of the utility model right.

(2) When the utility model registration certificate does not coincide with the Utility Model Register or other equivalent documents, the Commissioner of the Korean Intellectual Property Office shall reissue the utility model registration certificate with amendments, or issue a new utility model registration certificate upon request or *ex officio*.

(3) When a trial decision for correction under Article 51(1) of this Law has become final and conclusive, the Commissioner of the Korean Intellectual Property Office shall issue a new utility model registration certificate in accordance with the trial decision.

Mutatis Mutandis Application of Provisions of the Patent Law

34. The provisions of Articles 80 (deleted) and 83 of the Patent Law shall apply *mutatis mutandis* with respect to registration fees and utility model registrations. (the latter paragraph deleted)

Chapter V Utility Model Right

Registration of Establishment of Utility Model Right and Publication of Registration

35.—(1) A utility model right shall come into effect upon registration of its establishment.

(2) The Commissioner of the Korean Intellectual Property Office shall register the establishment of a utility model right except where the utility model application comes under the subparagraphs of Article 11 or the subparagraphs of Article 12, or has been abandoned or withdrawn. However, if a situation in any of the following subparagraphs applies, the Commissioner of the Korean Intellectual Property Office shall register the establishment of the utility model right only if a corresponding patent right has been abandoned:

(i) where a patent application provided the basis for a dual application, and the establishment of the patent right is registered; or

(ii) where there is a patent application based on a utility model application under Article 53 of the Patent Law (referred to herein as a dual application) and the establishment of the patent right from the dual application is registered.

(3) Where a registration has been made under paragraph (2), the Commissioner of the Korean Intellectual Property Office shall publish the registration of the utility model together with relevant information in the Utility Model Gazette.

(4) The Commissioner of the Korean Intellectual Property Office shall reserve the publication of the registration of a utility model under paragraph (3), if the utility model application is ordered to be confidentially treated under Article 41(1) of the Patent Law as applied *mutatis mutandis* under Article 20 of this Law until it is declassified, and, upon declassification, shall publish the registration without delay.

(5) The Commissioner of the Korean Intellectual Property Office shall make application documents and materials attached thereto available for public inspection for a period of three months from the date of publication of the registration under paragraph (3).

(6) When a registration is published under paragraph (3), any person may submit to the Commissioner of the Korean Intellectual Property Office, information with supporting evidence that the device falls within the terms of any of the subparagraphs of Article 25(1):

(deleted)

(7) Matters to be published in the Utility Model Gazette with respect to publication of registrations under paragraph (3) shall be prescribed by Presidential Decree.

Term of Utility Model Right

36.—(1) The term of a utility model right shall commence upon registration of the utility model under Article 35(1) and be in force for ten years from the filing date of the utility model application.

(2) Where a utility model right is granted to a lawful holder of the right under Article 35 of the Patent Law as applied *mutatis mutandis* under article 20 of this Law, the term of the utility model right under paragraph (1) shall be calculated from the date following the filing date of the utility model application filed by the unentitled person.

(3) deleted

(4) Where for a utility model right that a utility model application is deemed to have been filed at the time of filing a dual application under Article 15(2) of this Law, the utility model term under paragraph (1) shall commence from the date of registration of the utility model and be in force for ten years from the filing date of the patent application on which the dual application is based.

Effects of Utility Model Right

37. The owner of a utility model right shall have the exclusive right to work the registered utility model commercially and industrially. However, where the utility model 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 registered utility model under Article 100(2) of the Patent Law as applied *mutatis mutandis* under Article 42 of this Law.

Limitations on Utility Model Right

38. The effects of the utility model right shall not extend to the following:

(i) working of the registered utility model for the purpose of research or experimentation;

(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 utility model application was filed.

Relation to Registered Utility Model, and the like, of Another Person's

39. Where working of a registered utility model would utilize another person's registered utility model, patented invention or registered design or a design similar to such registered design under an application filed prior to the filing date of the application for said registered utility model, or where a utility model right conflicts with another person's design right or trademark right under a design or a trademark application for registration filed prior to the filing date of the application for said registered utility model, the owner of the utility



model right or exclusive or non-exclusive licensee shall not work the registered utility model commercially or industrially without the license of the owner of the earlier utility model, patent, design right or trademark right, except where a non-exclusive license is obtained by a trial under Article (53)(1).

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

40.—(1) Where a person falling within any of the following subparagraphs, prior to the registration of a request for an invalidation trial of a relevant registered utility model or patent, has been working a device in the Republic of Korea, commercially or industrially, in good faith, or has been making preparations therefor, without knowing that the registered utility model or patent is subject to invalidation, regardless of whether the utility model registration is based on a decision of maintenance under Article 25(2) of this Law or whether he has given other substantial attention to such matters, or has been working an invention in the Republic of Korea, commercially or industrially, in good faith, or has been making preparation therefor, without knowing that his patent was subject to invalidation, such person shall have a non-exclusive license on that utility model or patent right or on the exclusive license existing at the time when the utility model registration or patent was invalidated, however, such non-exclusive license shall be limited to the device or invention which is being worked or for which preparations for working are being made and to the purpose of such working or preparations therefor:

- (i) the original owner of a utility model right, where one of two or more utility model registrations granted for the same device has been invalidated;
- (ii) the original owner of a patent right, where a registered utility model and a patented invention are the same and the patent has been invalidated;
- (iii) the original owner of a utility model right, where his utility model registration has been invalidated and a utility model registration for the same device has been granted to an entitled person;
- (iv) the original patentee, where his patent has been invalidated and a utility model registration for the same device as the invention has been granted to an entitled person; or
- (v) in 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 utility model or patent right, has been granted an exclusive license or a non-exclusive license, or a non-exclusive license on the exclusive license, and such license has been registered. However, a person falling under Article 118(2) of the Patent Law is not required to register the license.

(2) A person who has been granted a non-exclusive license under paragraph (1) shall pay reasonable remuneration as consideration for the non-exclusive license to the owner of a utility model right or the exclusive licensee.

Non-exclusive License after Expiration of Design Right

41.—(1) Where a design right filed and registered prior to or on the filing date of a utility model application conflicts with the utility model right, and the term of the design right has expired, the owner of such design right shall have a non-exclusive license on the utility model right to the extent of such design right, or on the exclusive license existing at the time when the design right expired.

(2) Where a design right filed and registered prior to or on the filing date of a utility model application conflicts with the utility model 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 a non-exclusive license (limited to the non-exclusive license under Article 118(1) of the Patent Law as applied *mutatis mutandis* under Article 61 of the Design Law) on the expired design right or on the exclusive license, shall, to the extent of the scope of the expired right, have a non-exclusive license on said utility model right 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 as consideration for the non-exclusive license to the owner of the utility model right or the exclusive licensee.

Mutatis Mutandis Application of Provisions of the Patent Law

42. The provisions of Articles 97, 99 to 103, 106 to 116 and 118 to 125 or 125*bis* of the Patent Law shall apply *mutatis mutandis* with respect to utility model rights.

Chapter VI
Protection of Owner of Utility Model Right

Acts Deemed to be Infringement

43. The commercial act of manufacturing, assigning, leasing or importing, or the act of offering for commercial or industrial assignment or lease, of goods used exclusively for manufacturing a product relating to a utility model registration shall be deemed to constitute infringement of a utility model right or an exclusive license under the utility model registration.

Presentation of a Copy of the Certificate of Decision of Maintenance for a Utility Model Registration

44. An owner of a utility model right or an exclusive licensee may exercise his right against a person who infringes his utility model right or exclusive license only after he provides warning to that person by presenting a copy of the certificate of decision of maintenance for a utility model registration under Article 25(2) of this Law.

Liability of the Owner of a Utility Model Right

45.—(1) An owner of a utility model right or an exclusive licensee thereof shall be liable for damage compensation to a person who suffers from the exercise of the right or warning, where there has been a final and conclusive decision of revocation, on the utility model registration concerned, under Article 74(3) of the Patent Law as applied *mutatis mutandis* under Article 48 of this Law, or a final and conclusive decision of invalidation of a utility model right (except a trial decision under Article 49(1)(iv) of this Law), after exercise of the right or warning to a person who infringed the utility model right or exclusive license. However, where the utility model registration is based on a decision of maintenance under Article 25(2) of this Law or substantial and diligent attention thereto has been paid, this provision shall not apply.

(2) The provisions of paragraph (1) shall apply, *mutatis mutandis*, where exercise of right or warning was made for that portion of a right which was excluded from the scope of a device described in the claims at the time of registration of a utility model application as a result of corrections to the specification and drawings attached to the utility model application, pursuant to a request and trial for correction.

Mutatis Mutandis Application of Provisions of the Patent Law

46. The provisions of Articles 126, 128, 130, 131 and 132 of the Patent Law shall apply *mutatis mutandis* with respect to protection of the owner of a utility model right. In such cases, “A person who has infringed a patent right or exclusive license of another person” in Article 130 of the Patent Law shall be deemed “A person who has infringed a utility model right or exclusive license of another person who has been granted a decision of maintenance of a utility model registration under Article 25(2) of this Law.”

Chapter VII Opposition to Registration of a Utility Model

Opposition to Registration of a Utility Model

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

(i) where the utility model has been registered contrary to the provisions of Article 25 of the Patent Law as applied *mutatis mutandis* under Article 4 of this Law, Articles 5, 7, 8(1) to 8(4) of this Law, Articles 44 of the Patent Law as applied *mutatis mutandis* under Article 20, of this Law;



(ii) in cases where a person is not entitled to obtain a patent under Article 33(1) of the Patent Law as applied *mutatis mutandis* under Article 20 of this Law or in cases where a patent cannot be granted under the proviso of Article 33(1) of the Patent Law.

(iii) where the utility model has been registered in violation of a treaty;

(iv) where the utility model has been registered in violation of the provisions of Article 9(3) or 9(4); or

(iv)*bis* where the amendment is beyond the scope of the provision of Article 14.

(v) where the establishment of the utility model has been registered in violation of the proviso of Article 35(2).

(2) When filing an opposition, the opponent (hereinafter referred to as “the opponent filing the opposition”) shall file a written opposition together with the relevant evidence before the Commissioner of the Korean Intellectual Property Office. The opposition shall state the following:

(i) the name and the domicile of the opponent (for a legal entity, its title, location of the place of business);

(ii) the name and the domicile or location of the place of business of an agent, if any (if the agent is a patent corporation, its title, office location and the name of appointed patent attorney);

(iii) identification of the utility model registration to which the opposition pertains; and

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

(3) The provisions of Article 49(4) of this Law shall apply *mutatis mutandis* to an opposition to the registration of a utility model.

Mutatis Mutandis Application of Provisions of the Patent Law

48. The provisions of Articles 70 to 78*bis* of the Patent Law shall apply *mutatis mutandis* with respect to an opposition to the registration of a utility model. Pursuant thereto, “Articles 136(2) to 136(5)” in the preceding paragraph of Article 77(3) of the Patent Law shall read “Articles 136(2), (3) and 136(5), and “a decision on an opposition” in Article 78(1) of the Patent Law shall read “a decision on a request for technical evaluation or a decision on an opposition.”

Chapter VIII Trials, Retrials and Litigation

Trial for Invalidation of Utility Model Registration

49.—(1) Any interested party or an examiner may request a trial to invalidate a utility model registration pursuant to any of the following subparagraphs. If the registered utility

model contains two, or more claims, a request for an invalidation trial may be made for each claim:

(i) where the utility model has been registered in violation of Article 25 of the Patent Law as applied *mutatis mutandis* under Article 4 of this Law, Articles 5, 7, 8(1) to 8(4), 9(3), 9(4) of this Law, or Article 44 of the Patent Law as applied *mutatis mutandis* under Article 20 of this Law;

(ii) where the utility model has been registered to a person who is not entitled to obtain the utility model right under the provision of Article 33(1) of the Patent Law as applied *mutatis mutandis* under Article 20 of this Law, or who may not obtain a patent under the proviso of Article 33(1) of the Patent Law;

(iii) where the utility model has been registered in violation of a treaty;

(iv) where following the registration of the utility model, the owner of the utility model right is no longer capable of enjoying the utility model right under Article 25 of the Patent Law as applied *mutatis mutandis* to Article 4 of this Law, or the utility model registration no longer complies with a treaty;

(iv)*bis* where the amendment is beyond the scope provided for under 14; or

(v) where the utility model has been registered in violation of the proviso of Article 35(2) of this Law.

(2) A request for a trial under paragraph (1) may be made even after the extinguishment of a utility model right.

(3) Where a trial decision invalidating a utility model registration has become final and conclusive, the utility model right shall be deemed never to have existed; however, where a trial decision invalidating a utility model registration under subparagraph (1)(iv) has become final and conclusive, the utility model right shall be deemed not to have existed from the time when the utility model registration first became subject to said subparagraph.

(4) Where a request for a trial under paragraph (1) has been made, the presiding trial examiner shall notify the exclusive licensee of the utility model right and any other persons who have registered rights relating to the utility model registration, of the contents of the request.

Correction of Utility Model Registration under Trial for Invalidation of Utility Model Registration

49bis.—(1) An owner of a utility model right who is a demander of a trial for invalidation under Article 49(1) of this Law may make a request for correction of the specification or drawing(s) in a utility model registration only where the subparagraphs of Article 27(2) of this Law apply.

(2) A request for corrections under paragraph (1) may be made within the time limit prescribed in Article 147(1) of the Patent Law or the latter part of Article 159(1) of the patent Law as applied *mutatis mutandis* under Article 56 of this Law.

(3) Where a request for corrections is submitted under paragraph (1), the presiding trial examiner shall transmit a certified copy of the request to the petitioner of the trial under Article 49(1).

(4) The provisions of Articles 51(2) to 51(4), 51(6) to 51(10), 55(1), 55(2), 55(5) of this Law and Article 139(3) of the Patent Law as applied *mutatis mutandis* under Article 56 of this Law shall apply *mutatis mutandis* to a request for corrections to a utility model registration under paragraph (1). In such cases, “only before a notice under Article 162(3) of the Patent Law as applied *mutatis mutandis* under Article 56 of this Law (where proceedings are reopened under Article 162(4) of the Patent Law, before issuance of the notice of concluded proceedings under Article 162(3) of the Patent Law)” in Article 51(9) of this Law shall read “within the prescribed time limit if there is a notice issued under Article 51(4) of this Law”.

Trial to Confirm the Scope of a Utility Model Right

50. An owner of a utility model right or any interested person may request a trial to confirm the scope of a registered utility model. A trial may be requested for each claim if the registered utility model contains two or more claims.

Trial for Correction

51.—(1) An owner of a utility model right may request a trial for correction of the specification or drawing(s) pursuant to any of the subparagraphs of Article 27(2). However, these provisions shall not apply where a technical evaluation, an opposition against the registration or a trial for invalidation of a utility model registration is pending before the Korean Intellectual Property office or before the Korean Intellectual Property Tribunal.

(2) Corrections to the specification or drawing(s) under paragraph (1) shall be within the scope of the features disclosed in the specification or drawing(s) attached to the utility model application (If corrections are made under Article 27(2)(ii), said corrections shall be within the scope of the features disclosed in the specification or drawing(s) originally attached to the utility model application).

(3) Corrections to the specification or drawing(s) under paragraph (1) shall neither substantially expand nor modify the scope of the claims.

(4) A trial for correction under paragraph (1) may be requested even after the utility model right has been extinguished. However, where the utility model registration has been revoked by a decision of revocation under Article 74(3) of the Patent Law as applied *mutatis mutandis* under Article 25(1) or 48, or invalidated by a trial decision for invalidation, this provision shall not apply.



(5) An owner of a utility model right shall not request a trial for correction under paragraph (1) without the consent of an exclusive licensee, a pledge or a nonexclusive licensee, under Article 39(1) of the Patent Law as applied *mutatis mutandis* under Article 20 of this Law, and Articles 100(4) and 102(1) of the Patent Law as applied *mutatis mutandis* under Article 42 of this Law.

(6) The Commissioner of the Korean Intellectual Property Office shall make publication of the corrected matters in the Utility Model Gazette where a trial decision has been rendered to the effect that the specification or drawings of a registered utility model are to be corrected.

(7) Where the specification or drawing(s) of a registered utility model have been corrected by a trial under paragraph (1), the president of the Korean Industrial Property Tribunal shall notify the Commissioner of the Korean Intellectual Property Office of the content of the corrections.

(8) Where a trial decision to allow corrections to the specification or drawing(s) of a registered utility model becomes final and conclusive, the utility model application and registration of the establishment of the utility model right shall be deemed to have been made on the basis of said corrected specification or drawing(s).

(9) A person who requests a trial under paragraph (1) may make corrections to the specification or drawing(s) attached to the request for trial under Article 55(5) of this Law only if said request is submitted before issuance of a notification under Article 162(3) of the Patent Law as applied *mutatis mutandis* under Article 56 of this Law (where proceedings have been reopened under Article 162(4) of the Patent Law, before issuance of the notification of closure of the proceedings under Article 162(3) of the Patent Law).

(10) The Commissioner of the Korean Intellectual Property Office shall make publication of the notice in the Utility Model Gazette where a notice under Paragraph (1) is notified.

Trial for Invalidation of Correction

52.—(1) An interested party or an examiner may request a trial for an invalidation of a correction under Article 27(1), 49*bis*(1), 51(1) of this Law, or Article 77(1) of the Patent Law as applied *mutatis mutandis* under Article 48 of this Law, where the specification or drawing(s) of a registered utility model have been corrected contrary to any of the following subparagraphs.

(i) any of the subparagraphs of Article 27(2).

(ii) Article 51(2) or 51(3) (including cases that apply *mutatis mutandis* under Article 49*bis*(4)).

(iii) any of Articles 136(2) to 136(4) or identical provisions under Article 77(3) of the Patent Law as applied *mutatis mutandis* under Article 27(4) or 48 of this Law.

(2) The provisions of Articles 49(2) and 49(4) shall apply *mutatis mutandis* to a request for trial under paragraph (1).

(3) An owner of a utility model right who is a demander of a trial under paragraph (1) may make a request to correct the specification or drawing(s) of a utility model registration under Article 147(1) or the latter part of 159(1) of the Patent Law as applied *mutatis mutandis* under Article 56 of this Law within the prescribed time limit only in cases where any of the subparagraphs under Article 27(2) of this Law apply.

(4) The provisions of Article 49*bis*(3) and 49*bis*(4) shall apply *mutatis mutandis* to a request for correction under paragraph (3). In such cases, “Article 49(1) in Article 49*bis*(3) shall read “Article 52(1)”.

(5) Where a trial decision invalidating corrections to the specification or drawing(s) under paragraph (1) has become final and conclusive, the corrections shall be deemed to have never been made.

Trial for Grant of Non-exclusive License

53.—(1) If an owner of a utility model right, or an exclusive or non-exclusive licensee, desires to obtain permission to exercise the registered utility model provided for in Article 39, and if the other person refuses to grant permission without justifiable reasons, or it is not possible to obtain such permission, said owner or said exclusive or non-exclusive licensee may request a trial for grant of a non-exclusive license having a scope necessary to work the registered utility model.

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

(3) If the other person, who is ordered to grant a non-exclusive license pursuant to a trial under paragraph (1) needs to work the registered utility model of the party 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 a scope necessary to work the registered utility model.

(4) The party granted a non-exclusive license under paragraphs (1) and (3), shall pay remuneration to the owner of the utility model right, the patentee, the owner of the design right or an exclusive licensee thereof, provided that if payment is not possible for reasons beyond the control of said party, the remuneration shall be placed in deposit.

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

Trial against Decision of Revocation of Utility Model Registration

54. A person who has received a decision of revocation of a utility model registration under Article 25(1) of this Law or Article 74(3) of the Patent Law as applied *mutatis mutandis* under Article 48 of this Law, and does not agree with the ruling, may request a trial within thirty days from the date of receipt of a certified copy of the ruling.

Trial Against a Decision of Rejection of a Utility Model Application

54bis. Where a person who receives a decision of rejection under Article 12(3) is dissatisfied therewith, he may request a trial within thirty days from the date of receipt of the certified copy of the decision.

Formal Requirements of Request for Trial

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

(i) names and domiciles of the parties (in case of a legal entity, its title and place of business);

(ii) names and domiciles or place of a business of the agent, if any (where the agent is a patent corporation, its title, place of a business office and name of a designated patent attorney);

(iii) identification of the trial case; and

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

However, for a request for trial against a decision of revocation under Article 54 of this Law or a trial against a decision of rejection under Article 54bis of this Law, the provisions of Article 140bis(1) of the Patent Law shall apply.

(2) No amendment to a request for trial submitted under paragraph (1) may change the intent or purpose thereof. However, this provision shall not apply where the grounds for the request is amended under subparagraph (1)(iv).

(3) A written request for a trial under Article 53(1) shall, in addition to the particulars referred to in paragraph (1), state:

(i) the number and title of his utility model registration which is required to be worked;

(ii) the number, title and date of the other party's patented invention, registered utility model or registered design to be worked; and

(iii) the scope, duration and remuneration for the non-exclusive license for the patented invention, the registered utility model or the registered design.

(4) When a trial is requested to confirm the scope of a utility model right under Article 50, the explanation and the necessary drawings which can be compared with the registered utility model shall be attached to the written request.

(5) When a trial for correction under Article 51(1) is requested, the corrected specification or drawing(s) shall be attached to the written request for trial.

Mutatis mutandis Application of Provisions of the Patent Law

56. The provisions of Articles 139, 140*bis*(2), 141 to 166, 171(2), 172, 176 and 178 to 191 of the Patent Law shall apply *mutatis mutandis* with respect to trials, appellate trials, retrials and litigation. In this case, “the opponent” in Article 140*bis*(2) of the Patent Law shall be deemed to be “a person who requests a technical evaluation or an opponent;” “the decision on a patent opposition” [in Article 164(1)] shall read “the decision on a request for technical evaluation or an opposition to the registration of a utility model;” and “an examination or an opposition” [in Article 172] shall read “an examination, technical evaluation of a utility model or an opposition to the registration of a utility model:”

Chapter IX

International Applications under the Patent Cooperation Treaty

Utility Model Application Based on International Application

57.—(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 utility model registration, shall be considered to be a utility model application filed on its international filing date.

(2) Article 54 of the Patent Law as applied *mutatis mutandis* under Article 20 of this Law shall not apply to an international application considered to be a utility model application filed on its international filing date under paragraph (1) (hereinafter referred to as an “international utility model application”).

Special Provision on Devices Deemed to be Novel

58. Notwithstanding the provisions of Article 6(2), any person desiring to apply Articles 6(1)(i) and 6(1)(iii) to the device claimed in an international utility model application, may submit a written statement to that effect and documents substantiating that the device falls under Articles 6(1)(i) and 6(1)(iii), to the Commissioner of the Korean Intellectual Property Office within the time limit prescribed by the Ordinance of the Ministry of Industry and Energy.

Translation of International Utility Model Application

59.—(1) An applicant for an international utility model application filed in a foreign language, shall submit to the Commissioner of the Korean Intellectual Property Office, a



Korean translation of the description, claims, drawings (only the textual 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 the “priority date”), or two years and six months from the priority date if 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 Article 31(4)(a) of the Patent Cooperation Treaty (hereinafter referred to as the “domestic time limit for submitting documents”). However, in case where the claims have been amended under Article 19(1) of the Patent Cooperation Treaty, an applicant for an international utility model application need only submit a Korean translation of the amended claims.

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

(3) An applicant who has submitted the Korean 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 under Article 23(2) or 40(2) of Patent Cooperation Treaty (hereinafter referred to as “request for domestic treatment”).

(4) Matters which were disclosed in the description, claims and textual matter of the drawings of an international utility model application filed on the international filing date, but which were not disclosed in the translation under paragraph (1) or (3) (hereinafter referred to as “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 appropriate time limit, hereinafter referred to as the “relevant date”), shall be deemed not to have been disclosed in the description, claims and textual matter of the drawings of said international utility model application filed on the international filing date.

(5) An application submitted on the international filing date of an international utility model application shall be deemed to be an application submitted under Article 9(1).

(6) The translated version of the description, claims, drawings and abstract of an international utility model application (or the description, claims, drawings and abstract submitted on the international filing date if the international utility model application is filed in the Korean language) shall be deemed to be the description, claims, drawings and abstract submitted under Article 9(2).

(7) Articles 63(1) and 63(2) shall not apply where a Korean translation of the amended claims has been submitted pursuant to the proviso of paragraph (1).

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



Special Provisions on Claim of Priority

60.—(1) Articles 18(2) and 19(2) shall not apply to an international utility model application.

(2) For purposes of Article 18(4) regarding an international utility model application, “specification or drawings originally attached to the earlier application” shall read “description, claims and drawings (only the textual matter thereof) submitted on the international filing date under Article 59(1), and the translated version of said documents or drawings (except the text matter thereof) of the international application submitted on the international filing date” and “laying open for public inspection” shall read “laying open for public inspection or international publication under Article 21 of the Patent Cooperation Treaty.”

(3) For purposes of Articles 18(1), 18(3), 18(4) and 19(1), where the earlier application under Article 18(1) is the international utility model application or international patent application under Article 199(2) of the Patent Law, “specification or drawings originally attached to a model application” in Articles 18(1) and 18(3) shall read “description, claims and drawings of an international application submitted on the international filing date under Article 59(1) of this Law or Article 201(1) of the Patent Law”; “specification or drawings originally attached to the earlier application” in Article 18(4) shall read “description, claims or drawings of an international application concerning an earlier application submitted on the international filing date under Article 59(1) of this Law or Article 201(1) of the Patent Law”; “laying open of the earlier application for public inspection” 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 19(1) shall read “at the relevant date under Article 59(4) of this Law or Article 201(4) of the Patent Law or at the expiration of one year and three months from the international filing date under Article 59(1) of this Law or Article 201(1) of the Patent Law, whichever date expires later,” respectively.

(4) For purposes of Articles 18(1), 18(3) and 18(4) or 19(1), where the earlier application under Article 18(1) is an international utility model application recognized as a utility model application or a patent application under Article 71(4) of this Law or Article 214(4) of the Patent Law, “specification or drawings originally attached to the application” in Articles 18(1) and 18(3) shall read “description, claims or drawings of an international application as of the date regarded as the international filing date under Article 71(4) of this Law or Article 214(4) of the Patent Law” and “specification or drawings originally attached to the earlier application” in Article 18(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 71(4) of this Law or Article 214(4) of the Patent Law” and “at the expiration of one year and three months from the filing date of that earlier application” in Article 19(1) shall read “within one year and three months from the date regarded as the international filing date under Article 71(4) of this Law or Article 214(4) of the Patent Law or at the time of making a decision under Article 71(4), of this Law or Article 214(4) of the Patent Law, whichever date expires later,” respectively.



Submission of Identifying Document

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

- (i) the name and domicile of the applicant (its title and place of business if a legal entity);
- (ii) the name and domicile or place of business of the agent, if any (where the agent is a patent corporation, its title, place of business and the name of the designated patent attorney);
- (iii) deleted;
- (iv) the title of the device;
- (v) the name and domicile or place of business of the deviser; and
- (vi) the international filing date and the international application number.

Submission of Drawings

62.—(1) An applicant for an international utility model application shall submit drawings (including brief text thereof) to the Commissioner of the Korean Intellectual Property Office no later than the relevant date if the international application submitted on the international filing date does not include the drawings.

(2) The Commissioner of the Korean Intellectual Property Office may require the applicant for an international utility model application to submit the drawings within a designated time limit when the drawings under paragraph (1) have not been submitted prior to or on the relevant date. The same procedure shall apply where the Korean translation of the textual matter of the drawings under Article 59(1) or 59(3) has not been submitted by the relevant date.

(3) The Commissioner of the Korean Intellectual Property Office may invalidate an international utility model application where the applicant who was required to submit the drawings under paragraph (2) has failed to do so within the designated time limit.

(4) Drawings submitted under paragraph (1) or (2) shall be deemed to be an amendment under Article 13(1) of this Law. However, the period allowed for amendment under Article 13(1) of this Law shall not apply to such drawing submissions.

Amendment after Receipt of the International Search Report

63.—(1) If the claims of an international utility model 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 utility model 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 Korean translation of the amendment has been submitted under paragraph (1), the claims shall be deemed to have been amended under Article 13(1) by the Korean 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 said Treaty (hereinafter referred to as the “International Bureau”), the applicant of an international utility model application shall submit to the Commissioner of the Korean Intellectual Property Office a Korean translation of such statement.

(4) If an applicant for an international utility model application has not submitted the Korean translation of the amendment or statement under paragraph (1) or (3) on or before the relevant date, the amendment or statement under Article 19(1) of the Patent Cooperation Treaty shall be deemed not to have been submitted.

(5) The time limit for an amendment prescribed in Article 13(1) shall not apply to an amendment under paragraph (2).

Amendment Before Establishment of the International Preliminary Examination Report

64.—(1) If the description, claims and drawings of an international utility model application have been amended before the establishment of the International Preliminary Examination Report under Article 34(2)(b) of the Patent Cooperation Treaty, the applicant of an international utility model 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) Where a Korean translation of the amendment has been submitted under paragraph (1), the description and drawings shall be deemed to have been amended under Article 13(1) by the Korean translation.

(3) If an applicant for an international utility model application has not followed the procedure under paragraph (1) on or before the relevant date, the amendment under Article 34(2)(b) of the Patent Cooperation Treaty shall be deemed not to have been submitted.

Special Provision on Amendments

65.—(1) Notwithstanding the provisions of Article 13(1), no amendment to an international utility model application (except an amendment under Articles 63(2) and 64(2)) may be made until the registration fees prescribed under Article 29(1) and the official fees prescribed under Article 30(1) have been paid, a Korean translation of the application under Article 59(1) (except the case of an international utility model application made in the Korean language) has been submitted, and the relevant date has passed.

(2) The proviso of Article 13(1) shall not apply to an amendment of an international utility model application under Article 28(1) or 41(1) of the Patent Cooperation Treaty.

(3) With regard to the scope of an amendment to an international utility model application, “the specification or drawing(s) originally attached to the utility model application” in Article 14 shall read “the features disclosed in the translated version of the description, claims or drawing(s) (only the textual matter thereof) of the international utility model application submitted on the international filing date or the drawing(s) (except the textual matter thereof) of the international utility model application submitted on the international filing date.”

Time Restrictions on Filing of Dual Application

66. Notwithstanding Article 17(1), a co-filing of a utility model application based on an international application considered to be a patent application filed on its international filing date under Article 199(1) of the Patent Law, may not be filed until the official fees prescribed under Article 82(1) of the Patent Law have been paid, and a translation (except in cases where the international patent application has been filed in the Korean language) under Article 201(1) of the Patent Law has been submitted (for a co-filing of a utility model application based on an international application which is considered to have been filed on the date recognized as the international filing date under Article 214(4) of the Patent Law, not until the decision under Article 214(4) of the Patent Law has been made).

Special Provision on Decisions of Revocation of Utility Model Registrations

67.—(1) deleted.

(2) Where Article 47(1)(iv)*bis* applies to an opposition against a utility model registration for an international utility model application, “the features disclosed in the specification or drawing(s) originally attached to the utility model application” in Article 14 shall read “the device disclosed both in the description, claims or drawing(s) (only the textual matter thereof) of an international 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 thereof) of an international application submitted on the international filing date.”

Special Provision on Trial for Invalidation of Utility Model Registration

68. Where Article 49(1)(iv)*bis* applies with respect to a trial for invalidation of an utility model registration for an international utility model application, “the features disclosed in the specification or drawing(s) originally attached to the utility model application” in Article 14 shall read “the device disclosed both in the description, claims or drawing(s) (only the textual matter thereof) of an international 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 thereof) of an international application submitted on the international filing date.”

*Time Restriction on Request for Technical Evaluation of Utility Model*

69. With regard to a request for a technical evaluation of an international utility model application, “any person” in Article 21(1) shall read “any person after the relevant date.”

Special Provisions on Payment of Registration Fee

70. With regard to the registration fees for the first year for an international utility model application, “simultaneously with a utility model application (divisional application in case of a divisional application under Article 16 of this Law or dual application in case of a co-filed application under Article 17 of this Law)” in Article 29(2) shall read “within the domestic time limit for submitting documents under Article 59(1) (where a request for domestic treatment under Article 59(3) has been made, until the time of request for domestic treatment).”

International Application Considered to be a Utility Model Application by Decision

71.—(1) Where the Receiving Office referred to in Article 2(xv) of the Patent Cooperation Treaty has refused to recognize an international filing date or a declaration of withdrawal of an international application under Article 25(1)(a) or 25(1)(b) of the Patent Cooperation Treaty, or the International Bureau has made a finding that the record copy under Article 25(1)(a) has not been received under Article 25 (1)(a) of the Patent Cooperation Treaty, with respect to an international application which designates the Republic of Korea as a designated State, an applicant of the international application may request the Commissioner of the Korean Intellectual Property Office, as provided in the Ordinance of the Ministry of Industry and Energy, to make a decision on whether the refusal, declaration or finding is properly made, under Article 25(2)(a) of the Treaty.

(2) A person who intends to make a request under paragraph (1) shall submit to the Commissioner of the Korean Intellectual Property Office a petition with a Korean translation of the description, claims or drawings (only the textual matter thereof) and other documents relating to the international application as prescribed by the Ordinance of the Ministry of Industry and Energy, attached to the petition.

(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 properly made 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 was not properly made under the provisions of the Patent Cooperation Treaty and the regulations thereunder, the relevant international application shall be considered to be a utility model application filed on the date which would have been recognized as the international filing date if said refusal, declaration or finding had not been made with respect to said international application.



(5) Articles 57(2), 58, 59(4) to 59(8), 60(1), 60(2), 62, 65, and 67 to 70 shall apply *mutatis mutandis* to an international application considered to be a utility model application filed on the date which would have been recognized as the international filing date under paragraph (4).

(6) With regard to the amendment of an international application considered to be a utility model application under paragraph (4), “the filing date of the utility model application” in Article 13(1) of this Law shall read “date of decision that the refusal, declaration or finding was not properly made under Article 71(4).”

Mutatis mutandis Application of Provisions of the Patent Law

72. The provisions of Articles 192 to 198*bis*, 206, 210 and 211 of the Patent Law shall apply *mutatis mutandis* to international utility model applications. In this situation, “a request for examination of application” in Article 210 of the Patent Law shall read “a request for domestic treatment.”

Chapter X Supplementary Provisions

Utility Model Gazette

73.—(1) The Korean Intellectual Property Office shall publish the Utility Model Gazette.

(2) The Utility Model Gazette may be published by the electronic media under conditions prescribed by the Ordinance of the Ministry of Industry and Energy.

(3) In publishing the Utility Model Gazette by the electronic media, the Commissioner of the Korean Intellectual Property Office shall make public, matters regarding publication of the Utility Model Gazette, its main contents and service by public notification through communication network.

Special Provisions for Utility Model Registration or Right with Two or More Claims

74. Under Article 74(4) of the Patent Law as it applies *mutatis mutandis* under Article 48 of this Law, Articles 21(2), 25(4), 31(1)(ii), 32(1)(i) (only in cases of extinguishment), 40(1)(i), 40(1)(iii) and 40(1)(v) of this Law, Articles 101(1)(i), 119(1) of the Patent Law as applied *mutatis mutandis* under Article 42 of this Law, Articles 49(2) and 49(3) of this Law, Articles 139(1), 181, 182, 104(1)(ii), 104(1)(iv), or 104(1)(v) of the Patent Law as applied *mutatis mutandis* under Articles 51(5) and 56 of this Law, where a utility model registration or utility model right has two or more claims, the utility model registration shall be deemed to have been registered or a utility model right shall be deemed to have been established, for each claim.

Indication of Utility Model Registration

75. An owner of a utility model right, or an exclusive or non-exclusive licensee, may identify a utility model registration on the registered utility model product, or a container or packaging thereof.

Prohibition against False Indication

76. No person shall be allowed to perform any of the following acts:

(i) marking to indicate that a utility model registration has been granted or a utility model application has been filed, or any sign likely to cause confusion in a similar manner, on an article for which a utility model has not been registered or a utility model application is not pending, or a container or packaging thereof;

(ii) assigning, leasing or displaying, an article which has been marked with an indication referred to in subparagraph (i); or

(iii) for purposes of manufacturing, using, assigning or leasing an article referred to in subparagraph (i), marking with an indication upon advertisements, signboards or tags that a utility model has been registered for the article, a utility model application has been filed therefor, or marking with any sign likely to cause such confusion.

Mutatis Mutandis Application of Provisions of the Patent Law

77. The provisions of Articles 216, 217, 217*bis*, 218 to 220, 222 and 224*bis* of the Patent Law shall apply *mutatis mutandis* to a utility model application. In this case “examination” in Articles 217 and 217*bis* of the Patent Law shall read “technical evaluation of a utility model application,”

**Chapter XI
Penal Provisions**

Offense of Infringement

78.—(1) Any person who infringes a utility model right or exclusive license 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 the filing of a complaint by an injured party.

Offense of Perjury

79.—(1) Where a witness, expert witness or interpreter, having taken an oath under this Law, has made a false statement or given a false expert opinion or interpreted falsely before



the Industrial Property Tribunal, he/she shall be liable to imprisonment with labor not exceeding five years, or a fine not exceeding 10 million won.

(2) Any person having committed an offense under paragraph (1) who admits such offense before the decision of an opposition or a trial decision relating to the utility model registration becomes final and conclusive, may be partially or totally exempted from the application of the sentence.

Offense of False Marking

80. Any person who violates the provisions of Article 76 of this Law shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million Won.

Offense of Fraud

81. Any person who has obtained a utility model registration, a decision on a technical evaluation, or an official, or a trial decision in an opposition to a utility model registration, by means of fraudulent or other unjust acts, shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million Won.

Offense of Divulging Secrets

82. Where any present or former official of the Korean Intellectual Property Office has disclosed or appropriated a device disclosed in a pending utility model application to which he had access to during the course of his duties, he shall be liable to imprisonment with labor for a period not to exceed two years or to a fine not to exceed 3 million Won.

Officers and Employees of Specialized Search Organization etc. as Public Officials; Irrefutable Presumption

83. A person who is or was an officer or employee of a specialized search organization, or any computerized patent, document processing agency pursuant to Article 217bis of the Patent Law as applied *mutatis mutandis* under Article 77 of this Law, shall be deemed to be a present or former official of the Korean Intellectual Property Office for purposes of applying Article 82 of this Law.

Dual Liability

84. Where a representative of a legal entity or an agent, employee or other servant of a legal entity or natural person, has committed an act in violation of Article 78(1), 80 or 81 with regard to the business of the legal or natural person, the legal person shall be subject to the fine of the following paragraphs and the natural person shall be subject to the fine prescribed in said Articles.

(i) In case of Article 78(1) a fine not to exceed 300 million Won;

- (ii) In case of Article 80 or 81 a fine not to exceed 60 million Won.

Confiscation, etc.

85.—(1) Any goods that are the subject of an act of infringement under Article 78(1) or any goods arising out of such act infringement shall be confiscated or, upon request of the injured party, a judgment shall be rendered to the effect that such goods shall be delivered to the injured party.

(2) Where goods are delivered to the injured party under paragraph (1), the injured party may claim compensation of damages in excess of the value of such goods.

Administrative Fine

86.—(1) Any person who has committed an act that falls under any of the following subparagraphs shall be liable to an administrative fine not exceeding 500,000 Won:

(i) where a person who has taken an oath under Articles 271(2) and 339 of the Code of Civil Procedure has made a false statement before the Industrial Property Tribunal;

(ii) where a person was ordered by the Industrial Property Tribunal to submit or present documents or other materials for taking or 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 of the Patent Law as applied *mutatis mutandis* under Article 42 of this Law, on matters relating to the working of a registered utility model, without justifiable reasons; or

(iv) where a person was summoned by the Industrial Property Tribunal as a witness, an expert witness or an 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 make 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, upon receipt of a protest under paragraph (3), shall notify, without delay, a court of competent jurisdiction which shall adjudicate the administrative fine case according to the provisions of the Law on Non-Litigation Non-Contentious Procedures.

(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 make collection thereof in accordance with rules on the collection of national taxes in arrears through the head of a competent tax office.

Addendum

Date of Entry into Force

1. The greater part of this amended Law shall enter into force on July 1, 2001. However, the amended provisions of Articles 10, 19(1) of this Law, the portions of Article 28*bis* of this Law that pertain to Articles 141 and 142 of the Patent Law, Articles 31(2), 31(3) of this Law, the proviso of Article 217(1) of the Patent Law as applied *mutatis mutandis* under Article 77 of this Law, and Article 83 of this Law shall enter into force on or after the day of promulgation.

Transitional Provision to Requirements for Utility Model

2. The amended provisions of Articles 5(1)(ii) and 6(1)(i)(c) of this Law shall apply to utility model applications initially filed after this amended Law comes into force.

General Transitional Measures

3. Examinations of the basic requirements for utility models, utility model registrations and rights, oppositions to registrations, trials, retrials and litigation with respect to utility model applications filed under the previous provisions and before the enforcement of this amended Law shall be governed by the previous provisions. However, if any of the following subparagraphs apply, this provision shall not apply.

(i) where a technical evaluation of a utility model is conducted, Article 77(3) of the Patent Law as applied *mutatis mutandis* under the amended provision of Article 27(4) of this Law shall apply. In such a case, only Article 136(9) of the Patent Law as applied *mutatis mutandis* under the Article 77(3) of the Patent Law shall apply;

(ii) where a request for a technical evaluation is rejected, Article 141 of the Patent Law as applied *mutatis mutandis* under the amended provision of Article 28*bis* of this Law shall apply;

(iii) where a utility model right is deemed to exist retroactively by virtue of late payment of the registration fee, the amended provision of Article 29*ter* of this Law shall apply;

(iv) where an opposition to a utility model registration is requested, Article 77(3) of the Patent Law as applied *mutatis mutandis* under Article 48 of this Law shall apply. In such cases, only Article 136(9) of the Patent Law as applied *mutatis mutandis* under the Article 77(3) of the Patent Law shall apply;



(v) where a trial for invalidation of a utility model registration is requested, the amended provisions of Article 49*bis*(1) to 49*bis*(3), Articles 51(2) to 51(4), 51(6) to 51(10), 55(1), 55(2) and 55(5) of this Law as applied *mutatis mutandis* under the amended provisions of Articles 49*bis*(4) shall apply, respectively.
