

PATENT ACT

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CHAPTER I GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Act is, through protecting and encouraging inventions and promoting the utilization of inventions, to accelerate the development of technology, and thereby to contribute to the development of industry.

Article 2

Definitions

The definitions of terms used in this Act are as follows:

- (i) "invention" means the highly advanced creation of a technical idea using the law of nature;
- (ii) "patented invention" means an invention for which a patent has been granted; and
- (iii) "working" means any of the following acts:
 - (a) in the case of an invention of a product, acts of manufacturing, using, assigning, leasing, importing or offering for assignment or lease (including displaying for assignment or lease. The same shall apply hereinafter) of an invented product;
 - (b) in the case of an invention of a process, acts of using thereof; and
 - (c) in the case of an invention of a process for manufacturing a product, in addition to the acts mentioned in subparagraph (b), acts of using, assigning, leasing, importing or offering for assignment or lease of the product manufactured by the process for manufacturing a product.

Article 3

Capacity of Minors etc.

- (1) Minors, quasi-incompetents and incompetents may not undertake a procedure for filing an application, a request, or any other procedure (referred to as "a patent-related procedure", hereinafter) unless represented by a legal representative. However, this provision shall not apply where a minor or quasi-incompetent can perform a legal act independently.

(2) The legal representative referred to in paragraph (1) may undertake procedures related to a trial or retrial procedure initiated by another party without the consent of the family council.

(3) deleted

Article 4

Associations etc. which are Not Juridical Persons

An association or a foundation which is not a juridical person but for which a representative or an administrator has been designated may file a request for examination of an application, a trial or a retrial and may become a defendant in a trial or a retrial in the name of the association or foundation.

Article 5

Patent Administrator for Overseas Residents

(1) A person who has neither a residential nor business address in the Republic of Korea (referred to as "a overseas resident", hereinafter) may not, except when the overseas resident (or a representative in the case of a juridical person) is sojourning in the Republic of Korea, undertake any patent-related procedure or institute action against measures taken by an administrative agency in accordance with this Act or any decree under this Act, unless the person is represented by a representative with a residential or business address in the Republic of Korea who is handling matters related to the person's patent (referred to as "a patent administrator", hereinafter)

(2) A patent administrator shall, within the scope of authority of representation conferred on the patent administrator, represent the principal in all procedures related to a patent and in any litigation against measures taken by an administrative agency in accordance with this Act or any decree under this Act.

(3) Deleted.

(4) Deleted.

Article 6

Scope of Authority of Representation

Unless expressly empowered, a representative delegated to undertake a patent-related procedure before the Korean Intellectual Property Office (referred to as "KIPO ", hereinafter) by a person whose residential or business address is in the Republic of Korea may not convert, abandon or withdraw a patent application, withdraw an application to register an extension of the term of a patent right, abandon a patent right, withdraw a petition, withdraw a request, make or withdraw a priority claim under Article 55(1), request a trial

under Article 132ter or appoint a subagent.

Article 7

Proof of Authority of Representation

The authority of representation of a representative (including a patent administrator. the same shall apply hereinafter) for the person who is undertaking a patent-related procedure shall be confirmed in writing.

Article 7bis

Ratification Regarding Defect in Legal Capacity, etc.

Where the correct party or legal representative ratifies any procedure undertaken by a person with no legal capacity or authority of legal representation or by a person to whom the authority required to undertake the patent-related procedure has been delegated defectively, the ratified procedure is deemed to have been undertaken at the time the procedure was originally initiated.

Article 8

Non-extinction of Authority of Representation

The authority of representation of a representative representing a person undertaking a patent-related procedure is not extinguished upon the death or loss of legal capacity of the principal, the extinguishment of a juridical persons as the principal due to a merger, the termination of the trust duty of a trustee as the principal, the death or loss of legal capacity of the legal representative or the extinguishment or modification of authority of representation of the legal representative.

Article 9

Independence of Representation

Where two or more representatives of a person undertaking a patent-related procedure have been designated, each of them may independently represent the principal before the KIPO or the Intellectual Property Tribunal ("IPT" hereinafter).

Article 10

Replacement of Representatives etc.

- (1) Where the Commissioner of the KIPO or the presiding administrative patent judge considers that a person undertaking a patent-related procedure is not qualified to conduct the procedure or make oral statements in oral proceedings etc., the Commissioner or presiding administrative patent judge may order *ex officio* the appointment of a representative to conduct the procedure.
- (2) Where the Commissioner of the KIPO or the presiding administrative patent judge considers that a representative representing a person undertaking a patent-related procedure is not qualified to conduct the procedure or make oral statements in oral proceedings etc., the Commissioner or the presiding administrative patent judge may order *ex officio* the replacement of the representative.
- (3) The Commissioner of the KIPO or the presiding administrative patent judge may, in the case referred to in paragraphs (1) or (2) of this Article, order the appointment of a patent attorney to conduct the procedure.
- (4) The Commissioner of the KIPO or the presiding administrative patent judge may invalidate any procedure taken before the KIPO or the IPT by a person undertaking a patent-related procedure referred to in paragraph (1) of this Article or by a representative referred to in paragraph (2) of this Article before the appointment or the replacement of a representative referred to in paragraphs (1) or (2), respectively, after issuing the order under paragraphs (1) or (2).

Article 11

Representation of Two or More Persons

- (1) Where two or more persons jointly undertake a patent-related procedure, any of them may represent the other or others except for actions falling under any of the following subparagraphs, unless they have appointed a representative and have notified the KIPO or the IPT of the appointment of the representative:
 - (i) convert, abandonment or withdrawal of a patent application or withdrawal of an application to register an extension of the term of a patent right;
 - (ii) withdrawal of a petition; claim or withdrawal of a priority claim under Article 55(1);
 - (iii) withdrawal of a request; and
 - (iv) a request for a trial under Article 132ter.
- (2) Where a notification has been given under the proviso of paragraph (1), the appointment of the representative shall be confirmed in writing.

Article 12

***Mutatis Mutandis* Application of the Civil Procedure Act**

With the exception of the provisions in this Act expressly related to representatives, Part I,

Section 2, Subsection 4 of the Civil Procedure Act applies *mutatis mutandis* to representatives under this Act.

Article 13

Venue of Overseas residents

If an overseas resident appoints a patent administrator to administer a patent right or other right related to a patent, the residential or business address of the patent administrator is regarded as the seat of the property under Article 11 of the Civil Procedure Act. Where a patent administrator has not been appointed, the location of the KIPO is regarded as the seat of the property under Article 11 of the Civil Procedure Act.

Article 14

Calculation of Time Periods

The calculation of time periods under this Act or in any decrees under this Act shall be made in accordance with the following provisions:

- (i) the first day of the period is not counted unless the period starts at 00:00 hours;
- (ii) when the period is expressed in months or years, it is counted according to the calendar;
- (iii) Where the period is not calculated from the beginning of a month or a year, the period shall expire on the day before the day corresponding to the first day of the calculation in the last month or year; however, if no corresponding date occurs in the last month, the period expires on the last day of that month; and
- (iv) when the last day of a period for undertaking a patent-related procedure falls on an official holiday (including Saturday and Labor Day, as designated by the Labor Day Designation Act), the period expires on the first working day after the holiday.

Article 15

Extension of Time Periods etc.

- (1) The Commissioner of the KIPO or the President of the IPT may, upon request or *ex officio*, extend the period for requesting for a trial under Article 132ter for once and for up to 30 days. However, the number and period of extension may be further extended for a person residing in an area that is difficult to access.
- (2) The Commissioner of the KIPO, the President of the IPT, a presiding administrative patent judge or an examiner who has designated a period for a patent-related

procedure to be undertaken under this Act may shorten or extend the period upon a request or extend the period *ex officio*. In such cases, the Commissioner of the KIPO etc. shall decide whether to shorten or extend the period in a way that does not unlawfully violate the interests of the interested parties involved in the relevant procedure.

- (3) A presiding administrative patent judge or an examiner who has designated a date for undertaking a patent-related procedure under this Act may change the date upon a request or *ex officio*.

Article 16

Invalidation of Procedure

- (1) Where a person who has been ordered to make an amendment under Article 46 fails to do so within the designated period, the Commissioner of the KIPO or the President of the IPT may invalidate the patent-related procedure. However, where a person who has been ordered to make an amendment for not paying the fees for requesting an examination under Article 82(2) fails to pay the fees for requesting an examination, the Commissioner of the KIPO or the President of the IPT may invalidate the amendment to the description attached to a written patent application.
- (2) Where a patent-related procedure is invalidated under paragraph (1), if the delay is considered to have been caused by reasons not attributable to the person who has been ordered to make an amendment, the Commissioner of the KIPO or the President of the IPT may cancel the measure of invalidation at the request of the person who has been ordered to make the amendment, provided the request is made within fourteen days of the date on which the reasons for the delay cease to exist and not more than a year after the designated period expired.
- (3) Where the measure of invalidation is taken under the main sentence or proviso of paragraph (1), and where the measure of invalidation is cancelled under the main sentence of paragraph (2), the Commissioner of the KIPO or the President of the IPT shall issue a notification of measures to the person who has been ordered to make an amendment.

Article 17

Subsequent Completion of Procedure

Where a person who has undertaken a patent-related procedure fails to observe either the period for requesting a trial under Article 132ter or the period for requesting a retrial under Article 180(1) for non-attributable reasons, the person may complete the procedure within the fourteen-day period after the date on which the reasons cease to exist, if not more than one year has elapsed since the designated period expired.

Article 18

Succession of Procedural Effects

The effects of the procedures relating to a patent right or a patent-related right to a patent shall extend to a successor of the patent right or the patent-related right.

Article 19

Continuation of a Procedure

Where a patent right or other patent-related right is transferred while a patent-related procedure is pending in the KIPO or the IPT, the Commissioner of the KIPO or the presiding administrative patent judge may require the successor of the patent right or the patent-related right to continue the patent-related procedure.

Article 20

Interruption of a Procedure

A patent-related procedure pending in the KIPO or the IPT that falls under any of the following subparagraphs is interrupted. However, this shall not apply when a representative is delegated to conduct the procedure:

- (i) when the party involved has died;
- (ii) when the juridical person involved has ceased to exist due to a merger;
- (iii) when the party involved has lost the capacity to conduct the procedure;
- (iv) when the legal representative of the party involved has died or lost the authority of representation;
- (v) when the duty of a trustee given by the trust of the party involved has terminated;
- (vi) where the representative under the proviso of Article 11(1) has died or lost the legal qualification; or
- (vii) where a person who had been qualified as a party in his name on behalf of another as a bankruptcy trustee, etc. has lost his qualification or died.

Article 21

Resumption of an Interrupted Procedure

Where a procedure pending in the KIPO or the IPT is interrupted in the manner referred to in Article 20, a person who falls under any of the following subparagraphs shall resume the procedure:

- (i) under Article 20(i), a dead person's successor, administrator of inheritance or other person legally authorized to resume the procedure; however, a successor may not resume the procedure until the right to succession is no longer subject to renunciation;
- (ii) under Article 20(ii), the juridical person established by or existing after the merger;
- (iii) under Article 20(iii) and (iv), the party whose capacity to conduct the necessary procedure has been restored or any person who becomes the legal representative of the party;
- (iv) under Article 20(v), a new trustee;
- (v) under Article 20(vi), a new representative or each principal involved; or
- (vi) under Article 20(vii), a person with the same qualifications.

Article 22

Request for a Resumption

- (1) An opposing party may request a resumption of an interrupted procedure under Article 20.
- (2) Where a request for the resumption of an interrupted procedure under Article 20 is made, the Commissioner of the KIPO or the presiding administrative patent judge shall notify the opposing party accordingly.
- (3) If no grounds are considered to exist for the resumption of an interrupted procedure under Article 20, the Commissioner of the KIPO or the administrative patent judge shall reject the request by a ruling after examining the request *ex officio*.
- (4) The Commissioner of the KIPO or the administrative patent judge shall decide, upon a request for resumption, whether to permit the resumption of a procedure interrupted after a certified copy of the ruling or trial decision has been sent.
- (5) If a person referred to in Article 21 does not resume an interrupted procedure, the Commissioner of the KIPO or the administrative patent judge shall *ex officio* order the resumption of the procedure within a designated period.
- (6) If no request for resumption is made within the period designated in paragraph (5), the resumption is deemed to have been made on the first day after the designated period expires.
- (7) Having deemed that resumption has been made in accordance with paragraph (6), the Commissioner of the KIPO or the presiding administrative patent judge shall notify the parties involved accordingly.

Article 23

Suspension of a Procedure

- (1) If the Commissioner of the KIPO or the administrative patent judge is unable to carry out duties due to a natural disaster or other unavoidable reasons, any procedure pending in the KIPO or the IPT is suspended until the impediments cease to exist.
- (2) If a party involved is unable to resume a procedure pending in the KIPO or the IPT on account of impediments of indefinite duration, the Commissioner of the KIPO or the administrative patent judge may order a suspension by a ruling.
- (3) The Commissioner of the KIPO or the administrative patent judge may cancel the ruling issued under paragraph (2).
- (4) If a procedure is suspended under paragraphs (1) or (2), or a ruling is canceled under paragraph (3), the Commissioner of the KIPO or the presiding administrative patent judge shall notify the parties involved accordingly.

Article 24

Effects of an Interruption or Suspension

The interruption or suspension of a patent-related procedure pending in the KIPO or the IPT suspends the running of a term and the entire term starts to run again from the date of the notification of the resumption of the procedure or pursuit of the procedure.

Article 25

Capacity of Foreigners

Foreigners among overseas residents are not entitled to enjoy patent rights or other patent-related rights, except under any of the following circumstances:

- (i) where their country allows nationals of the Republic of Korea to enjoy patent rights or other patent-related rights under the same conditions as its own nationals;
- (ii) where their country allows nationals of the Republic of Korea to enjoy patent rights or other patent-related rights under the same conditions as its own nationals when the Republic of Korea allows their country's nationals to enjoy patent rights or other patent-related rights; or
- (iii) where they may enjoy patent rights or other patent-related rights according to a treaty or the equivalent of a treaty (referred to as "a treaty", hereinafter).

Article 26

Effects of a Treaty

Where a treaty contains a patent-related provision that differs from this Act, the treaty prevails.

Article 27

Deleted

Article 28

Effective Date of Submitted Documents

- (1) Written applications, written requests or other documents (which in this Article includes articles. The same applies in this article) submitted to the KIPO or the IPT under this Act, or any decree under this Act, are effective from the date on which they arrived to the KIPO or the IPT.
- (2) Where written applications, written requests or other documents are submitted by mail to the KIPO or the IPT, they are deemed to have arrived to the KIPO or the IPT on the date stamped by the mail service, if the date stamp is clear. Where the date stamp is unclear, they are deemed to have arrived on the date on which the mail was submitted to a post office, if the date is verified by a receipt. However, this provision shall not apply if documents for requesting registration of a patent right and other patent-related rights and documents relating to an international application under Article 2(vii) of the Patent Cooperation Treaty (referred to as "an international application", hereinafter) are submitted by mail.
- (3) Deleted.
- (4) Notwithstanding paragraphs (1) and (2), details concerning the delay of mail, loss of mail or the submission of documents due to the interruption of the mail service are prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 28bis

Entry of Identification Number

- (1) A person who undertakes a patent-related procedure prescribed by Ordinance of the Ministry of Knowledge Economy (excluding any person to whom an identification number has already been granted under paragraphs (2) or (3)) shall apply to the KIPO or the IPT for an identification number.
- (2) Where a person applies for the identification number under paragraph (1), the Commissioner of the KIPO or the President of the IPT shall grant an identification number and notify the person accordingly.
- (3) Where a person who undertakes a patent-related procedure under paragraph (1) fails to apply for an identification number, the Commissioner of the KIPO or the President of the

IPT shall *ex officio* grant an identification number and notify the person accordingly.

- (4) Where a person to whom an identification number has been granted under paragraphs (2) or (3) undertakes a patent-related procedure, the person shall enter the identification number in any document prescribed by Ordinance of the Ministry of Knowledge Economy; in this case, notwithstanding this Act or any decree under this Act, the person may not enter a residential address (or a business address if a juridical person) in such a document.
- (5) Paragraphs (1) to (4) apply *mutatis mutandis* to a representative of a person who undertakes a patent-related procedure.
- (6) An application for the grant of an identification number, the grant and notification of the grant of an identification number or other necessary matters for an identification number are prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 28ter

Undertaking Patent-related Procedures by Electronic Documents

- (1) A person who undertakes a patent-related procedure may, in accordance with the methods prescribed by Ordinance of the Ministry of Knowledge Economy, convert a written patent application or other documents presented to the Commissioner of the KIPO or the President of the IPT under this Act into an electronic document, and may present it by means of any information communication network or through electronic recording medium such as a floppy disk or laser disk etc.
- (2) An electronic document presented under paragraph (1) has the same effect as other documents presented under this Act.
- (3) The content of an electronic document presented through an information communication network under paragraph (1) is, if the presenter confirms a receipt number through the information communication network, deemed to be the same as the content of the receipted file saved on a computer system operated by the KIPO or the IPT.
- (4) The kinds of documents capable of being presented by electronic documents under paragraph (1) and the methods of such presentation or other necessary matters for presentation by electronic documents are prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 28quater

Report on Use of Electronic Documents and Electronic Signatures

- (1) A person who intends to undertake a patent-related procedure by means of electronic documents shall report in advance the intention of use of electronic documents to the Commissioner of the KIPO or the President of the IPT, and shall execute an electronic signature for identification.

- (2) An electronic document presented under Article 28ter is deemed to have been presented by the person who executes an electronic signature under paragraph (1).
- (3) Matters necessary for reporting procedure on the intention of use of electronic documents and the methods of executing the electronic signature, etc. prescribed under paragraph (1) are prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 28quinquies

Conduct of Notification etc. through an Information Communication Network

- (1) When giving notification and delivery (referred to as "a notification", hereinafter) any pertinent documents to a person who reports the intention of use of electronic documents under Article 28quater(1), the Commissioner of the KIPO, the President of the IPT, a presiding administrative patent judge, a administrative patent judge, or an examiner may do so through a information communication network.
- (2) Notification of any pertinent documents through an information communication network under paragraph (1) has the same effect as notification given in writing.
- (3) Notification of any pertinent documents under paragraph (1) is deemed to be the same as the contents saved in a file of a computer system operated by the KIPO or the IPT for the delivery of documents at the time the notification of any pertinent documents is saved in a file of a computer system operated by a person who receives the notification.
- (4) Matters necessary for the classification and methods of notification through an information communication network under paragraph (1) are prescribed by Ordinance of the Ministry of Knowledge Economy.

CHAPTER II REQUIREMENTS FOR PATENT REGISTRATION AND PATENT APPLICATIONS

Article 29

Requirements for Patent Registration

- (1) Inventions that have industrial applicability are patentable unless they fall under either of the following subparagraphs:
 - (i) inventions publicly known or worked in the Republic of Korea or a foreign country before the filing of the patent application; or
 - (ii) inventions described in a publication distributed in the Republic of Korea or a foreign country, or inventions publicly available through telecommunication lines as prescribed by Presidential Decree, before the filing of the patent application.
- (2) Notwithstanding paragraph (1), where a person with ordinary skill in the art to which the invention pertains would have been able to easily make the invention based on the inventions prescribed in each subparagraph of paragraph (1) before the filing of the patent application, the patent shall not be granted for such an invention.
- (3) Notwithstanding paragraph (1), where a patent application is filed for an invention that is identical to an invention or device described in the description or drawing(s) originally attached to the written application of another application for a patent or a utility model registration that has been filed before the filing date of the patent application and laid open or published in the patent gazette after the filing of the patent application, the patent shall not be granted for such an invention. However, this shall not apply where the inventor of the concerned patent application and the inventor of the another application for a patent or utility model registration are the same person, or the applicant of the concerned patent application and the applicant of the another application for a patent or utility model registration are the same person at the time of filing of the concerned patent application.
- (4) In applying paragraph (3), where the another application for a patent or utility model registration falls under one of the following subparagraphs, "laid open" of paragraph (3) reads "laid open or published for an international publication under Article 21 of the Patent Cooperation Treaty", and "an invention or device described in the description or drawing(s) originally attached to the written application" reads, in case the international application was filed in Korean, "an invention or device described in the description, claim(s) or drawing(s) of the international application as of the international filing date" and, in case the international application was filed in a foreign language, "an invention or device described in the description, claim(s) or drawing(s) of both the international application as of the international filing date and its translation":
 - (i) the another application for a patent is an international application that is deemed to be a patent application according to Article 199(1) (including an international application that is deemed to be a patent application according to Article 214(4));

and

- (ii) the another application for a utility model registration is an international application that is deemed to be a utility model registration application according to Article 34(1) of the Utility Model Act (including an international application that is deemed to be a utility model registration application according to Article 40(4) of the Utility Model Act).

Article 30

Inventions Not Deemed to be Publicly Known etc.

- (1) Where a person who has a right to obtain a patent files a patent application for an invention within six months of date on which the invention falls under any of the following subparagraphs, the invention is deemed not to fall under any of the subparagraphs of Article 29(1) when Article 29(1) or (2) applies to the invention:
 - (i) when a person with the right to obtain a patent causes the invention to fall under either subparagraph of Article 29(1); However, this provision shall not apply where a patent application is laid open or published in the patent gazette in the Republic of Korea or a foreign country under a treaty or law.
 - (ii) when, against the intention of a person with the right to obtain a patent, the invention falls under either subparagraph of Article 29(1).
 - (iii) deleted
- (2) A person who intends to take advantage of paragraph (1)(i) shall state purport of such intention in the written patent application when filing a patent application; The person shall also submit a document proving the relevant facts to the Commissioner of the KIPO, within thirty days from the filing date of the patent application.

Article 31

Deleted

Article 32

Unpatentable Inventions

Notwithstanding Article 29(1) to (2), any invention that is liable to contravene public order or morality or to injure public health shall not be patented.

Article 33

Persons Entitled to Obtain a Patent

- (1) A person who makes an invention or the person's successor is entitled to have a right to obtain a patent under this Act. However, employees of the KIPO and the IPT may not obtain patents during their employment at the office or tribunal except by inheritance or bequest.
- (2) Where two or more persons jointly make an invention, they are entitled to jointly own the right to obtain a patent.

Article 34

Patent Application Filed by an Unentitled Person and Protection of the Lawful Holder of a Right

Where a patent cannot be granted because an application was filed by a person who is not the inventor or a successor to the right to obtain a patent (referred to as "an unentitled person", hereinafter) under the main sentence of Article 33(1) as prescribed in Article 62(ii), an application filed by the lawful holder of the right after the patent application of the unentitled person is deemed to have been filed on the filing date of the patent application filed by the unentitled person. This provision shall not apply, however, if the application is filed by the lawful holder of the right later than thirty days after the date on which the application filed by the unentitled person was rejected.

Article 35

Patent Granted to an Unentitled Person and Protection of the Lawful Holder of a Right

Where a trial decision to invalidate a patent becomes final and binding for lack of entitlement of the right to obtain a patent under the main sentence of Article 33(1) as prescribed in Article 133(1)(ii), an application filed by the lawful holder of the right after the patent application of the unentitled person is deemed to have been filed on the filing date of the invalidated patent. However, this provision shall not apply if the application is filed later than two years after the date of publication of registration of the patent or later than thirty days after the trial decision becomes final and binding.

Article 36

First-to-File Rule

- (1) Where two or more patent applications claiming identical inventions are filed on different dates, only the applicant of the patent application with the earlier filing date may obtain a patent for the invention.
- (2) Where two or more patent applications claiming identical inventions are filed on the same date, only the applicant agreed upon by all the applicants after consultation may

obtain a patent for the invention. If no agreement is reached or no consultation is possible, none of the applicants may obtain a patent for the invention.

- (3) Where an invention of a patent application is the same as a device of a utility model registration application and the applications are filed on different dates, paragraph (1) applies *mutatis mutandis*. In addition, where the applications are filed on the same date, paragraph (2) applies *mutatis mutandis*.
- (4) Where a patent application or a utility model registration application is invalidated, withdrawn, or abandoned, or where a decision of rejection or a trial decision to reject the application has become final and binding, the patent application or utility model registration application is deemed to have never been filed in the application of paragraphs (1) to (3). However, this provision shall not apply where a decision of rejection or a trial decision to reject the patent application or the utility model registration application has become final and binding in accordance with the latter sentence of paragraph (2) (including cases in which the provision applies *mutatis mutandis* under paragraph (3)).
- (5) When paragraphs (1) to (3) apply, a patent application or utility model registration application filed by a person who is not the inventor, creator or successor in title to the right to obtain a patent or utility model registration is deemed never to have been filed.
- (6) When paragraph (2) applies, the Commissioner of the KIPO shall order the applicants to report on the results of the consultation within a designated period. If the report is not submitted to the Commissioner of the KIPO within the designated period, the applicants are deemed not to have reached an agreement prescribed in paragraph (2).

Article 37

Transfer of the Right to Obtain a Patent etc.

- (1) The right to obtain a patent may be transferred.
- (2) The right to obtain a patent may not be the subject of a pledge.
- (3) Where a right to obtain a patent is jointly owned, the owners may not assign their individual share without the consent of the other owners.

Article 38

Succession to the Right to Obtain a Patent

- (1) Succession to the right to obtain a patent before filing the patent application is not effective against third parties unless the successor in title files the patent application.
- (2) Where two or more applications for a patent are filed on the same date on the basis of a right to obtain a patent for the same invention derived by succession from the same person, the succession to the right to obtain a patent by any person other than the person agreed upon by all the patent applicants is not effective.

- (3) Paragraph (2) also applies where a patent application and a utility model registration application are filed on the same date on the basis of the right to obtain a patent and utility model registration for the same invention and device derived by succession from the same person.
- (4) Succession to the right to obtain a patent after filing a patent application does not take effect unless a notice of change of applicant is filed, except for inheritance or other general succession.
- (5) Upon inheritance or other general succession of the right to obtain a patent, the successor in title shall immediately notify the Commissioner of the KIPO accordingly.
- (6) Where two or more notifications of change of applicant are made on the same date, on the basis of a right to obtain a patent for the same invention that has been derived by succession from the same person, a notification made by any person other than the person agreed upon after consultations among all the persons who made notifications is not effective.
- (7) Article 36(6) applies *mutatis mutandis* to the cases under paragraphs (2), (3) or (6).

Article 39

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Article 40

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Article 41

Inventions Necessary for National Defense etc.

- (1) If an invention is necessary for national defense, the Government may order an inventor, an applicant or a representative not to file a patent application for the invention in the foreign patent offices concerned or to keep the invention confidential. However, if such persons obtain permission from the Government, they may file a patent application in foreign countries.
- (2) If an invention is considered necessary for national defense, the Government may refuse to grant a patent and, for reasons of national defense such as in time of war, uprising or other similar emergency, may expropriate the right to obtain a patent.
- (3) The Government shall pay reasonable compensation for losses arising from its prohibition of filing a patent application in a foreign country or from the maintenance of confidence under paragraph (1).
- (4) The Government shall pay reasonable compensation if a patent is not granted or the

right to obtain a patent is expropriated under paragraph (2).

- (5) When a person violates an order prohibiting the filing of an application for an invention in a foreign country or an order to maintain confidence under paragraph (1), the person's right to obtain a patent for that invention is deemed to be abandoned.
- (6) When a person violates an order to maintain confidence under paragraph (1), the person's right to request payment of compensation for the loss arising from maintaining confidence is deemed to be abandoned.
- (7) Matters related to such procedures as prohibiting the filing of a patent application in foreign countries and maintaining confidence under paragraph (1) or for expropriation or payment of compensation under paragraphs (2) to (4) are prescribed by Presidential Decree.

Article 42

Patent Application

- (1) A person to obtain a patent shall file a written patent application with the Commissioner of the KIPO, stating the following:
 - (i) the name and residential address of the applicant (and, if the applicant is a juridical person, the name and business address);
 - (ii) the name and residential or business address of the representative, if any (and, if the representative is a patent juridical person, the name and business address of the patent juridical person and the name of the designated patent attorney);
 - (iii) deleted;
 - (iv) the title of the invention;
 - (v) the name and residential address of the inventor;
 - (vi) deleted.
- (2) A written patent application under paragraph (1) shall be accompanied by an abstract, drawing(s) (if necessary) and a description stating the following:
 - (i) the title of the invention;
 - (ii) a brief explanation of the drawing(s);
 - (iii) a detailed description of the invention; and
 - (iv) the scope of claims.
- (3) The detailed description of the invention referred to in paragraph (2)(iii) shall describe the invention clearly and in detail as prescribed by Ordinance of the Ministry of Knowledge Economy so that a person with ordinary skill in the art to which the invention

pertains may easily work the invention.

- (4) The scope of claims under paragraph (2)(iv) shall describe the matter for which protection is sought in one or more claims (referred to as "claim(s)", hereinafter) and the claim(s) shall comply with each of the following subparagraphs:
 - (i) the claim(s) shall be supported by the detailed description of the invention;
 - (ii) the claim(s) shall define the invention clearly and concisely; and
 - (iii) deleted
- (5) Notwithstanding paragraph (2), a patent applicant may, at the time the application is filed, attach the description, from which the scope of claims under paragraph (2)(iv) are omitted, to the written patent application. In such cases, the applicant shall amend the description to include the scope of claims by either of the following deadlines:
 - (i) the date marking the elapse of one year and six months from the date that falls under any of the subparagraphs of Article 64(1); or
 - (ii) the date marking the elapse of three months from the date on which notification is given under Article 60(3) for a request to examine a patent application before the deadline stipulated in subparagraph (i) of this paragraph (however, where the notification is given more than one year and three months after the date that falls under any subparagraph of Article 64(1), the date marking the elapse of one year and six months from that date).
- (6) When stating the scope of claims under paragraph (2)(iv), the applicant shall state the structure, method, functions, materials, or a combination thereof etc. which are deemed to be necessary for specifying the invention, for the purpose of clearly specifying the matters for which protection is sought.
- (7) Where a patent applicant has filed a patent application but fails to subsequently amend the description to include the scope of claims by the relevant deadline stipulated in subparagraph (5)(i) or (ii), the application is deemed to have been withdrawn on the date immediately following the relevant deadline.
- (8) Necessary matters concerning the manner of describing the scope of claims under paragraph 2(iv) are prescribed by Presidential Decree.
- (9) Necessary matters concerning the manner of describing the abstract under paragraph (2) are prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 43

Abstract

The abstract under Article 42(2) may not be interpreted to define the scope of a patented invention but it serves as technical information.

Article 44

Joint Applications

Where the right to obtain a patent is jointly owned under Article 33(2), the owners shall jointly file the patent application.

Article 45

Scope of a Single Patent Application

- (1) A patent application shall contain a single invention only. However, a group of inventions that form a single general inventive concept may be the subject of a single patent application.
- (2) The requirements for a single patent application under paragraph (1) are prescribed by Presidential Decree.

Article 46

Amendment of Procedure

The Commissioner of the KIPO or the President of the IPT shall order an amendment if the patent-related procedure falls under any of the following subparagraphs:

- (i) where the procedure does not comply with Articles 3(1) or 6;
- (ii) where the procedure does not comply with the formalities prescribed in this Act or Presidential Decree; or
- (iii) where fees under Article 82 have not been paid.

Article 47

Amendment of Patent Application

- (1) An applicant may amend the description or drawing(s) attached to a written patent application within the period designated in any of the subparagraphs of Article 42(5) or before the examiner issues a certified copy of a decision to grant a patent under Article 66. However, after an applicant received a notification of the grounds for rejection under Article 63(1) (hereinafter "a notice of the grounds for rejection"), the applicant may only amend the description or drawing(s) within the periods (in the case of subparagraph (iii), at the time of a request for reexamination) designated in the following subparagraphs:

- (i) where the applicant initially receives the notice of the grounds for rejection (except notices of the grounds for rejection occurring from an amendment according to a notice of the grounds for rejection) or receives a notice of grounds for rejection other than that of paragraph (ii), the period designated for submitting arguments in response to the notice of the grounds for rejection:
 - (ii) where the applicant receives a notice of the grounds for rejection occurring from an amendment according to a notice of the grounds for rejection, the period designated for submitting arguments in response to the notice of the grounds for rejection; or
 - (iii) when the applicant requests a reexamination under Article 67bis.
- (2) An amendment to the description or drawing(s) under paragraph (1) shall be made within the scope of the matters disclosed in the description or drawing(s) originally attached to the written patent application.
- (3) An amendment to the scope of claims under paragraphs (1)(ii) and (iii) can only be made in cases falling under one of the following subparagraphs:
- (i) where the scope of claims is narrowed by specifying or deleting the claim, or adding an element to the claim;
 - (ii) where a clerical error is corrected; or
 - (iii) where an ambiguous description is clarified.
 - (iv) where the amendment is beyond the scope of paragraph (2), to amend the scope of claims so as to revert to the scope of claims before the amendment or to amend the scope of claims in accordance with subparagraphs (i) through (iii) while reverting.

Article 48

Deleted

Article 49

Deleted

Article 50

Deleted

Article 51

Dismissal of an Amendment

- (1) Where an amendment under Article 47(1)(ii) or (iii) violates paragraphs (2) or (3) of Article 47 or an examiner considers that the amendment (except an amendment to delete the claim among amendments under 47(3)(i) or (iv)) has caused a new ground for rejection, the examiner must dismiss the amendment by a ruling. However, where there is a request for reexamination under Article 67bis, this paragraph shall not apply to the amendment made before the request.
- (2) A ruling of dismissal under paragraph (1) shall be in writing and state the grounds for rejection.
- (3) An appeal may not be made against the ruling of dismissal under paragraph (1), except, in a trial against a decision to reject a patent application under Article 132ter, when the ruling of dismissal is one of the issues of the trial (except, when a request for reexamination under Article 67bis is made, the ruling of dismissal made before the request).

Article 52

Divisional Application

- (1) An applicant who has filed a patent application comprising two or more inventions may divide the application into two or more applications within the scope of the matters disclosed in the description or drawing(s) originally attached to the written application of the patent application within one of the following periods:
 - (i) the amendment period prescribed under Article 47(1);
 - (ii) the period for requesting a trial under Article 132ter after the applicant received a certified copy of the decision to reject a patent application.
- (2) A divided patent application under paragraph (1) (referred to as "a divisional application", hereinafter) is deemed to have been filed when the original patent application was filed. However, when any of the following subparagraphs applies to the divisional application, the divisional application is deemed to have been filed when the divisional application was filed:
 - (i) where Article 29(3) of this Act or Article 4(3) of the Utility Model Act applies because the divisional application falls under another application for patent under Article 29(3) of this Act or a patent application under Article 4(3) of the Utility Model Act;
 - (ii) where Article 30(2) applies;
 - (iii) where Article 54(3) applies; or
 - (iv) where Article 55(2) applies.
- (3) A person who files a divisional application under paragraph (1) shall state the purport of

the divisional application and indicate the patent application that forms the basis of the division in a written application of the divisional application.

- (4) When filing a divisional application, an applicant claiming priority under Article 54 shall file the documents prescribed in paragraph (4) of Article 54 with the Commissioner of the KIPO within three months from the filing date of the divisional application, regardless of the period prescribed in paragraph (5) of Article 54.

Article 53

Converted Application

- (1) An applicant who files a utility model registration application may convert the utility model registration application to a patent application within the scope of the matters disclosed in the description or drawing(s) originally attached to the written application of the utility model registration application. However, the applicant may not convert the application if thirty days have elapsed since the date on which the person received a certified copy of the first decision to reject the utility model registration application.
- (2) Any application that is converted under paragraph (1) of this Article (referred to as "a converted application", hereinafter) is deemed to have been filed on the date on which the utility model registration application was filed unless it falls under either of the following subparagraphs:
 - (i) where Article 29(3) of this Act or Article 4(3) of the Utility Model Act applies because the converted application falls under another application for patent under Article 29(3) of this Act or a patent application under Article 4(3) of the Utility Model Act;
 - (ii) where Article 30(2) applies;
 - (iii) where Article 54(3) applies; or
 - (iv) where Article 55(2) applies.
- (3) A person who files a converted application under paragraph (1) shall state the purport of the converted application and indicate the utility model registration application that forms the basis of the conversion in a written application of the converted application.
- (4) The utility model registration application that forms the basis of a converted application is deemed to be withdrawn when the converted application is filed.
- (5) Where the period stipulated in Article 132ter of this Act is extended under Article 15(1) of this Act, which applies *mutatis mutandis* under Article 3 of the Utility Model Act, the thirty-day period stipulated in the proviso of paragraph (1) is extended by the period of the extension given under Article 15(1).
- (6) In the case of the converted application, an applicant claiming priority under Article 54 shall file the documents prescribed in paragraph (4) of Article 54 with the Commissioner of the KIPO within three months from the filing date of the converted application, regardless of the period prescribed in paragraph (5) of Article 54.

Article 54

Priority Claim under Treaty

- (1) If a national of a State party to the treaty that recognizes under the treaty the priority for a patent application filed by a national of the Republic of Korea has filed a patent application in the State party to the treaty or another State party to the treaty and makes a priority claim for a patent application filed in the Republic of Korea for the same invention, the filing date in the State party to the treaty is deemed to be the filing date in the Republic of Korea while applying Articles 29 and 36. Where a national of the Republic of Korea who has filed a patent application in the State party to the treaty that recognizes under the treaty the priority for patent applications filed by nationals of the Republic of Korea makes the priority claim for a patent application in the Republic of Korea for the same invention , this provision also applies.
- (2) A person making the priority claim under paragraph (1) shall file a patent application making the priority claim within one year from the filing date of the earliest application which forms a basis of the priority claim.
- (3) A person making the priority claim under paragraph (1) shall specify the purport of the priority claim, the name of the country in which the application was initially filed and the filing date of the application in the written patent application at the time of filing.
- (4) A person who has made the priority claim under paragraph (3) shall submit to the Commissioner of the KIPO the documents prescribed in paragraph (i) or the written statement prescribed in paragraph (ii). However, the written statement referred to in paragraph (ii) must be submitted only if the country is prescribed by Ordinance of the Ministry of Knowledge Economy:
 - (i) a written statement certified by the government of the country where the application was initially filed and setting forth the filing date of the patent application and a certified copy of the description and drawing(s) of the patent application; or
 - (ii) a written statement setting forth the application number of the patent application in the country where the application was initially filed.
- (5) Documents under paragraph (4) shall be submitted within one year and four months of the earliest date among those prescribed in the following subparagraphs:
 - (i) the date on which the application was initially filed in the State party to the treaty;
 - (ii) where the patent application contains other priority claims under Article 55(1), the filing date of the application that would be the basis for the priority claim; or
 - (iii) where a patent application contains other priority claims under paragraph (3), the filing date of the application that would be the basis for the priority claim.
- (6) Where a person who has made the priority claim under paragraph (3) fails to submit the document prescribed under paragraph (4) within the designated period under paragraph (5), the priority claim loses its effect.

- (7) A person who complies with the requirements of paragraph (2) among the persons who have made the priority claim under paragraph (1) may amend or add the priority claim(s) within one year and four months from the earliest date among those prescribed under paragraph (5).

Article 55

Priority Claim Based on a Patent Application etc.

- (1) An applicant for a patent may make the priority claim based on a invention disclosed in the description or drawing(s) originally attached to a written application of an earlier application for a patent or utility model registration (referred to as "an earlier application", hereinafter), for which the applicant has the right to obtain a patent or utility model registration. However, this shall not apply to the cases which fall under any of the following subparagraphs:
- (i) where the patent application is filed more than one year after the filing date of the earlier application;
 - (ii) where the earlier application is a divisional application under Article 52(2) (including those cases to which this Article applies *mutatis mutandis* under Article 11 of the Utility Model Act) or a converted application under Article 53 of this Act or Article 10 of the Utility Model Act;
 - (iii) where the earlier application has been abandoned, invalidated, or withdrawn when the patent application is filed;
 - (iv) where an examiner's decision to grant or reject the earlier application or a trial decision thereto has become final and binding, when the patent application is filed.
- (2) A person making the priority claim under paragraph (1) shall state the purport of the priority claim and indicate the earlier application in the written patent application when the patent application is filed.
- (3) A patent application that contains a priority claim under paragraph (1) is deemed to have been filed when the earlier application was filed when Articles 29(1) or (2), and (3) (main sentence), 30(1), 36(1) to (3), 96(1)(iii), 98, 103, 105(1) and (2), 129, and 136(4) (including those cases to which Article 136(4) applies *mutatis mutandis* under Article 133bis(4)) of this Act, Article 7(3) and (4) and 25 of the Utility Model Act and Articles 45 and 52(3) of the Design Law are applied to an invention that is identical to the invention that have been disclosed in the description or drawing(s) originally attached to a written application of the earlier application that is the basis for the priority claim.
- (4) In applying the main sentence of Article 29(3) of this Act and the main sentence of Article 4(3) of the Utility Model Act, an invention disclosed in the description or drawing(s) originally attached to a written application of a patent application containing a priority claim under paragraph (1), that is identical to an invention disclosed in the description or drawing(s) originally attached to a written application of an earlier application that is the basis for the priority claim, is deemed to have been laid open with

regard to the earlier application that is the basis for the priority claim at the time when the application is laid open or at the time of publication of registration.

- (5) Where the earlier application falls under any of the following subparagraphs, paragraphs (3) and (4) of this Article shall not apply to an invention, among inventions disclosed in a description or drawing(s) originally attached to a written application of the earlier application, disclosed in a description or drawing(s) at the time of filing of a patent application that forms the basis of priority claim with regard to the earlier application:
 - (i) the earlier application contains a priority claim under paragraph (1); or
 - (ii) the earlier application contains a priority claim under Article 4D(1) of the Paris Convention for the Protection of Industrial Property.
- (6) In applying paragraph (4), where the earlier application falls under one of the following subparagraphs, "an invention or device described in the description, claim(s) or drawing(s) of both the international application as of the international filing date and its translation" in Article 29(4) reads "an invention or device described in the description, claim(s) or drawing(s) of the international application as of the international filing date":
 - (i) the earlier application is an international application that is deemed to be a patent application in accordance with Article 199(1) (including an international application that is deemed to be patent application in accordance with Article 214(4)); or
 - (ii) the earlier application is an international application that is deemed to be a utility model registration application in accordance with Article 34(1) of the Utility Model Act (including an international application that is deemed to be a utility model registration application in accordance with Article 40(4) of the Utility Model Act).
- (7) A person who makes the priority claim and complies with the requirements under paragraph (1) may amend or add the priority claim(s) within one year and four months from the filing date of the earlier application (the earliest filing date if two or more earlier applications exist).

Article 56

Withdrawal of an Earlier Application etc.

- (1) An earlier application which is the basis of the priority claim under Article 55(1) is deemed to have been withdrawn when more than one year and three months has elapsed after the filing date of the earlier application. However, this shall not apply where the earlier application falls under any of the following subparagraphs:
 - (i) if the earlier application has been abandoned, invalidated, or withdrawn;
 - (ii) if an examiner's decision to grant or reject the earlier application or a trial decision thereto has become final and binding;
 - (iii) if priority claims based on the concerned earlier application have been withdrawn; or
 - (iv) deleted.

- (2) The applicant of a patent application containing a priority claim under Article 55(1) may not withdraw the priority claim more than one year and three months after the filing date of the earlier application.
- (3) Where a patent application containing a priority claim under Article 55(1) is withdrawn within one year and three months after the filing date of an earlier application, the priority claim is deemed to have been withdrawn simultaneously.

CHAPTER III EXAMINATION

Article 57

Examination by Examiner

- (1) The Commissioner of the KIPO shall have patent applications examined by an examiner.
- (2) Necessary matters concerning the qualifications for examiners are prescribed by Presidential Decree.

Article 58

Search for Prior Art etc.

- (1) If considered necessary for examination of a patent application (including an international search or international preliminary examination), the Commissioner of the KIPO may designate a specialized organization and request it to search for prior art, make an international patent classification, and conduct other tasks prescribed by Presidential Decree.
- (2) If considered necessary for the examination process, the Commissioner of the KIPO may request the cooperation and advice of a government agency, an organization specialized in the technology concerned or an expert with profound knowledge and experience in patent matters, and may pay them allowances or expenses for their cooperation or advice within the limits of the budget of the KIPO.
- (3) Necessary matters concerning the designation of specialized organizations, such as the standards for designation, and assigning procedures, such as those related to prior art searches and the making of international patent classifications, under paragraph (1) are prescribed by Presidential Decree.

Article 58bis

Cancellation of the Designation of a Specialized Organization

- (1) Where a specialized organization designated in accordance with Article 58(1) falls under subparagraph (1) of this paragraph, the Commissioner of the KIPO shall cancel the designation; furthermore, if such an organization falls under subparagraph (2) of this paragraph, the Commissioner shall cancel the designation or order a suspension of the organization's business within a designated period less than six months:
 - (i) where the specialized organization obtained designation through false or unfair means;

- (ii) where the specialized organization fails to comply with the designation standards referred to in Article 58(3).
- (2) When intending to cancel the designation of a specialized organization, the Commissioner of the KIPO shall hold a public hearing.
- (3) Necessary matters concerning the standards and procedures for canceling the designation of a specialized organization or suspending its business are prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 59

Request for an Examination of a Patent Application

- (1) A patent application is examined only when a request for an examination is filed.
- (2) Where a patent application has been filed, any person may request the Commissioner of the KIPO for an examination of the patent application within five years from the filing date of the application. However, a patent applicant may request an examination of a patent application only when a description with the scope of claims is attached to the written application.
- (3) For a divisional application under Article 52(2) or a converted application under Article 53(2), a person may request an examination within thirty days from the filing date of the divisional application or the converted application, even after the expiry of the period prescribed in paragraph (2).
- (4) A request for an examination may not be withdrawn.
- (5) Where a request for an examination has not been made within the periods prescribed in paragraphs (2) or (3), the patent application concerned is deemed to have been withdrawn.

Article 60

Procedure for Requesting an Examination

- (1) A person requesting an examination of an application shall submit a written request to the Commissioner of the KIPO, stating the following:
 - (i) the name and residential address of the person making the request (and, if the person is a juridical person, the name and business address);
 - (ii) deleted; and
 - (iii) the indication of the patent application for which the request for an examination is made.
- (2) Where a request for an examination has been made before the laying open of the

application, the Commissioner of the KIPO shall notify the indication of the request in the Patent Gazette when the application is laid open. Where a request for an examination has been made after the laying open of the application, the Commissioner shall immediately notify the indication of the request in the Patent Gazette.

- (3) Where a request for an examination has been made by a person other than the applicant, the Commissioner of the KIPO shall notify the patent applicant accordingly.

Article 61

Accelerated Examination

The Commissioner of the KIPO may have an examiner examine an application in preference to others if the former falls under either of the following subparagraphs:

- (i) where a person other than the applicant is considered to work the invention claimed in the patent application as a business after the laying open of the application; or
- (ii) where urgent processing of the patent application is considered necessary as prescribed by Presidential Decree.

Article 62

Decision to Reject a Patent Application

An examiner shall make a decision to reject a patent application for any of the following grounds (referred to as "the grounds for rejection", hereinafter):

- (i) where the invention is unpatentable under Articles 25, 29, 32, 36(1) to (3) or 44;
- (ii) where the application is filed by a person who does not have the right to obtain a patent under the main sentence of Article 33(1) or where the invention is unpatentable under the proviso of Article 33(1);
- (iii) where the application violates a treaty;
- (iv) where the application does not comply with the requirements of Articles 42(3), (4), (8) or 45;
- (v) where the application is amended beyond the scope of Article 47(2);
- (vi) where the application is divided beyond the scope of Article 52(1); or
- (vii) where the application is converted beyond the scope of Article 53(1).

Article 63

Notification of Grounds for Rejection

- (1) An examiner who rejects a patent application under Article 62 shall notify the patent applicant of the grounds and give the applicant an opportunity to submit an argument within a designated period. However, this provision shall not apply where a ruling of dismissal is made under Article 51(1).
- (2) When an examiner notifies a patent applicant of the grounds for rejecting a patent application with two or more claims under the main sentence of paragraph (1), the examiner shall specify the claim(s) rejected and state the grounds for rejection in detail.

Article 63bis

Provision of Information on Patent Applications

After a patent application has been filed, any person may provide the Commissioner of the KIPO with information and evidence of a ground for rejecting the patent application. However, this provision may not apply if the requirements stipulated in Articles 42(8) and 45 are not satisfied.

Article 64

Laying Open of Application

- (1) By Ordinance of the Ministry of Knowledge Economy, the Commissioner of the KIPO shall lay open a patent application in the Patent Gazette later than one year and six months after the date prescribed in any of the following subparagraphs or, upon request of the applicant, within one year and six months from the prescribed date; however, this provision shall not apply if, in accordance with the former sentence of Article 42(5), excluding each subparagraph of that article, the scope of claims was not included in the description that accompanied the patent application, or if the publication of registration was made in accordance with Article 87(3).
 - (i) where a patent application contains a priority claim under Article 54(1), the priority date;
 - (ii) where a patent application contains a priority claim under Article 55(1), the filing date of the earlier application as prescribed in Article 55(1);
 - (iii) the earliest filing date among the filing dates of two or more applications that are the basis for priority claims in a patent application under Articles 54(1) or 55(1); or
 - (iv) where a patent application does not fall under any of subparagraphs (i) to (iii), the filing date of the patent application.
- (2) Deleted.
- (3) Article 87(4) applies *mutatis mutandis* to the laying open of application under paragraph (1).

- (4) Matters to be published in the Patent Gazette for the laying open of application under paragraph (1) are prescribed by Presidential Decree.

Article 65

Effects of Laying Open of Application

- (1) After an application is laid open, a patent applicant may warn a person who has worked the filed invention as a business, in writing indicating that a patent application for the invention has been filed.
- (2) An applicant may demand a person who has worked the filed invention as a business, after being warned as provided in paragraph (1) or knowing that the invention has been laid open, to pay compensation in an amount equivalent to what the applicant would have normally received for working the invention from the date of the warning or the date on which the person knew that the patent application of the invention had been laid open to the date on which a registration of establishment of the patent right was made.
- (3) The right to demand compensation as provided in paragraph (2) may be exercised only after the registration for establishment of the patent right.
- (4) Exercising the right to demand compensation under paragraph (2) does not preclude exercising the patent right.
- (5) Articles 127, 129 and 132 of this Act, or Articles 760 and 766 of the Civil Act apply *mutatis mutandis* to the exercise of the right to demand compensation under paragraph (2). In such a case, "the date when the damaged party or his legal representative became aware of such damage and of the identity of the person causing it" in Article 766(1) of the Civil Act reads "the date of registration of establishment of the patent right concerned."
- (6) Where a patent application is abandoned, invalidated or withdrawn after the laying open of the application, or a decision to reject a patent application or a trial decision to invalidate a patent under Article 133 (excluding the cases under subparagraph (iv) of Article 133(1)) has become final and binding, the right to demand compensation under paragraph (2) is deemed never to have existed.

Article 66

Decision to Grant a Patent

Where an examiner does not find any ground to reject a patent application, the examiner shall make a decision to grant a patent.

Article 66bis

Amendment *Ex officio*

- (1) When making a decision to grant a patent, an examiner may amend *ex officio* the matters in the description, drawing(s) or abstract attached to a written patent application that is clearly erroneous ("amendment *ex officio*", hereinafter).
- (2) When the examiner intends to make an amendment *ex officio* under paragraph (1), the examiner shall notify the applicant of the matters to be amended *ex officio* along with the delivery of a certified copy of the decision to grant a patent under Article 67(2).
- (3) If the applicant cannot accept a part or whole of the matters to have been amended *ex officio*, the applicant shall submit an argument on the amendment *ex officio* to the Commissioner of the KIPO by the time for paying patent fees under Article 79(1).
- (4) If the applicant submits an argument under paragraph (3), the relevant part or whole of the matters amended *ex officio* shall be deemed not to have been amended.
- (5) When an amendment *ex officio* has been made to a matter that is not clearly erroneous, the amendment *ex officio* is deemed not to have been made.

Article 67

Formalities for a Decision of Patentability

- (1) A decision to either grant or reject a patent application (referred to as "a decision of patentability", hereinafter) shall be made in writing and shall state the grounds for the decision.
- (2) Where a decision of patentability has been made, the Commissioner of the KIPO shall deliver a certified copy of the decision to the patent applicant.

Article 67bis

Request for Reexamination

- (1) Within 30 days from the date of receiving a certified copy of the decision to reject a patent application (or where the period under Article 132ter is extended according to Article 15(1), within the extended period), the applicant may amend the description or drawing(s) attached to the written patent application of the patent application to request reexamination of the application (referred to as "reexamination", hereinafter). However, this paragraph shall not apply where there is a decision of rejection made after reexamination or where there is a request for a trial under Article 132ter.
- (2) Where there is a request for reexamination according to paragraph (1), the decision to reject the patent application made prior to the request shall be deemed to have been canceled.
- (3) A request for reexamination under paragraph (1) may not be withdrawn.

Article 68

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

Article 148(i) to (v) and (vii) applies *mutatis mutandis* to the examination of a patent application.

Article 69

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Article 70

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Article 71

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Article 72

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Article 73

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Article 74

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Article 75

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Article 76

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Article 77

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Article 78

Suspension of Examination or Litigation Procedures

- (1) The examination procedure of a patent application may, if necessary, be suspended until a trial decision becomes final and binding or litigation procedures have been completed.
- (2) The court may, if necessary, suspend the litigation procedures until the examiner's decision on a patent application becomes final and binding.
- (3) An appeal may not be made against a suspension under paragraphs (1) and (2).

Article 78bis

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CHAPTER IV PATENT FEES AND PATENT REGISTRATIONS ETC.

Article 79

Patent Fees

- (1) A person who seeks to register establishment of a patent right under Article 87(1) shall pay a patent fee for a period of three years from the date sought for registration of establishment of a patent right (referred to as "registration date of establishment" , hereinafter), and a patentee shall pay every annual patent fee from the registration date of establishment of the patent right concerned every year.
- (2) Notwithstanding paragraph (1), a patentee may pay the patent fee for multiple years in the order of or for the entire term of the patent right.
- (3) The patent fees, method of payment, period for payment and other necessary matters under paragraph (1) and (2) are prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 80

Payment of Patent Fees by Interested Party

- (1) Regardless of the intent of a person liable to pay patent fees, any interested party may pay the patent fees.
- (2) An interested party who has paid the patent fees under paragraph (1) may demand reimbursement of the expenses to the extent that the person liable to pay is currently making a profit.

Article 81

Late Payment of Patent Fees etc.

- (1) A patentee or a person seeking to register establishment of a patent right has a period of six months after the expiry of the payment period prescribed under Article 79(3) to pay the patent fees late.
- (2) Where the patentee or the person seeking to register establishment of a patent right pays patent fees late under paragraph (1), the patentee or person must pay an amount prescribed by Ordinance of the Ministry of Knowledge Economy, but not more than twice the patent fees to be paid.
- (3) Where a patentee or a person seeking to register establishment of a patent right fails to pay the patent fees within the period under paragraph (1) (or fails to pay the remaining

portion within the period of remainder payment when the period for late payment has expired but the period of remainder payment designated in Article 81bis(2) has not expired), the patent application is deemed to have been abandoned, and the patent right concerned is deemed to have been extinguished retroactively from the next day of the expiry date of the period for the patent fees paid under Article 79(1) or (2).

Article 81bis

Remainder Payment of Patent Fees

- (1) Where a patentee or a person seeking to register establishment of a patent right fails to pay any portion of the patent fees within the period of payment under Articles 79(3) or 81(1), the Commissioner of the KIPO shall order payment of the remaining portion.
- (2) A person ordered to pay the remaining portion under paragraph (1) has a period of one month after the date on which the order was received to pay the remaining portion of the patent fees.
- (3) A person who pays the remaining portion under paragraph (2) shall pay an amount prescribed by Ordinance of the Ministry of Knowledge Economy, but not more than twice the remaining portion when the remainder payment falls under either of the following subparagraphs:
 - (i) where the remaining portion of the patent fees is paid after the expiry of the payment period under Article 79(3); or
 - (ii) where the remaining portion of the patent fees is paid after the expiry of the late payment period under Article 81(1).

Article 81ter

Restoration etc. of a Patent Application and Patent Right by Late Payment or Remainder Payment of Patent Fees

- (1) Where a patentee or a person seeking to register establishment of a patent right fails to pay the patent fees within the period of late payment under Article 81(1) or fails to pay the remaining portion within the period of remainder payment under Article 81bis(2) for non-attributable reasons, the patentee or the person may pay late patent fees or pay the remaining portion within fourteen days of the date on which the reasons cease to exist, but not later than six months after the expiry date for either the period of late payment or the period of remainder payment, whichever comes later.
- (2) Notwithstanding Article 81(3), a person who has paid late patent fees or paid the remaining portion under paragraph (1) is deemed not to have abandoned the patent application, and the patent right concerned is deemed to have continuously existed
- (3) Where the patent right of a patented invention that is being worked is extinguished because of a failure to pay the patent fees within the period of late payment under

Article 81(1) or the remaining portion of fees within the period of remainder payment under Article 81bis(2), the patentee may apply to restore the extinguished right by paying three times the patent fees referred to in Article 79 within three months of the expiry of the period of late payment or the period of remainder payment. In such cases, the patent right is deemed to have continuously existed.

- (4) The effects of a patent application or a patent right under paragraph (2) or paragraph (3) do not extend to another person's working of the patented invention in the period from the date on which the period for late payment of the patent fees expires to the date of the payment or remainder payment of the patent fees (referred to as "the period of limited effect", hereinafter).
- (5) During the period of limited effect, where a person has been working as a business or making preparations to work an invention in good faith in the Republic of Korea and the invention pertains to a patent application or patent right referred to in paragraph (2) or paragraph (3), the person is entitled to have a non-exclusive license for the patent that pertains to the invention of the patent application, within the scope of the objective of the invention or the business related to the invention that the person is working or making preparations to work.
- (6) A person granted a non-exclusive license under paragraph (5) shall pay reasonable remuneration to the patentee or exclusive licensee.

Article 82

Official Fees

- (1) A person undertaking a patent-related procedure shall pay the official fees.
- (2) Where the number of claims is increased because of amendments to the description attached to the written patent application after a request for examination made by a person other than the applicant, the applicant shall pay the fees for the request for examination corresponding to the increased number of claims.
- (3) The official fees under paragraph (1), the method and period for payment and other necessary matters are prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 83

Reduction or Exemption of Patent Fees or Official Fees

- (1) Notwithstanding Articles 79 and 82, the Commissioner of the KIPO shall grant an exemption from the payment of patent fees or official fees in the following cases:
 - (i) official fees or patent fees that correspond to patent applications or patent rights belonging to the State; or
 - (ii) fees related to requests for an invalidation trial made by an examiner under Articles 133(1), 134(1) or 137(1).

- (2) Notwithstanding Articles 79 and 82, where a patent application related to the invention of an entitled person under Article 5 of the National Basic Livelihood Security Law or a person prescribed by Ordinance of the Ministry of Knowledge Economy has been filed, the Commissioner of the KIPO may reduce or exempt from payment the fees prescribed by Ordinance of the Ministry of Knowledge Economy and the patent fees for the first three years.
- (3) A person taking advantage of the reduction or exemption of patent fees or official fees under paragraph (2) shall submit the documents prescribed by Ordinance of the Ministry of Knowledge Economy to the Commissioner of the KIPO.

Article 84

Refund of Patent Fees etc.

- (1) Patent fees and official fees that have been paid may not be refunded unless requested by a person who has paid the fees in any of the following cases:
 - (i) the patent fees or official fees paid by mistake;
 - (ii) a portion corresponding to the patent fees for the years after the year in which a trial decision to invalidate the patent became final and binding;
 - (iii) a portion corresponding to the patent fees for the years after the year in which a trial decision to invalidate the registration of extension of the term of a patent right became final and binding; or
 - (iv) the patent application fees and the fees for requesting an examination for a patent application that was withdrawn or abandoned within one month from the filing of the patent application (excluding a divisional application, a converted application and a patent application with a request for an accelerated examination).
- (2) Where there is a case which falls under any subparagraph of paragraph (1), the Commissioner of the KIPO shall issue a notification to the person who has made the payment.
- (3) A person may not request a refund under the proviso of paragraph (1) of this Article if more than three years have elapsed since the person received the notification referred to in paragraph (2) of this Article.

Article 85

Patent Register

- (1) The Commissioner of the KIPO shall keep the Patent Register at the KIPO and shall register the following matters:
 - (i) the establishment, transfer, extinguishment, restoration, restriction on disposal or extension of the term of a patent right;

- (ii) the establishment, maintenance, transfer, modification, extinguishment, or restriction on disposal of an exclusive or non-exclusive license; and
 - (iii) the establishment, transfer, modification, extinguishment or restriction on the disposal of a pledge on a patent right or on an exclusive or non-exclusive license.
- (2) All or parts of the Patent Register under paragraph (1) may be stored on magnetic tapes etc..
 - (3) Necessary matters concerning the items, procedures etc. of registration not stipulated in paragraphs (1) or (2) are prescribed by Presidential Decree.
 - (4) The description and drawing(s) of a patented invention and documents prescribed by Presidential Decree are deemed to be part of the Patent Register.

Article 86

Issuance of a Patent Registration Certificate

- (1) When a patent right has been registered, the Commissioner of the KIPO shall issue a patent registration certificate to the patentee.
- (2) Where a patent registration certificate does not coincide with the patent register or other documents, the Commissioner of the KIPO shall reissue the patent registration certificate with amendments, or issue new patent registration certificate upon request or *ex officio*.
- (3) When a trial decision for a correction under Article 136(1) has become final and binding, the Commissioner of the KIPO shall issue a new patent registration certificate in accordance with the trial decision.

CHAPTER V PATENT RIGHT

Article 87

Registration of Establishment of a Patent Right and the Publication of Registration

- (1) A patent right enters into effect upon registration of establishment.
- (2) The Commissioner of the KIPO shall register establishment of a patent right in any of the following cases:
 - (i) when the patent fees have been paid under Article 79(1);
 - (ii) when the patent fees have been paid late under Article 81(1);
 - (iii) when the remaining portion of the patent fees has been paid under Article 81bis(2);
 - (iv) when the patent fees have been paid or the remaining portion of the patent fees has been paid under Article 81ter(1); or
 - (v) when an exemption has been granted for the payment of patent fees under Article 83(1)(i) and (ii).
- (3) Where a registration has been made under paragraph (2), the Commissioner of the KIPO shall make a publication of registration of the patent in the Patent Gazette.
- (4) The publication of registration for a patented invention required to be maintained confidentially shall be reserved until the invention is declassified; upon declassification, the publication of registration shall be made immediately.
- (5) The Commissioner of the KIPO shall provide the application documents and the attached application materials for public inspection for the three-month period after the date on which the registration is published.
- (6) Matters to be published in the Patent Gazette concerning the publication of registration under paragraph (3) are prescribed by Presidential Decree.

Article 88

The Term of a Patent Right

- (1) The term of a patent right commences upon registration of establishment of the patent right under Article 87(1) and ends twenty years after the filing date of the patent application.
- (2) Where a patent is granted to the application of the lawful holder of the right to obtain a

patent under Articles 34 and 35, the term of the patent right under paragraph (1) is reckoned from the day after the date on which the unentitled person files the patent application.

(3) Deleted.

(4) Deleted.

Article 89

Extension of the Term of a Patent Right

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

Article 90

Application to Register an Extension of the Term of a Patent Right

- (1) A person seeking to register an extension of the term of a patent right under Article 89 (referred to as "an applicant for registration of extension", hereinafter) shall submit a written application to register an extension of the term of a patent right to the Commissioner of the KIPO, stating the following:
 - (i) the name and residential address of the applicant for registration of extension (and, if the applicant is a juridical person, the name and business address);
 - (ii) the name and residential or business address of the representative, if any (and, if the representative is a patent juridical person, the name and business address of the patent juridical person and the name of the designated patent attorney);
 - (iii) the patent number for which the extension is sought and the indication of the scope of claims of that patent;
 - (iv) the term of extension sought;
 - (v) the matters for authorization etc. under Article 89; and
 - (vi) the grounds for extension as prescribed by Ordinance of the Ministry of Knowledge Economy (accompanied by materials substantiating the grounds).
- (2) An application to register an extension of the term of a patent right shall be filed within three months after the date on which the authorization etc. under Article 89 was obtained; however, the application may not be filed when the unexpired period of the

term prescribed in Article 88 is less than six months.

- (3) Where a patent is jointly owned, an application to register an extension of the term of a patent right shall be jointly filed by all owners.
- (4) Where an application to register an extension of the term of a patent right has been filed, the term is deemed to have been extended, unless a decision to reject an application to register an extension of the term of a patent right under Article 91(1) has become final and binding.
- (5) Where an application to register an extension of the term of a patent right has been filed, the Commissioner of the KIPO shall publish the matters prescribed in paragraph (1) in the Patent Gazette.
- (6) An applicant for registration of extension may amend the matters of paragraph (1)(iii) to (vi) in the written application to register an extension (except the patent number of the patent right to be extended, as referred to in subparagraph (iii)) if the amendment is made before the examiner delivers a certified copy of the decision of granting or rejecting of the application to register an extension. However, after receiving a notification of the grounds for rejection in which *mutatis mutandis* application results under Article 93, the applicant for registration of extension may only make amendment during the period for submitting arguments to the notification of the grounds for rejection.

Article 91

Decision to Reject an Application to Register an Extension of the Term of a Patent Right

- (1) An examiner shall reject an application to register an extension of the term of a patent right when it falls under any of the following subparagraphs:
 - (i) where an authorization etc. under Article 89 is considered unnecessary for working a patented invention;
 - (ii) where a patentee or a person who has an exclusive or registered non-exclusive license under the patent right has not obtained the authorization etc. under Article 89;
 - (iii) where the term of extension sought exceeds the period in which the patented invention could not have been worked;
 - (iv) where the applicant for registration of extension is not the patentee; or
 - (v) where the application to register an extension violates Article 90(3);
 - (vi) deleted.
- (2) The period referred to in paragraph (1)(iii) does not include any period that has elapsed for reasons attributable to the patentee.

Article 92

Decision etc. to Register an Extension of the Term of a Patent Right

- (1) Where an examiner finds no grounds under any subparagraph of Article 91(1) to reject an application to register an extension of the term of a patent right, the examiner shall make a decision to register the extension.
- (2) Where a decision to register the extension has been made under paragraph (1), the Commissioner of the KIPO shall register the extension of the term of the patent right in the Patent Register.
- (3) Where the registration under paragraph (2) has been made, the matters prescribed in the following subparagraphs shall be published in the Patent Gazette:
 - (i) the name and residential address of the patentee (if the patentee is a juridical person, the title and business address);
 - (ii) the patent number;
 - (iii) the date of registration of the extension;
 - (iv) the term of the extension; and
 - (v) the matters for authorization etc. under Article 89.

Article 93

***Mutatis Mutandis* Application of Provisions**

Articles 57(1), 63, 67 and 148(i) to (v) and (vii) apply *mutatis mutandis* to the examination of an application to register an extension of the term of a patent right.

Article 94

Effects of Patent Right

A patentee shall have the exclusive right to work the patented invention as a business; provided, however, that where an exclusive license regarding the patent right is granted to a licensee, this shall not apply to the extent that the exclusive licensee is licensed to exclusively work the patented invention under Article 100(2).

Article 95

Effects of Patent Right with an Extended Term

The effects of a patent right whose term has been extended do not extend to any other acts except working the patented invention for products whose authorization etc. was the basis for registering the extension (where the authorization etc. was obtained for a specific use of the product, for products applied to the specific use).

Article 96

Limitations on a Patent Right

- (1) The effect of a patent right does not extend to any of the following subparagraphs:
 - (i) working a patented invention for research or experimental purposes (including researches and experiments for item permits and reports of medical supplies under the Pharmaceutical Affairs Act and for registration of agrochemicals under the Agrochemical Management Act);
 - (ii) vessels, aircraft or vehicles merely passing through the Republic of Korea, or machinery, instruments, equipment or other accessories used thereon; or
 - (iii) products existing in the Republic of Korea prior to the time of filing of the patent application.
- (2) The effects of a patent right for the invention of medicines used for diagnosis, therapy, alleviation, medical treatment or prevention of human disease (referred to as "medicines", hereinafter) that are manufactured by mixing two or more medicines, or for the invention of processes for manufacturing medicines by mixing two or more medicines, do not extend to acts of dispensing medicines under the Pharmaceutical Affairs Act or to medicines manufactured by such acts.

Article 97

Scope of Protection of Patented Invention

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

Article 98

Relation to Patented Invention etc. of Another Person

Where a patented invention would use another person's patented invention, registered utility model or registered design or similar design derived from an application filed before the filing date of the patent application concerned, or where a patent right conflicts with another person's design right or trademark right derived from an application filed before the filing date of the patent application concerned, the patentee, exclusive licensee or non-exclusive licensee may not work the patented invention as a business without a permission from the owner of the patent right, utility model right, design right or trademark right.

Article 99

Transfer and Joint Ownership of a Patent Right

- (1) A patent right may be transferred.
- (2) Where a patent right is jointly owned, the owners may not transfer or establish a pledge their individual share without the consent of the other owners.
- (3) Where a patent right is jointly owned, and unless otherwise agreed in a contract of the owners, each owner may individually work the patented invention without the consent of the other owners.
- (4) Where a patent right is jointly owned, an owner may not grant an exclusive license or a non-exclusive license of the patent right without the consent of the other owners.

Article 100

Exclusive License

- (1) A patentee may grant an exclusive license on the patent right to others.
- (2) An exclusive licensee to whom an exclusive license under paragraph (1) is granted, has the exclusive right to work the patented invention as a business to the extent allowed in the license contract.
- (3) Except when an exclusive license is transferred with the underlying business or by inheritance or other general succession, an exclusive licensee may not transfer the license without the consent of the patentee.
- (4) An exclusive licensee may not establish a pledge or grant a non-exclusive license on an exclusive license without the consent of the patentee.
- (5) Article 99(2) to (4) applies *mutatis mutandis* to an exclusive license.

Article 101

Effects of Registration of a Patent Right and an Exclusive License

- (1) Unless registered, the following patent-related matters have no effect:
 - (i) the transfer (except through inheritance or other general succession) or extinguishment by abandonment, or restriction on disposal of a patent right;
 - (ii) the establishment, transfer (except through inheritance or other general succession), modification, extinguishment (except through confusion) or restriction on disposal of a exclusive license; or

- (iii) the establishment, transfer (except through inheritance or other general succession), modification, extinguishment (except through confusion) or restriction on disposal of a pledge on a patent right or exclusive license.
- (2) An inheritor or a general successor shall immediately notify The Commissioner of the KIPO of the inheritance or other general succession related to a patent right, an exclusive license or a pledge under paragraph (1).

Article 102

Non-exclusive License

- (1) A patentee may grant to others a non-exclusive patent license on the patent right.
- (2) A non-exclusive licensee is entitled to work the patented invention as a business to the extent prescribed in this Act or allowed in the license contract.
- (3) A non-exclusive license granted under Article 107 shall be transferred with the underlying business.
- (4) A non-exclusive license under Article 138 of this Act, Article 32 of the Utility Model Act or Article 70 of the Industrial Design Act shall be transferred with the patent right, utility model right or design right concerned and is extinguished when the concerned patent, utility model or design right concerned is extinguished.
- (5) A non-exclusive license other than those described in paragraphs (3) and (4) may not be transferred without the consent of the patentee (or the patentee and the exclusive licensee for a non-exclusive license on an exclusive license), unless the transfer is made with the underlying business or through inheritance or other general succession.
- (6) A pledge may not be established on a non-exclusive license other than those under paragraphs (3) and (4) without the consent of the patentee (or the patentee and the exclusive licensee for a non-exclusive license on an exclusive license).
- (7) Article 99(2) and (3) applies *mutatis mutandis* to a non-exclusive license.

Article 103

Non-exclusive License by Prior Use

A person who, without knowledge of the content of an invention claimed in a patent application, made an invention identical to the said invention or learned the invention from a person who made an invention identical to the said invention, and has been working the invention or making preparations to work the invention in the Republic of Korea at the time of the filing of the patent application, is entitled to have a non-exclusive license on the patent right for which the patent application was filed, within the scope of the objective of the invention or the business related to the invention that the person is working or making preparations to work.

Article 104

Non-exclusive License Due to Working before Registration of a Request for an Invalidation Trial

- (1) Where a person under any of the following subparagraphs has been working a patented invention as a business in the Republic of Korea, or has been making preparations to work the patented invention, before the registration of a request for an invalidation trial of the concerned patent or utility model, without knowing that the patented invention is subject to invalidation, the person is entitled to have a non-exclusive license on that patent right or a non-exclusive license on the exclusive license to the patent right existing when the patent or utility model registration was invalidated, within the scope of the objective of the invention or device and the business related to the invention that the person is working or making preparations to work:
 - (i) the original patentee, where one of two or more patents granted for the same invention has been invalidated;
 - (ii) the original owner of a utility model right, where a patented invention and a device registered as a utility model are the same and the utility model registration has been invalidated;
 - (iii) the original patentee, where the patent has been invalidated and a patent for the same invention has been granted to a lawful holder;
 - (iv) the original owner of a utility model right, where the utility model registration has been invalidated and a patent for the same invention as the device has been granted to a lawful holder; or
 - (v) in the cases referred to in subparagraphs (i) to (iv), a person who, at the time of registering a request for an invalidation trial of the invalidated patent right or utility model right, has been granted and registered an exclusive license, a non-exclusive license or a non-exclusive license on the exclusive license; however, a person falling under Article 118(2) is not required to register the license.
- (2) A person entitled to have a non-exclusive license under paragraph (1) shall pay reasonable remuneration to the patentee or exclusive licensee.

Article 105

Non-exclusive License after a Term of a Design Right Expires

- (1) Where a design right under an application that was filed prior to or on the filing date of a patent application and resulted in the granting of a registration conflicts with the patent right and the term of the design right has expired, the owner of the design right is entitled, to the extent of the design right, to have a non-exclusive license on the patent right concerned or the exclusive license existing at that time when the design right expired.

- (2) Where a design right under an application that was filed prior to or on the filing date of a patent application and resulted in the granting of a registration conflicts with the patent right and the term of the design right has expired, a person who has an exclusive license on the design right existing at the expiry or a non-exclusive license which is effective under Article 118(1) of this Act, which applies *mutatis mutandis* under Article 61 of the Design Law related with the design right or the exclusive license, is entitled to have a non-exclusive license on the patent right concerned or on the exclusive license existing at that time when the design right expired, to the extent of the expired right.
- (3) A person entitled to have a non-exclusive license under paragraph (2) shall pay reasonable remuneration to the patentee or exclusive licensee.

Article 106

Expropriation of Patent Right etc.

- (1) Where a patented invention falls under either of the following subparagraphs in time of war, uprising, or other similar emergency, the Government may expropriate the patent right (in the case of subparagraph (i) only), work the patented invention or require a person other than the Government to work the patented invention:
 - (i) where the working of the patented invention is necessary for national defense; or
 - (ii) where the noncommercial working of the patented invention is necessary for the public interest.
- (2) Where a patent right is expropriated, the rights to the patented invention other than the patent right are extinguished.
- (3) If the Government expropriates a patent right, or the Government or a person other than the Government works the patented invention under paragraph (1), the Government or that person shall pay reasonable remuneration to the patentee, exclusive licensee or non-exclusive licensee.
- (4) Matters necessary concerning expropriating and working a patent right as well as payment of remuneration are prescribed by Presidential Decree.

Article 107

Award for the Grant of a Non-exclusive License

- (1) Where a patented invention falls under any of the following subparagraphs, a person who intends to work the patented invention may request the Commissioner of the KIPO to make an award (referred to as "an award", hereinafter) for the establishment of a non-exclusive license, provided no agreement is reached despite having a consultation (referred to as "a consultation" in this Article) under reasonable conditions with the patentee or exclusive licensee on the grant of a non-exclusive license for the patented invention or a consultation is impossible to arrange; however, the person may request

an award even in the absence of a consultation if the patented invention is to be worked noncommercially for the interests of the public or in any case that falls under subparagraph (iv):

- (i) where the patented invention has not been worked for more than three consecutive years in the Republic of Korea, except for natural disasters, unavoidable circumstances or other justifiable reasons prescribed by Presidential Decree;
 - (ii) where the patented invention has not continuously been worked commercially or industrially in the Republic of Korea on a substantial scale during a period of three years or more without justifiable reasons, or where the domestic demand for the patented invention has not been satisfied to an appropriate extent and under reasonable conditions;
 - (iii) where working the patented invention noncommercially is necessary for the interests of the public; or
 - (iv) where working the patented invention is necessary to remedy a practice determined to be unfair by the judicial or administrative process;
 - (v) where working the patented invention is necessary for the export of medicine to a country (referred to as "an importing country" in this article) that intends to import the medicine (including effective ingredients that are necessary for the production of the medicine and diagnostic kits necessary for the use of the medicine) in order to treat diseases that threaten the health of the majority of its citizens.
- (2) Paragraph (1)(i) and (ii) of this Article shall not apply unless a period of four years has elapsed after the filing date of the application for the patented invention.
- (3) In making an award, , the Commissioner of the KIPO shall consider the necessity of each request.
- (4) When the Commissioner of the KIPO makes an award under subparagraphs (i) to (iii) or (v) of paragraph (1), the following conditions apply to the person for whom the award was made:
- (i) where the award is made under subparagraphs (i) to (iii) of paragraph (1), the non-exclusive license must be implemented for the primary purpose of meeting domestic demand; and
 - (ii) where the award is made under subparagraph (v) of paragraph (1), all the medicine produced under the terms of the award must be exported to importing countries.
- (5) The Commissioner of the KIPO shall ensure that reasonable remuneration is given to every award. When making an award under subparagraph (iv) or (v) of paragraph (1), the Commissioner of the KIPO may consider the factors in each of the following subparagraphs:
- (i) where an award is made under subparagraph (iv) of paragraph (1), the purport to rectify unfair transactions; and
 - (ii) where an award is made under subparagraph (v) of paragraph (1), the economic

value generated in importing countries by the working of the patented invention.

- (6) For semiconductor technology, a request for award may be made only in the cases set forth in subparagraph (1)(iii) (where the noncommercial working of the patented invention is permitted in a limited way for the interests of the public) and (1)(iv).
- (7) An importing country is limited to a country which is either a World Trade Organization (WTO) member country that has notified the WTO of the following particulars or a non-WTO member country listed in a Presidential decree, and which has notified the Republic of Korea of the following particulars:
 - (i) the name of the medicine and the quantity required by an importing country;
 - (ii) where the importing country is not one of the least developed countries listed in a resolution of the General Assembly of the United Nations, confirmation by the importing country that it has insufficient or no manufacturing capability to produce the medicine concerned; and
 - (iii) where the medicine concerned is patented in the importing country, confirmation by the importing country that it has granted or intends to grant a compulsory license.
- (8) The term medicine in paragraph (1)(v) of this Article refers to any of the definitions in the following subparagraphs:
 - (i) patented medicine;
 - (ii) medicine manufactured by means of a patented process ;
 - (iii) patented effective ingredients necessary for the production of the medicine; or
 - (iv) patented diagnostic kits necessary for the production of the medicine.
- (9) The documents for submission and other necessary matters concerning a request for award are prescribed by Presidential Decree.

Article 108

Submission of Response

Where a request for an award has been made, the Commissioner of the KIPO shall deliver a copy of the written request to the patentee or exclusive licensee mentioned in the request and to any other persons with a registered right related to the patent, and shall give them an opportunity to submit a response within a designated period.

Article 109

Hearing of Opinion of the Intellectual Property Rights Dispute Committee and the Heads of Relevant Authorities

Before making an award, the Commissioner of the KIPO may hear an opinion of the Intellectual Property Rights Dispute Committee established under Article 41 of the Invention Promotion Act and the heads of relevant authorities and seek assistance from relevant administrative authorities or interested parties.

Article 110

Formalities etc. of Award

- (1) An award must be in writing and must state the reasons for the award.
- (2) The following matters must be specified in an award under paragraph (1):
 - (i) the scope and duration of the non-exclusive license; and
 - (ii) the remuneration for the license and the method and time of payment
 - (iii) where the award is made under Article 107(1)(v), the address of a Web site that publishes information on the following: the patented invention the medicine supplied by the patentee, exclusive licensee, or non-exclusive licensee (unless the license is granted by an award) any externally discernable packaging and markings and any other matters decided in the award; and
 - (iv) where a person who is the subject of an award works the patented invention, any other matters of compliance with laws or treaties.
- (3) Except in justifiable circumstances, the Commissioner of the KIPO shall decide on an award within six months of the request date for an award.
- (4) Except for justifiable reasons, where a request for award under Article 107(1)(v) falls under paragraphs (7) and (8) of Article 107 and all the documents stipulated in Article 107(9) have been submitted, the Commissioner of the KIPO shall make an award for the establishment of a non-exclusive license.

Article 111

Delivery of Certified Copies of Award

- (1) Where an award is made, the Commissioner of the KIPO shall deliver a certified copy of the award to the parties and to any other persons with a registered right related to the patent.
- (2) Where a certified copy of an award has been delivered to the parties under paragraph (1), a consultation on the terms as specified in the award is deemed to have been held by the parties.

Article 111bis

Changes of the Award Document

- (1) Where any change is required in the award document regarding the matters referred to in Article 110(2)(iii), the person who requested the award may submit to the Commissioner of the KIPO a request for the change and any evidentiary documents that confirm the reasons for the change.
- (2) Where the Commissioner of the KIPO acknowledges the reasonableness of a request made under paragraph (1) for a change in the award document, the Commissioner may change the matter specified in the award document. In such cases, the Commissioner shall hear the opinions of the interested parties.
- (3) Article 111 of this Act applies *mutatis mutandis* to paragraph (2) of this Article.

Article 112

Deposit of Remuneration

Under any of the following circumstances, a party obligated to pay remuneration under Article 110(2)(ii) shall deposit the remuneration:

- (i) where the party entitled to receive the remuneration refuses the remuneration or is unable to receive it;
- (ii) where an action under Article 190(1) has been brought concerning the remuneration; or
- (iii) where the patent right or exclusive license is the subject of a pledge, unless the pledgee has consented.

Article 113

Lapse of Award

Where a person granted an award on an authorization fails to pay or deposit the remuneration (or the first installment of the payment, if the payment is to be made periodically or by installments) under Article 110(2)(ii) by the time the payment is due, the award loses its effect.

Article 114

Cancellation of an Award

- (1) Where a person who is granted an award falls under any of the following subparagraphs, the Commissioner of the KIPO may cancel the award *ex officio* or upon the request of any interested party. However, for subparagraph (ii), such action must protect the non-exclusive licensee's lawful interests:

- (i) where working the patented invention is not within the purpose of the award;
 - (ii) where the grounds for granting the award of a non-exclusive license disappear and are considered unlikely to reoccur ; or
 - (iii) where the matters stated in the award document under Article 110(2)(iii) or (iv) are violated without justifiable reasons.
- (2) Articles 108, 109, 110(1) and 111(1) apply *mutatis mutandis* to paragraph (1) of this Article.
- (3) Where the award is canceled under paragraph (1) of this Article, the non-exclusive license shall be extinguished from the time of cancellation.

Article 115

Restriction on Reasons for Objections to an Award

Where a request for an administrative trial has been filed under the Administrative Trial Act or a revocation action has been brought under the Administration Litigation Act for an award, the remuneration determined in the award shall not be a basis for objection.

Article 116

Cancellation of a Patent Right

- (1) Where a patented invention has not been continuously worked in the Republic of Korea for a period of two years or more from the date of the award under Article 107(1)(i), the Commissioner of the KIPO may cancel the patent right, *ex officio*, or upon the request of any interested party.
- (2) Articles 108, 109, 110(1) and 111(1) apply *mutatis mutandis* to paragraph (1) of this Article.
- (3) When a patent right is cancelled under paragraph (1) of this Article, the patent right is extinguished from the time of cancellation.

Article 117

Deleted

Article 118

Effects of Registration of a Non-exclusive License

- (1) When a non-exclusive license has been registered, it is also effective against any person who acquires the patent right or an exclusive license after the registration.
- (2) A non-exclusive license granted under Articles 81ter(5), 103 to 105, 122, 182 and 183 of this Act and Article 10(1) of the Invention Promotion Act has the same effect as prescribed under paragraph (1) of this Article even if it has not been registered.
- (3) The transfer, modification, extinguishment or restriction on disposal of a non-exclusive license or the establishment, transfer, modification, extinguishment or restriction on disposal of a pledge related to a non-exclusive license is not effective against a third party unless it is registered.

Article 119

Restriction on Abandonment of a Patent Right etc.

- (1) A patentee shall not abandon a patent right without the consent of the exclusive licensee, pledgee or non-exclusive licensee under Articles 100(4) or 102(1) of this Act and Article 10(1) of the Invention Promotion Act.
- (2) An exclusive licensee shall not abandon an exclusive license without the consent of the pledgee or non-exclusive licensee under Article 100(4).
- (3) A non-exclusive licensee shall not abandon a non-exclusive license without the consent of the pledgee.

Article 120

Effects of Abandonment

When a patent right or an exclusive or non-exclusive license is abandoned, the patent right or the license is extinguished from the time of abandonment.

Article 121

Pledge

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

Article 122

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

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

Article 123

Subrogation of Pledge

A pledge may be exercised against the remuneration under this Act or against remuneration or goods to be received for working the patented invention; however, a pledgee shall attach the remuneration or goods before the payment or delivery of the remuneration or goods.

Article 124

Extinguishment of a Patent Right in the Absence of a Successor

A patent right shall be extinguished if no successor exists at the time of succession.

Article 125

Report on Working a Patent

The Commissioner of the KIPO may require a patentee, exclusive licensee or non-exclusive licensee to report whether the patented invention has been worked, the extent of such working etc..

Article 125bis

The Title of Execution on Amount of Compensation and Remuneration

A final and binding ruling by the Commissioner of the KIPO on the amount of the compensation or remuneration to be paid under this Act has the same effect as an enforceable title of execution. In such a case, a public official of the KIPO shall give the enforceable writ, which has the force of execution.

CHAPTER VI PROTECTION OF PATENTEE

Article 126

Right to Seek Injunction etc. against an Infringement

- (1) A patentee or exclusive licensee may demand a person who is infringing or is likely to infringe on a patent right of the patentee or exclusive licensee to discontinue or prevent the infringement.
- (2) A patentee or an exclusive licensee acting under paragraph (1) may demand the destruction of products by which an act of infringement was committed (including products obtained by the act of infringement in cases of a invention of a process for manufacturing the products), the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

Article 127

Acts Deemed to be Infringement

Where anyone performs either of the following acts as a business, it is deemed that he/she infringes a patent right or an exclusive license:

- (i) In the case of an invention of a product, acts of manufacturing, assigning, leasing, importing or offering for assignment or lease any product used exclusively for manufacturing the said product; or
- (ii) In the case of an invention of process, acts of manufacturing, assigning, leasing, importing or offering for assignment or lease any product used exclusively for working the said process.

Article 128

Presumption etc. of the Amount of Damages

- (1) Where a patentee or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a patent right or exclusive license by the infringer's assignment of products causing an infringing act, the amount of damages may be calculated as the number of assigned products multiplied by the profit per unit of the products that the patentee or exclusive licensee might have sold in the absence of the infringement. In such a case, the compensation may not exceed the amount calculated as follows: the estimated profit per unit multiplied by the number of products that the patentee or exclusive licensee could have produced subtracted by the number of products sold. However, where the patentee or exclusive licensee was unable to sell

the product for circumstances other than infringement, a sum based on the number of products subject to these circumstances shall be deducted.

- (2) Where a patentee or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a patent right or exclusive license, the profits gained by the infringer as a result of the infringement are presumed to be the amount of damage suffered by the patentee or exclusive licensee.
- (3) Where a patentee or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a patent right or exclusive license, the amount corresponding to what the patentee would have normally received for working the patented invention may be claimed as the amount of damage suffered by the patentee or exclusive licensee.
- (4) Notwithstanding paragraph (3), where the amount of damages exceeds the amount referred to in paragraph (3), the amount in excess may also be claimed as compensation for damage. In such a case, where the infringer committed the infringement of the patent right or exclusive license without intent or gross negligence, the court may take these circumstances into consideration in determining the amount of damages.
- (5) In litigation related to the infringement of a patent right or exclusive license, where the court recognizes that the occurrence of damages is acknowledged, but the nature of the case makes it very difficult to provide evidence proving the amount of damage that has occurred, notwithstanding paragraphs (1) to (4), the court may determine a reasonable amount based on an examination of the evidence and on a review of all the arguments.

Article 129

Presumption of the Process for Manufacturing

Where a product is identical to another product manufactured by a patented process, the former is presumed to have been manufactured by the patented process unless the product falls under either of the following subparagraphs:

- (i) a product publicly known or worked in the Republic of Korea before the filing of the patent application; or
- (ii) a product described in a publication distributed in the Republic of Korea or a foreign country, or a product publicly available through telecommunication lines as prescribed by Presidential Decree, before the filing of the patent application.

Article 130

Presumption of Negligence

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

Article 131

Recovery of the Reputation of a Patentee etc.

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

Article 132

Submission of Documents

In litigation related to the infringement of a patent right or exclusive license, the court may, upon the request of a party, order the other party to submit documents necessary for assessing the damages caused by the infringement, unless the person possessing the documents has a justifiable reason for refusing to submit the documents.

CHAPTER VII TRIAL

Article 132bis

The Intellectual Property Tribunal

- (1) The IPT is established under the jurisdiction of the Commissioner of the KIPO to be responsible for trials and retrials for patents, utility models, designs and trademarks as well as the investigation and research for the trials and retrials.
- (2) The IPT is composed of the President and administrative judges.
- (3) Necessary matters concerning the organization, personnel and operation of the IPT are determined by Presidential Decree.

Article 132ter

Trial against a Decision to Reject a Patent Application etc.

Where a person has received a decision to reject a patent application or a decision to reject an application to register an extension of the term of a patent right under Article 91, the person may request a trial within 30 days from the date of receipt of the certified copy of the decision.

Article 132quater

Deleted

Article 133

Invalidation Trial of a Patent

- (1) Where a patent falls under any of the following subparagraphs, an interested party or an examiner may request a trial to invalidate the patent. In such a case, if the patent contains two or more claims in the scope of claims, a request for an invalidation trial may be made for each claim. However, any person may request an invalidation trial on the grounds that the patent falls under any of the following subparagraphs (except subparagraph (ii)), provided the request is made after the registration date of establishment of the patent right and not more than three months after the publication date of the registration of the patent right:
 - (i) where the patent has been granted in violation of Articles 25, 29, 32, 36(1) to (3), 42(3), (4);

- (ii) where the patent has been granted to a person who is not entitled to obtain the patent under the main sentence of Article 33(1), or in violation of Article 44;
 - (iii) where the patent has been granted to a person who is unable to obtain the patent under the proviso of Article 33(1);
 - (iv) where, after the grant of a patent, the patentee is no longer capable of enjoying the patent right under Article 25, or the patent no longer complies with a treaty;
 - (v) where the patent cannot be granted in violation of a treaty;
 - (vi) where the patent application related with the patent has been amended beyond the scope of Article 47(2);
 - (vii) where the patent application related with the patent has been a divisional application beyond the scope of Article 52(1); or
 - (viii) where the patent application has been a converted application beyond the scope of Article 53(1).
- (2) A trial under paragraph (1) of this Article may be requested even after the patent right is extinguished.
- (3) Where a trial decision invalidating a patent has become final and binding, the patent right shall be deemed never to have existed; however, where a patent falls under paragraph (1)(iv) of this Article and a trial decision invalidating the patent has become final and binding, the patent right shall be deemed not to have existed from the time when the patent became subject to paragraph (1)(iv) of this Article.
- (4) Where a trial under paragraph (1) of this Article has been requested, the presiding administrative patent judge shall notify the exclusive licensee of the patent right and any other persons with registered rights related to the patent accordingly.

Article 133bis

Correction of a Patent during an Invalidation Trial

- (1) A defendant under Article 133(1) may request a correction to the description or drawing(s) of a patented invention during the course of an invalidation trial, provided that the correction falls under any of the subparagraphs under Article 136(1), within the period designated under Article 147(1) or the latter sentence of Article 159(1). Where a presiding administrative patent judge acknowledges the need to approve a request for the correction due to the evidentiary documents submitted by the requester, the presiding administrative patent judge may, even after the elapse of the period designated in Article 147(1), designate another time period and approve the request for correction within the period.
- (2) Where there is a request for correction under paragraph (1), earlier request(s) for correction submitted in the course of the validation trial concerned is deemed to have been withdrawn.

- (3) When a correction has been requested under paragraph (1), the presiding administrative patent judge shall deliver a copy of the written request to the requester under Article 133(1).
- (4) Articles 136(2) to (5), (7) to (11), 139(3) and 140(1), (2), (5) apply *mutatis mutandis* to a request for a correction under paragraph (1). In their application, the provision "before issuance of a notification of closure of the trial proceedings under Article 162(3) (where the trial proceedings is reopened under Article 162(4), before a subsequent notification of the closure of the trial proceedings is issued under Article 162(3))" in Article 136(9) shall read "within the designated period where it would be noticed under Article 136(5)".
- (5) Where paragraph (4) applies, Article 136(4) shall not apply *mutatis mutandis* to the correction of a claim for which a patent invalidation trial has been requested under Article 133(1).

Article 134

Invalidation Trial of Registration of Extension of the Term of a Patent Right

- (1) Where a registration of extension of the term of a patent right falls under any of the following subparagraphs, an interested party or an examiner may request a trial to invalidate the registration of extension of the term of a patent right:
 - (i) where the extension has been registered for an application that did not require any authorization etc. under Article 89 to work the patented invention;
 - (ii) where the extension has been registered for an application, for which a patentee or a person who has an exclusive or registered non-exclusive license under the patent right has not obtained the authorization etc. under Article 89 ;
 - (iii) where the term extended by the registration of extension exceeds the period during which the patented invention could not be worked;
 - (iv) where the registration of an extension has been effected on an application made by a person other than the patentee;
 - (v) where the registration of an extension has been effected on an application that was in violation of Article 90(3); or
 - (vi) deleted.
- (2) Articles 133(2) and (4) apply *mutatis mutandis* to a request for a trial under paragraph (1) of this Article.
- (3) Where a trial decision invalidating the registration of extension has become final and binding, the registration of extension of the term shall be deemed to have never existed. However, where the registration of extension falls under paragraph (1)(iii), an extension of the term exceeding the period during which the patented invention could not be worked shall be deemed to be not effective.

Article 135

Trial to Confirm the Scope of a Patent Right

- (1) A patentee, an exclusive licensee or an interested party may request a trial to confirm the scope of a patent right.
- (2) When requesting a trial under paragraph (1) to confirm the scope of a patent right, if the patent right contains two or more claims in the scope of claims, a request for a trial to confirm the scope of a patent right may be made for each claim.

Article 136

Trial for a Correction

- (1) A patentee may request a trial to correct the description or drawing(s) of a patented invention in cases falling under any of the following subparagraphs. However, this shall not apply when an invalidation trial against the patent is pending in the IPT.
 - (i) where the scope of claims is narrowed;
 - (ii) where a clerical error is corrected;
 - (iii) where an ambiguous description is clarified.
- (2) A correction to the description or drawing(s) under paragraph (1) shall be made within the scope of the matters disclosed in the description or drawing(s) of the patented invention. However, where a clerical error is corrected under subparagraph (1)(ii), the correction shall be made within the scope of the matters of the description or drawing(s) originally attached to a written application.
- (3) The scope of claims shall neither be substantially extended nor modified by a correction of the description or drawing(s) under paragraph (1).
- (4) Corrections under subparagraph (1)(i) or (ii) may only be made when the matters described in the scope of claims after the correction are patentable at the time of filing.
- (5) Where a request for a trial for a correction under paragraph (1) does not fall under any of subparagraphs of paragraph (1), extends beyond the scope under paragraph (2) or violates paragraphs (3) or (4), the administrative patent judge shall notify the requester of the reasons for dismissing the request and give the requester an opportunity to submit written arguments within a designated period.
- (6) A trial for a correction under paragraph (1) may be requested even after a patent right has been extinguished, unless the patent has been invalidated by a trial decision.
- (7) A patentee may not request a trial for a correction under paragraph (1) without the consent of an exclusive licensee, a pledgee or a non-exclusive licensee under Articles 100(4) or 102(1) of this Act and Article 10(1) of the Invention Promotion Act.
- (8) Where a trial decision allowing the description or drawing(s) of a patented invention to

be corrected becomes final and binding, the patent application, the laying open of the application, the decision to grant the patent or trial decision, and the registration for establishment of the patent right are deemed to have been made on the basis of the corrected description or drawing(s).

- (9) A requester may amend the corrected description or drawing attached to the request for a trial prescribed in Article 140(5) only before issuance of a notification of closure of the trial proceedings under Article 162(3) (where the trial proceedings are reopened under Article 162(4) before a subsequent notification of closure of the trial proceedings is issued under Article 162(3)).
- (10) Where a trial decision has been made to accept the correction of the description or drawing(s) of a patented invention, the President of the IPT shall notify the Commissioner of KIPO of the trial decision.
- (11) Where there is the notification under paragraph (10), the Commissioner of KIPO shall publish it in the Patent Gazette.

Article 137

Trial for Invalidation of Correction

- (1) An interested party or an examiner may request a trial for an invalidation of a correction, where the correction of the description or drawing(s) of a patented invention under Articles 133bis(1) or 136(1) has violated any of the following subparagraphs:
 - (i) any of the subparagraphs of Article 136(1); or
 - (ii) Article 136(2) to (4) (including a *mutatis mutandis* application under Articles 133bis(4)).
- (2) Article 133(2) and (4) applies *mutatis mutandis* to a request for a trial under paragraph (1) of this Article.
- (3) A defendant in an invalidation trial under paragraph (1) may request a correction to the description or drawing(s) of a patented invention under any of the subparagraphs of Article 136(1) within the period designated under Article 147(1) or the latter sentence of Article 159(1).
- (4) Article 133bis(3) and (4) applies *mutatis mutandis* to a request for a correction under paragraph (3). In such cases, "Article 133(1)" in Article 133bis(3) shall read "Article 137(1)."
- (5) Where a trial decision to invalidate a correction under paragraph (1) has become final and binding, the correction is deemed never to have been made.

Article 138

Trial for Granting a Non-exclusive License

- (1) where a patentee, exclusive licensee or non-exclusive licensee seeks permission to work the patented invention according to Article 98, if the other party concerned refuses permission without justifiable reasons or it is impossible to obtain such permission, the patentee, exclusive licensee or non-exclusive licensee may request a trial for the grant of a non-exclusive license within the scope necessary to work the patented invention.
- (2) Where the request under paragraph (1) has been made, a non-exclusive license shall be granted only where the patented invention of the later application constitutes an important technical advance with substantial economical value in comparison with the other party's patented invention or registered utility model for which an application was filed before the filing date of the later application.
- (3) If a person who has granted a non-exclusive license under paragraph (1) needs to work the patented invention of the person who has been granted the 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 within the scope of the patented invention to be worked.
- (4) A non-exclusive licensee who was granted a non-exclusive license under paragraphs (1) or (3) of this Article shall remunerate the patentee, the owner of the utility model right, the owner of the design right or the exclusive licensee. In the case where payment is not possible for non-attributable reasons, the remuneration shall be deposited.
- (5) A non-exclusive licensee under paragraph (4) shall not work a patented invention, registered utility model, registered design or similar design without paying remuneration or depositing the payment.

Article 139

Request for a Joint Trial etc.

- (1) Where two or more persons request an invalidation trial under Articles 133(1), 134(1) or 137(1) or a trial to confirm the scope of a patent right under Article 135(1), all persons may jointly make the request.
- (2) Where a trial is requested against any of the joint owners of a patent right, the request shall be made against all the joint owners.
- (3) Where the joint owners of a patent right or of a right to obtain a patent request a trial concerning the right under joint ownership, all of the owners shall jointly make the request.
- (4) Where there are grounds for the interruption or suspension of trial proceedings that apply to one of the requesters under paragraphs (1) or (3) or one of the defendants under paragraph (2), the interruption or suspension is effective against all of them.

Article 140

Formal Requirements of a Request for a Trial

- (1) A person requesting a trial shall submit a written request to the President of the IPT, stating the following:
 - (i) the names and residential addresses of the party (and, if the party is a juridical person, the name and business address);
 - (ibis) the name and residential or business address of the representative, if any (and, if the representative is a patent juridical person, the name and business address of the patent juridical person and the name of the designated patent attorney);
 - (ii) the indication of the trial case; and
 - (iii) the purport and grounds of the request.
- (2) The gist of a written request for a trial submitted under paragraph (1) may not be changed with amendment; however, this provision shall not apply when such amendment falls under any of the following subparagraphs;
 - (i) where an amendment (including addition of a patentee) is made to correct the stated matter of the patentee among parties under subparagraph (1)(i);
 - (ii) where the grounds of the request under paragraph (1)(iii) is amended; or
 - (iii) where, in the case of a trial to confirm the scope of a patent right requested by a patentee or an exclusive licensee, the requester amends the description and drawing(s) of the invention specified in the written request (the invention of the defendant which is contended by the requester) in order to make the invention to be identical to the invention being worked by the defendant if the defendant argues, on the basis of a comparison, that the invention specified in the written request differs from the invention being worked by the defendant.
- (3) When a trial to confirm the scope of a patent right is requested under Article 135(1), the description and the necessary drawing(s) that can be compared with the patented invention shall be attached to the written request.
- (4) In addition to stating the particulars referred to in paragraph (1), a written request for a trial under Article 138(1) must state the following:
 - (i) the number and title of his patent required to be worked;
 - (ii) the number, title and date of registration of the other party's patent, registered utility model or registered design to be worked; and
 - (iii) the scope, duration and remuneration for the non-exclusive license on a patented invention, a registered utility model or a registered design.
- (5) When a trial for correction under Article 136(1) is requested, the corrected description or drawing(s) shall be attached to the written request for a trial.

Article 140bis

Formal Requirements of a Request for a Trial against a Decision to Reject a Patent Application

- (1) Notwithstanding Article 140(1), a person who requests a trial against a decision to reject a patent application under Article 132ter shall submit a written request to the President of the IPT stating the following:
 - (i) the name and residential address of the requester (if the requester is a juridical person, the name and business address);
 - (ibis) the name and residential or business address of the representative, if any (and, if the representative is a patent juridical person, the name and business address of the patent juridical person and the name of the designated patent attorney);
 - (ii) the filing date and application number of the application;
 - (iii) the title of the invention;
 - (iv) the date of the decision;
 - (v) the indication of the trial case; and
 - (vi) the purport and grounds of the request.
- (2) Where a request for a trial under paragraph (1) is amended, the gist of the request shall not be changed. However, this shall not apply under either of the following subparagraphs:
 - (i) where an amendment (including addition of a requester) is made to correct the stated matter of requester under subparagraph (1)(i); or
 - (ii) where the grounds of the request under subparagraph (1)(vi) are amended.

Article 141

Dismissal of a Request for a Trial by a Ruling

- (1) A presiding administrative patent judge shall order the requester to make an amendment within a designated period in either case of the following subparagraphs:
 - (i) where the written request for a trial does not comply with Articles 140(1) and (3) to (5) or 140bis(1);
 - (ii) where a trial-related procedure falls under any of the following items:
 - (a) where the procedure does not comply with Articles 3(1) or 6;
 - (b) where the fees under Article 82 have not been paid; or

(c) where the procedure does not comply with the formalities prescribed in this Act or Presidential Decree.

(2) Where a person ordered to make an amendment under paragraph (1) fails to do so within the designated period, the presiding administrative patent judge shall dismiss the written request for a trial by a ruling.

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

(4) Deleted.

(5) Deleted.

(6) Deleted.

Article 142

Dismissal of a Request for a Trial Containing Incurable Defects by a Trial Decision

Where a request for a trial contains unlawful defects that cannot be corrected by amendment, the request may be dismissed by a trial decision without giving the defendant an opportunity to submit a written response.

Article 143

Administrative Patent Judges

(1) When a trial is requested, the President of the IPT shall direct the administrative patent judges to handle the trial.

(2) The qualifications of administrative patent judges shall be prescribed by Presidential Decree.

(3) An administrative patent judge shall conduct official trial duties for a trial in an independent manner.

Article 144

Designation of Administrative Patent Judges

(1) For each trial, the President of the IPT shall designate administrative patent judges to constitute a board under Article 146.

(2) Where an administrative patent judge designated under paragraph (1) is ineligible to handle a trial, the President of the IPT may appoint another administrative patent judge to replace the designated administrative patent judge.

Article 145

Presiding Administrative Patent Judge

- (1) The President of the IPT shall select one of the administrative patent judges designated under Article 144(1) as the presiding administrative patent judge.
- (2) A presiding administrative patent judge shall preside over all matters related to the trial.

Article 146

Board for a Trial

- (1) A trial must be conducted by a board of three or five administrative patent judges.
- (2) The board referred to in paragraph (1) shall make its decisions by a majority vote.
- (3) The consultations of administrative patent judges shall not be open to the public.

Article 147

Submission of a Written Response etc.

- (1) When a trial has been requested, the presiding administrative patent judge shall deliver a copy of the written request to the defendant and shall give the defendant an opportunity to submit a written response within a designated period.
- (2) Upon receipt of the written response under paragraph (1), the presiding administrative patent judge shall deliver a copy of the written response to the requester.
- (3) The presiding administrative patent judge may directly interrogate the parties in relation to the trial.

Article 148

Exclusion of an Administrative Patent Judge

An administrative patent judge shall be excluded from exercising his functions in a trial where the administrative patent judge falls under any of the following subparagraphs:

- (i) the administrative patent judge or the present or former spouse of the administrative patent judge is a party or intervener;
- (ii) the administrative patent judge is or was a blood relative of a party or intervener;

- (iii) the administrative patent judge is or was a legal representative of a party or intervener;
- (iv) the administrative patent judge has become a witness or expert witness or was an expert witness;
- (v) the administrative patent judge is or was a representative of a party or intervener;
- (vi) the administrative patent judge participated as an examiner or administrative patent judge in a decision to grant a patent or a trial decision related to the case; or
- (vii) the administrative patent judge has a direct interest.

Article 149

Request for Exclusion

Where there are grounds for exclusion under Article 148, a party or intervener may request that an administrative patent judge be excluded.

Article 150

Recusation of an Administrative Patent Judge

- (1) In circumstances where the participation of an administrative patent judge would prejudice the fairness of a trial, a party or intervener may present a petition to recuse the administrative patent judge.
- (2) After a party or intervener has made a written or oral statement with regard to a case before an administrative patent judge, the party or intervener may not present a petition to recuse the administrative patent judge, except when the party or intervener did not know grounds for recusation existed or the grounds for recusation arose later.

Article 151

Indication of Grounds for Exclusion or Recusation

- (1) A person who presents a petition for exclusion or recusation under Articles 149 or 150 shall submit a document to the President of the IPT stating the grounds for the petition. However, in oral proceedings, an oral statement may be made.
- (2) The underlying causes for exclusion or recusation must be substantiated within three days from the date on which the petition was presented.

Article 152

Ruling on a Petition for Exclusion or Recusation

- (1) A ruling on a petition for exclusion or recusation shall be made by trial.
- (2) An administrative patent judge subject to a petition for exclusion or recusation may not participate in the trial of the petition. However, he/she may state an opinion.
- (3) A ruling made under paragraph (1) shall be in writing and shall state the grounds for the ruling.
- (4) An appeal may not be made against a ruling made under paragraph (1) of this Article.

Article 153

Suspension of Trial proceedings

When a petition for exclusion or recusation has been presented, trial proceedings shall be suspended until a ruling has been made, except when the trial requires urgent attention.

Article 153bis

Administrative patent judges Recusing Themselves

Where Articles 148 or 150 apply to administrative patent judges, the administrative patent judges may recuse themselves from trial proceedings related to the case with the consent of the President of the IPT.

Article 154

Trial Proceedings etc.

- (1) Trial proceedings are conducted by oral proceedings or documentary proceedings. However, when a concerned party requests oral proceedings, the trial proceedings must be conducted by oral proceedings unless a trial decision can obviously be made by documentary proceedings alone.
- (2) deleted.
- (3) Except when public order or morality is likely to be injured, oral proceedings are conducted in public.
- (4) Where trial proceedings are conducted by oral proceedings in accordance with paragraph (1), the presiding administrative patent judge shall designate the date and place of the hearings and deliver a document containing such information to the parties and interveners of the case unless the parties or interveners have already been notified.
- (5) Where trial proceedings are conducted by oral proceedings under paragraph (1), an

official designated by the President of the IPT shall, under the direction of the presiding administrative patent judge, prepare a protocol setting forth the gist of the proceedings and other necessary matters for every designated date.

- (6) The presiding administrative patent judge and the official who has prepared the protocol under paragraph (5) shall sign the protocol and affix their seals to the protocol.
- (7) Articles 153, 154 and 156 to 160 of the Civil Procedure Act apply *mutatis mutandis* to the protocol under paragraph (5).
- (8) Articles 143, 259, 299 and 367 of the Civil Procedure Act apply *mutatis mutandis* to a trial.

Article 155

Intervention

- (1) A person with the right to request a trial under Article 139(1) may intervene in the trial before the closure of the trial proceedings.
- (2) An intervener under paragraph (1) may continue a trial even after the request for the trial has been withdrawn by the original party.
- (3) A person with an interest in the result of a trial may intervene in the trial before the closure of the trial proceedings to assist one of the parties.
- (4) An intervener under paragraph (3) may undertake every trial-related procedure.
- (5) Where grounds for suspending a trial proceeding apply to an intervener under paragraphs (1) or (3), the suspension is also effective against the original party.

Article 156

Request for an Intervention and Ruling thereon

- (1) To intervene in a trial, a person shall submit a request for an intervention to the presiding administrative patent judge.
- (2) The presiding administrative patent judge shall deliver the copy of a request for an intervention to the parties and other interveners and give them an opportunity to submit arguments within a designated period.
- (3) Where a request for an intervention is made, the ruling shall be made by a trial.
- (4) The ruling under paragraph (3) shall be in writing and shall state the grounds for the ruling.
- (5) An appeal may not be made against the ruling under paragraph (3).

Article 157

Taking and Preserving Evidence

- (1) For a trial, evidence may be taken or preserved upon a petition of a party, intervener, interested party or *ex officio*.
- (2) The provisions of the Civil Procedure Act related to taking and preserving evidence apply *mutatis mutandis* to any taking and preserving of evidence under paragraph (1). However, the administrative patent judge may not impose a fine for negligence, or order a person to appear or require the deposit of money as security.
- (3) A request to preserve evidence must be made to the President of the IPT before a request for a trial and to the presiding administrative patent judge of the case while the trial is pending.
- (4) Where the petition for preservation of evidence has been made under paragraph (1) before a request for a trial, the President of the IPT designates an administrative patent judge to be responsible for the petition.
- (5) Where evidence has been taken or preserved *ex officio* under paragraph (1), the presiding administrative patent judge shall notify the parties, interveners and interested parties accordingly and shall give them an opportunity to submit written arguments within a designated period.

Article 158

Continuation of Trial Proceedings

Notwithstanding the failure of a party or intervener to take any proceedings within the period prescribed by law or designated under this Act, or the failure to appear on the date designated under Article 154(4), the presiding administrative patent judge may proceed with the trial proceedings.

Article 159

***Ex officio* Trial Proceedings**

- (1) Grounds that have not been pleaded by a party or intervener in a trial may be reviewed; however, in such cases, the parties and interveners shall be given an opportunity within a designated period to state their opinions regarding the grounds.
- (2) In a trial, a review may not be made on the purport of a request which is not requested by the requester.

Article 160

Joint or Separate conduct of Trial Proceedings or Trial Decisions

When reviewing two or more trial proceedings where one or both parties are the same, an administrative patent judge may either conduct the proceedings or make trial decisions jointly or separately.

Article 161

Withdrawal of a Request for a Trial

- (1) A request for a trial may be withdrawn by the requester before the trial decision has become final and binding; however, the consent of the defendant for the withdrawal shall be obtained where a response has already been submitted.
- (2) Where a request for a trial for invalidating a patent under Article 133(1) or for confirming the scope of a patent right under Article 135 has been made with regard to two or more claims, the request may be withdrawn for each of the claims.
- (3) Where a request for a trial or a request for a trial for each claim is withdrawn under paragraphs (1) or (2), the request is deemed never to have been made.

Article 162

Trial Decision

- (1) Except as otherwise stipulated, a trial is concluded by a trial decision.
- (2) A trial decision under paragraph (1) shall be in writing, and it shall be signed and sealed by the administrative patent judges who made the trial decision; the trial decision must state the following:
 - (i) the number of the trial;
 - (ii) the name and residential address of the parties and interveners (or, if the party or intervener is a juridical person, the name and business address);
 - (iibis) the name and residential or business address of the representative, if any (or, if the representative is a patent juridical person, the name and business address of the patent juridical person and the name of the designated patent attorney);
 - (iii) the indication of the trial case;
 - (iv) the text of the trial decision (including the scope, duration and remuneration in trial cases under Article 138);
 - (v) the reasons for the trial decision (including the purport of the request and a gist of the grounds for the request); and

- (vi) the date of the trial decision.
- (3) When ready to make a trial decision after a thorough review of a case, the presiding administrative patent judge shall notify the parties and interveners of the closure of the trial proceedings.
 - (4) After giving notification of the closure of trial proceedings under paragraph (3), if necessary, the presiding administrative patent judge may reopen the review upon the petition of a party or an intervener or *ex officio*.
 - (5) A trial decision is made within twenty days of the date on which the notification of the closure of trial proceedings is served under paragraph (3).
 - (6) When a trial decision or a ruling has been made, the presiding administrative patent judge shall deliver a certified copy of the trial decision or the ruling to the parties, interveners, and persons who have requested intervention to the trial but have been rejected.

Article 163

Res Judicata

Where a trial decision under this Act has become final and binding, a person may not request a trial on the basis of the same facts and evidence, unless the final and binding trial decision is a dismissal.

Article 164

Relation to Litigation

- (1) A trial proceedings may, if necessary, be suspended until a trial decision of another trial becomes final and binding or litigation procedures related are concluded.
- (2) The Court may, if considered necessary in the litigation procedures, suspend the litigation procedures until a trial decision on the patent becomes final and binding.
- (3) Where litigation related to the infringement of a patent right or exclusive license is filed and when litigation procedures have been terminated, the relevant Court must notify the President of the IPT accordingly.
- (4) Where an invalidation trial etc. of a patent is requested in response to a legal action against an infringement of a patent right or exclusive license under paragraph (3), the President of the IPT must notify the relevant Court under paragraph (3) accordingly. The same applies when a ruling to dismiss a request for a trial, a trial decision or a withdrawal of the request has occurred.

Article 165

Costs of a Trial

- (1) The imposition of costs of a trial under Articles 133(1), 134(1), 135 and 137(1) is decided either by a trial decision if a trial is terminated by a trial decision, or by a ruling if the trial is terminated in a manner other than by a trial decision.
- (2) Articles 98 to 103, 107(1) and (2), 108, 111, 112 and 116 of the Civil Procedure Act apply *mutatis mutandis* to the costs of trials under paragraph (1).
- (3) The requester shall bear the costs of trials under Article 132ter and 136 or 138.
- (4) Article 102 of the Civil Procedure Act applies *mutatis mutandis* to the costs borne by the requester under paragraph (3).
- (5) Upon the request of a concerned party, the President of the IPT shall determine the total costs of a trial after the trial decision or ruling has become final and binding.
- (6) The extent, amount and payment of the costs of a trial, as well as the payment of the costs for undertaking any procedural acts in the trial, are governed by the relevant provisions of the Act of Civil Procedure Costs, unless they are incompatible.
- (7) The payment that a party has paid or will pay to a patent attorney who represents the party in a trial is considered an element of the trial costs within the extent of the costs prescribed by the Commissioner of the KIPO. If two or more patent attorneys represent the party in a trial, the party is deemed to have been represented by a single patent attorney.

Article 166

Title of Enforcement of Costs or Remuneration

A final and binding ruling under this Act on the costs of a trial decided by the President of the IPT or on the remuneration decided by the administrative patent judge, has the same effect as an enforceable title of liability; an official of the IPT shall give the enforceable writ.

Article 167

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Article 168

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Article 169

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Article 170

***Mutatis Mutandis* Application of Provisions on Examination to Trial against a Decision to Reject a Patent Application**

- (1) Articles 47(1)(i) and (ii), 51, 63 and 66 apply *mutatis mutandis* to a trial against a decision to reject a patent application . In such cases, in the main sentence of Article 51(1), the expression "Article 47(1)(ii) or (iii)" reads "Article 47(1)(ii)", and "an amendment" reads "an amendment (except an amendment filed before a request for a trial against a decision to reject a patent application under Article 132ter)".
- (2) Article 63, which applies *mutatis mutandis* under paragraph (1), applies only if new grounds for rejection have been found that differ from the original grounds for a decision of rejection.

Article 171

Special Provisions for a Trial against a Decision to Reject a Patent Application

Articles 147(1) and (2), 155 and 156 shall not apply to a trial against a decision to reject a patent application or a decision of reject an application to register an extension of the term of a patent right.

Article 172

Effects of Examination Proceedings

Proceedings previously undertaken during the course of an examination remain effective in a trial against a decision to reject a patent application or a decision to reject an application to register an extension of the term of a patent right.

Articles 173

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Articles 174

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Articles 175

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Article 176

Cancellation of a Decision of Rejection etc.

- (1) Where an administrative patent judge considers that a request for a trial under Article 132ter is well grounded, the administrative patent judge shall cancel the examiner's decision to reject a patent application or an application to register an extension of the term of a patent right as a trial decision.
- (2) Where a decision to reject a patent application or an application to register an extension of the term of a patent right is cancelled in a trial, a trial decision that the issue shall be submitted for examination can be made.
- (3) In a trial decision under paragraphs (1) and (2) of this Article, the reasons constituting the basis for the cancellation are binding on the examiner in that specific case.

Article 177

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CHAPTER VIII RETRIAL

Article 178

Request for a Retrial

- (1) Any party may request a retrial against a trial decision that has become final and binding.
- (2) Articles 451 and 453 of the Civil Procedure Act apply *mutatis mutandis* to a request for a retrial under paragraph (1).

Article 179

Request for a Retrial on Trial Decision of Fraudulent

- (1) Where the parties in a trial colluded to bring about a trial decision that damages the rights or interests of a third party, the third party may request a retrial against a trial decision that has become final and binding.
- (2) In a request for a retrial under paragraph (1), the parties of the trial must be joint defendants.

Article 180

Period for Requesting a Retrial

- (1) A retrial must be requested within thirty days of the date on which the requester becomes aware of the grounds for a retrial after the trial decision has become final and binding.
- (2) Where a retrial is requested because of defects in an authority of representation, the period designated in paragraph (1) is counted from the day after the date on which the requester or the requester's legal representative becomes aware, by means of a delivery of a certified copy of the trial decision, that the trial decision has been given.
- (3) A person may not request a retrial more than three years after the date on which the trial decision became final and binding.
- (4) Where grounds for a retrial arise after a trial decision becomes final and binding, the period prescribed in paragraph (3) is counted from the day after the date on which the grounds arose.
- (5) Paragraphs (1) and (3) shall not apply to a request for a retrial made on the grounds that the trial decision conflicts with an earlier trial decision that is final and binding.

Article 181

Restriction on Effects of a Patent Right Restored by a Retrial

- (1) In any of the following cases, a patent right is not effective for any product imported into the Republic of Korea, or manufactured or acquired in good faith in the Republic of Korea, after a trial decision has become final and binding but before a request for a retrial is registered:
- (i) where the patent right whose patent or registration of the extension of the term was concluded to be invalid, has been restored by a retrial;
 - (ii) after a trial decision that a working did not fall under the scope of the patent right became final and binding, where a trial decision to the contrary at a retrial has become final and binding; or
 - (iii) after a trial decision to reject a patent application or an application to register an extension of the term of a patent right was became final and binding, where the establishment of a patent right or the extension of the term of a patent right has been registered through a retrial.
- (2) A patent right under paragraph (1) of this Article does not extend to any of the following acts:
- (i) working the invention concerned in good faith after the trial decision has become final and binding but before a request for a retrial is registered;
 - (ii) In the case of an invention of a product, acts of manufacturing, assigning, leasing, importing or offering for assignment or lease any product used exclusively for manufacturing the said product in good faith after a trial decision has become final and binding but before a request for a retrial is registered; and
 - (iii) In the case of an invention of a process, acts of manufacturing, assigning, leasing, importing or offering for assignment or lease any product used exclusively for working the said process in good faith after a trial decision has become final and binding but before a request for a retrial is registered.

Article 182

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

For cases that fall under any subparagraph of Article 181(1), when a person has, in good faith, worked an invention as a business in the Republic of Korea, or has been making preparations to work the invention, after a trial decision became final and binding but before a request for a retrial is registered, the person is entitled to have a non-exclusive license on the patent right within the scope of the objective of the invention or the business related to the invention that the person is working or making preparations to work.

Article 183

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

- (1) Where, after a trial decision to grant a non-exclusive license under Article 138(1) or (3) has become final and binding, a trial decision to the contrary becomes final and binding at a retrial, a person who has, in good faith, worked the invention as a business in the Republic of Korea or has been making preparations to work the invention under a non-exclusive license, before a request for a retrial is registered, the person is entitled to have a non-exclusive license on the patent right or on the exclusive license existing at the time when the trial decision at the retrial becomes final and binding, within the objective of the non-exclusive license and the scope of the invention.
- (2) Article 104(2) applies *mutatis mutandis* to the case referred to in paragraph (1).

Article 184

***Mutatis mutandis* Application of Provisions on Trial to Retrial**

The provisions on the trial-related procedure apply *mutatis mutandis* to a proceeding for a retrial against a trial decision, unless they are incompatible.

Article 185

***Mutatis mutandis* Application of the Civil Procedure Act**

Article 459(1) of the Civil Procedure Act applies *mutatis mutandis* to a request for a retrial.

CHAPTER IX LITIGATION

Article 186

Action against a Trial Decision etc.

- (1) The Patent Court of Korea has exclusive jurisdiction over any action against a trial decision or a ruling to dismiss a request for a trial or retrial.
- (2) The action prescribed in paragraph (1) may be brought by a person who is a party or intervener in the trial or by any person who has requested an intervention in the trial or retrial but has had the request rejected.
- (3) The action prescribed in paragraph (1) may be brought within the thirty-day period after the date on which a certified copy of the trial decision or ruling was received.
- (4) The period prescribed in paragraph (3) may not be changed.
- (5) For the period referred to in paragraph (4), a presiding administrative patent judge may *ex officio* determine an additional period for the benefit of a person residing in an area that is remote or difficult to access.
- (6) An action which relates to the matters for which a trial may be requested may not be brought unless the action relates to a trial decision.
- (7) An action under paragraph (1) against a trial decision on remuneration under Article 162(2)(iv) and a trial decision or ruling on trial costs under Article 165(1) may not be brought independently.
- (8) Any person who has received a judgment from the Patent Court may appeal to the Supreme Court.

Article 187

Qualification for Defendant

In an action under Article 186(1), the Commissioner of the KIPO shall be the defendant. However, in an action against the trial decision under Articles 133(1), 134(1), 135(1), 137(1), 138(1) and (3) or a retrial thereof, the requester or the defendant of the trial or retrial shall be the defendant.

Article 188

Notification of Institution of Action and Delivery of Original Copy of Judgment

- (1) When an action under Article 186(1) is brought or an appeal is filed under Article 186(8), the Patent Court shall immediately notify the President of the IPT accordingly.
- (2) When an action under the proviso of Article 187 has been concluded, the Patent Court shall immediately deliver an original copy of the judgment on respective actions to the President of the IPT.

Article 188bis

Exclusion or Recusation of a Technical Examiner

- (1) Article 148 of the Patent Act and Articles 42 to 45, 47 and 48 of the Civil Procedure Act apply *mutatis mutandis* to the exclusion or recusation of a technical examiner prescribed by Article 54bis of the Court Organization Act.
- (2) The court to which a technical examiner belongs shall decide on a petition for exclusion or recusation of the technical examiner under paragraph (1) as a ruling
- (3) Where grounds for exclusion or recusation exist, technical examiners may recuse themselves from conducting legal proceedings with the consent of the President of the Patent Court.

Article 189

Cancellation of a Trial Decision or Ruling

- (1) Where the Patent Court considers that an action under Article 186(1) is well grounded, the Patent Court shall cancel the trial decision or ruling by judgment.
- (2) Where the cancellation of a trial decision or ruling becomes final and binding under paragraph (1), the administrative patent judge shall review the case again and make a new trial decision or ruling.
- (3) The reasons for a judgment on an action under paragraph (1) that constitute the basis for a cancellation are binding on the IPT with respect to the case concerned.

Article 190

Action against Decision on Amount of Compensation or Remuneration

- (1) A person who is dissatisfied with a trial decision, ruling or award regarding the amount of compensation or remuneration under Articles 41(3) or (4), 106(3), 110(2)(ii) or 138(4) may bring an action before the court.
- (2) An action under paragraph (1) must be filed within thirty days from the date on which a certified copy of the trial decision, ruling or award was received.

(3) The period prescribed in paragraph (2) may not be changed.

Article 191

Defendant in an Action Related to Compensation or Remuneration

In an action under Article 190, the following persons are the defendants:

- (i) for compensation under Article 41(3) or (4), the government agency or applicant liable for payment of compensation;
- (ii) for compensation under Article 106(3), the government agency, patentee, exclusive licensee or non-exclusive licensee liable for payment of compensation; or
- (iii) for remuneration under Articles 110(2)(ii) or 138(4), the non-exclusive licensee, exclusive licensee, patentee or owner of a utility model or design registration.

Article 191bis

Compensation for Patent Attorneys and Costs of Litigation

Article 109 of the Civil Procedure Act applies *mutatis mutandis* to the compensation for patent attorneys who provide representation in litigations. In this case, "attorneys" are regarded as "patent attorneys".

CHAPTER X INTERNATIONAL APPLICATIONS UNDER THE PATENT COOPERATION TREATY

Part I. International Application Procedure

Article 192

Persons Capable of International Application

Any person who falls under any of the following subparagraphs may file an international application with the Commissioner of the KIPO:

- (i) a national of the Republic of Korea;
- (ii) a foreigner who has a residential or business address in the Republic of Korea;
- (iii) a person who does not fall under subparagraph (i) or (ii) but who files an international application under the name of a representative falling under subparagraph (i) or (ii); or
- (iv) a person who meets the requirements prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 193

International Application

- (1) A person filing an international application shall submit to the Commissioner of the KIPO a written application, description, claim(s), drawing(s) (if necessary), and abstract prepared in a language prescribed by Ordinance of the Ministry of Knowledge Economy.
- (2) A written application prescribed under paragraph (1) must contain the following:
 - (i) an indication that the international application is to be processed according to the Patent Cooperation Treaty;
 - (ii) the designation of the Contracting States in which protection for the invention of the international application is sought;
 - (iii) if the applicant is seeking a regional patent referred to in Article 2(iv) of the Patent Cooperation Treaty among the designated States designated under subparagraph (ii), a purport to that effect;
 - (iv) the name or title, the residential or business address and the nationality of the

applicant;

(v) the name and residential or business address of the representative (if any);

(vi) the title of the invention; and

(vii) the name and residential or business address of the inventor (where the national law of a designated State requires that these indications be furnished).

- (3) The description under paragraph (1) shall describe the invention clearly and in detail so that a person with ordinary skill in the art to which the invention pertains may easily work the invention.
- (4) The claim(s) under paragraph (1) shall clearly and concisely describe the matters for which protection is sought and be sufficiently supported by the description.
- (5) Other necessary matters not prescribed in paragraphs (1) to (4) concerning an international application is prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 194

Establishment etc. of the Filing Date of an International Application

- (1) The Commissioner of the KIPO shall establish the date of receiving the international application as the international filing date under Article 11 of the Patent Cooperation Treaty (referred to as "an international filing date", hereinafter); however, this provision shall not apply to any of the following cases:
 - (i) the applicant does not meet the requirements prescribed in Article 192;
 - (ii) the international application is not prepared in the language prescribed under Article 193(1);
 - (iii) the international application does not contain a description or claim(s) under Article 193(1); or
 - (iv) the elements listed in Article 193(2)(i) and (ii) or the name or title of the applicant are not indicated.
- (2) Where an international application falls under the proviso of paragraph (1), the Commissioner of the KIPO shall order the applicant to amend the defect within a designated period in writing.
- (3) Where an international application refers to a drawing or drawings not included in the application, the Commissioner of the KIPO shall notify the applicant accordingly.
- (4) The Commissioner of the KIPO shall deem the international filing date as the date of receiving the document relating to an amendment when the applicant ordered under paragraph (2) has complied with the order within the designated period, or the date of receiving the drawing(s) when the notified applicant under paragraph (3) has furnished

the drawing(s) within the period prescribed by Ordinance of the Ministry of Knowledge Economy. If the notified applicant under paragraph (3) does not furnish the drawing(s) within the period prescribed by Ordinance of the Ministry of Knowledge Economy, reference to the drawing(s) is deemed to be nonexistent.

Article 195

Order to Amendment

The Commissioner of the KIPO shall order the applicant to make an amendment within a designated period if the international application does not:

- (i) contain the title of the invention;
- (ii) contain an abstract;
- (iii) comply with Articles 3 or 197(3); or
- (iv) comply with the requirements prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 196

International Application Deemed to have been Withdrawn

- (1) An international application is deemed to have been withdrawn if:
 - (i) an applicant ordered to make an amendment under Article 195 fails to make an amendment within the designated period ;
 - (ii) the official fees are not paid within the period prescribed by Ordinance of the Ministry of Knowledge Economy, and Article 14(3)(a) of the Patent Cooperation Treaty therefore applies; or
 - (iii) it is an international application with an international filing date established under Article 194, and it falls under any of subparagraphs of proviso of Article 194(1) within the period prescribed by Ordinance of the Ministry of Knowledge Economy.
- (2) If any portion of official fees to be paid related to an international application has not been paid within the period prescribed by Ordinance of the Ministry of Knowledge Economy, and Article 14(3)(b) of the Patent Cooperation Treaty therefore applies, the designation of the designate State for which the official fees have not been paid is deemed to have been withdrawn.
- (3) If an international application, or part of the designation of the states, is deemed to have been withdrawn under paragraphs (1) or (2), the Commissioner of the KIPO shall notify the applicant accordingly.

Article 197

Common Representative etc.

- (1) Where two or more applicants jointly file an international application, the procedure under Articles 192 to 196 and 198 may be undertaken by a common representative of the applicants.
- (2) Where two or more applicants jointly file an international application and do not designate a common representative, a common representative may be designated as prescribed by Ordinance of the Ministry of Knowledge Economy.
- (3) An applicant who intends to use a representative to undertake a procedure under paragraph (1) shall appoint a patent attorney as the representative unless the procedure is undertaken by a legal representative under Article 3.

Article 198

Official Fees

- (1) An applicant for an international application shall pay the required fees.
- (2) Necessary matters concerning official fees, proceedings and payment period under paragraph (1) are prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 198bis

International Search and International Preliminary Examination

- (1) The KIPO shall perform duties as an international searching authority and as an international preliminary examining authority for an international application in accordance with the convention concluded with the International Bureau as prescribed in Article 2(xix) of the Patent Cooperation Treaty.
- (2) Necessary matters concerning the performance of duties under paragraph (1) are prescribed by Ordinance of the Ministry of Knowledge Economy.

Part II. Special Provisions on International Patent Applications

Article 199

Patent Application Based on an International Application

- (1) Where the international filing date of an international application is established under the Patent Cooperation Treaty and the Republic of Korea is designated as a designated

State for obtaining a patent, the international application is deemed to be a patent application filed on its international filing date.

- (2) Article 54 shall not apply to an international application deemed to be a patent application under paragraph (1) (referred to as "an international patent application", hereinafter).

Article 200

Special Provision Concerning Inventions Not Deemed to be Publicly Known etc.

Notwithstanding Article 30(2), a person intending to apply Article 30(1)(i) to the invention claimed in an international patent application may submit to the Commissioner of the KIPO a written statement stating purport of such intention and a document proving the relevant facts within the period prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 201

Translation of International Patent Applications

- (1) An applicant who has filed an international patent application in a foreign language shall submit to the Commissioner of the KIPO a Korean translation of the description, claim(s), drawing(s) (only the descriptive text of the drawing(s)) and abstract filed on the international filing date within two years and seven months (referred to as "period for submitting domestic documents", hereinafter) from the priority date as defined in Article 2(xi) of the Patent Cooperation Treaty (referred to as "priority date", hereinafter). However, when an applicant who has filed an international patent application in a foreign language amends the claim(s) under Article 19(1) of the Patent Cooperation Treaty, the Korean translation of the amended claim(s) may be submitted as a replacement for the Korean translation of the claim(s) submitted on the date of international application.
- (2) Where a translation of the description and claim(s) under paragraph (1) is not submitted within the period for submitting domestic documents, the international patent application is deemed to have been withdrawn.
- (3) An applicant who has submitted the translation referred to in paragraph (1) may submit a new translation to replace the earlier translation only within the period for submitting domestic documents, unless the applicant requested an examination.
- (4) Matters disclosed in the description, claim(s) and the descriptive text of the drawing(s) of an international patent application filed on the international filing date but not disclosed in the translation under paragraphs (1) or (3) (referred to as "the translated version", hereinafter) that was submitted within the period for submitting domestic documents (or the date of the request for an examination where the applicant has made the request within the period, which is referred to as "the reference date") are deemed not to have been disclosed in the description, claim(s) and the descriptive text of the drawing(s) of the international patent application filed on the international filing date.

- (5) A written application of an international patent application submitted on the international filing date is deemed to be a written patent application submitted under Article 42(1).
- (6) A translated version of the description, claim(s), drawing(s) and abstract of an international patent application (or the description, claim(s), drawing(s) and abstract submitted on the international filing date for an international patent application filed in Korean) is deemed to be the description, drawing(s) and abstract submitted under Article 42(2).
- (7) Article 204(1) and (2) shall not apply when a Korean translation of the amended claim(s) is submitted in accordance with the proviso of paragraph (1).
- (8) Where a Korean translation of the amended claim(s) has been submitted under the proviso of paragraph (1), the claim(s) submitted at the international filing date is not recognized.

Article 202

Special Provisions on Priority Claim

- (1) Articles 55(2) and 56(2) shall not apply to an international patent application.
- (2) In applying Article 55(4) to an international patent application, "the description or drawing(s) originally attached to a written application of a patent application" reads "the description, claim(s) and the drawing(s) (only the descriptive text of the drawing(s)) submitted on the international filing date under Article 201(1), and the translated version of the documents under Article 201(4) or the drawing(s) (excluding the descriptive text of the drawing(s)) of the international application submitted on the international filing date", and "laid open" reads "international publication under Article 21 of the Patent Cooperation Treaty".
- (3) Where an earlier application is an international patent application or international utility model registration application under Article 34(2) of the Utility Model Act, the following provisions shall apply when Article 55(1), (3) to (5) or Article 56(1) are applied:
 - (i) "The description or drawing(s) originally attached to the written application" in the main sentence of Article 55(1) or (5) and Article (3) reads "the description, claim(s) or drawing(s) of an international application submitted on the international filing date."
 - (ii) "The description or drawing(s) originally attached to a written application of the earlier application" in Article 55(4) reads "the description, claim(s) or drawing(s) of an international application submitted on the international filing date of the earlier application", and "laid open with regard to the earlier application" reads "international publication of the earlier application under Article 21 of the PCT."
 - (iii) "When more than one year and three months has elapsed after the filing date" in the main sentence of Article 56(1) reads "when more than one year and three months has elapsed after the international filing date or the reference date under Article 201(4) of this Act and Article 35(4) of the Utility Model Act, whichever is

later”.

- (4) Where the earlier application under Article 55(1) is an international application deemed as a patent application or a utility model registration application under Article 214(4) of this Act or Article 40(4) of the Utility Model Act, the following subparagraphs apply when Article 55(1), (3), (4), or (5) or Article 56(1) are applied:
- (i) “The description or drawing(s) originally attached to a written application” in the main sentence of Article 55(1) or (5) and Article (3) reads “the description, claim(s) or drawing(s) of an international application as of the date that could have been recognized as an international filing date under Article 214(4) of this Act or Article 40(4) of the Utility Model Act.”
 - (ii) “The description or drawing(s) originally attached to a written application of the earlier application” in Article 55(4) reads “the description, claim(s) or drawing(s) of an international application of the earlier application as of the date that could have been recognized as an international filing date under Article 214(4) of this Act or Article 40(4) of the Utility Model Act.”
 - (iii) “When more than one year and three months have elapsed after the filing date” in the main sentence of Article 56(1) reads “when more than one year and three months have elapsed from the date that could have been recognized as the international filing date under Article 214(4) of this Act or Article 40(4) of the Utility Model Act or at the time a ruling is made under Article 214(4) of this Act or Article 40(4) of the Utility Model Act, whichever is later”.

Article 203

Submission of Documents

- (1) An applicant for an international patent application shall submit a document within the period for submitting domestic documents to the Commissioner of the KIPO, stating the items in the following subparagraphs; an applicant who has filed an international patent application in a foreign language shall submit the translated version in accordance with Article 201(1):
- (i) the name and residential address of the applicant (and, if the applicant is a juridical person, the name and business address);
 - (ii) the name and residential or business address of the representative, if any (and, if the representative is a patent juridical person, the name and business address and the name of the appointed patent attorney);
 - (iii) deleted;
 - (iv) the title of the invention;
 - (v) the name and residential or business address of the inventor; and
 - (vi) the international filing date and the international application number.

- (2) The Commissioner of the KIPO shall order an applicant to make amendments within a designated period under either of the following subparagraphs:
 - (i) where the document prescribed in the former sentence of paragraph (1) was not submitted within the period for submitting domestic documents; or
 - (ii) where the document prescribed in the former sentence of paragraph (1) violates the formalities prescribed in this Act or any order under this Act.
- (3) Where a person ordered to make an amendment under paragraph (2) fails to make an amendment within the designated period, the Commissioner of the KIPO may invalidate the international patent application.

Article 204

Amendment after Receipt of the International Search Report

- (1) Where an applicant amends the claim(s) of an international patent application after receiving an international search report under Article 19(1) of the Patent Cooperation Treaty, the applicant shall submit to the Commissioner of the KIPO, no later than the reference date (which, if the reference date is the date on which a request is made to examine the patent application, refers to the time at which the request to examine the patent application is made. The same applies to below of this Article and Article 205) one of the following:
 - (i) in the case of an international patent application filed in a foreign language, a translated version of the amendment; or
 - (ii) in the case of an international patent application filed in Korean, a copy of the amendment.
- (2) Where a translated version or copy of the amendment is submitted under paragraph (1), the scope of claim(s) under Article 47(1) is deemed to have been amended according to the translated version or copy of the amendment. However, when an amendment (only for international patent application filed in Korean) is delivered to the KIPO until the reference date according to Article 20 of the Patent Cooperation Treaty, the scope of claim(s) is deemed to have been amended according to the amendment.
- (3) Where an applicant of an international patent application submits a statement under Article 19(1) of the Patent Cooperation Treaty to the International Bureau, the applicant shall submit to the Commissioner of the KIPO one of the following document until the reference date:
 - (i) in the case of an international patent application filed in a foreign language, a translated version of the statement; or
 - (ii) in the case of an international patent application filed in Korean, a copy of the statement.
- (4) Where an applicant of an international patent application does not complete the

procedure under paragraphs (1) or (3) before the reference date, an amendment or statement under Article 19(1) of the Patent Cooperation Treaty is deemed to not have been submitted. However, in the case of an international patent application filed in Korean, the same shall not apply if an amendment or statement is delivered to the KIPO until the reference date according to Article 20 of the Patent Cooperation Treaty.

Article 205

Amendment before Establishment of the International Preliminary Examination Report

- (1) Where an applicant amends the description, claim(s) or drawing(s) of an international patent application under Article 34(2)(b) of the Patent Cooperation Treaty, the applicant shall submit to the Commissioner of the KIPO until the reference date one of the following:
 - (i) in the case of an international patent application filed in a foreign language, a translated version the amendment; or
 - (ii) in the case of an international patent application filed in Korean, a copy of the amendment.
- (2) Where a translated version or copy of an amendment is submitted under paragraph (1), the description and drawing(s) under Article 47(1) are deemed to have been amended according to the translated version or copy. However, when an amendment (only where the application is an international application filed in Korean) is delivered to the KIPO by the reference date according to Article 36(3)(a) of the Patent Cooperation Treaty, the description and drawing(s) are deemed to be amended according to the amendment.
- (3) Where an applicant of an international patent application has not completed the procedure under paragraph (1) by the reference date, the amendment under Article 34(2)(b) of the Patent Cooperation Treaty is deemed not to have been submitted. However, the amendment is deemed to have been submitted when the amendment (only where the application is an international application filed in Korean) is delivered to the KIPO by the reference date according to Article 36(3)(a) of the Patent Cooperation Treaty.

Article 206

Special Provision on Patent Administrator for Overseas Residents

- (1) Notwithstanding Article 5(1), an overseas applicant of an international patent application may, before the reference date, undertake a patent-related procedure without a patent administrator.
- (2) Overseas residents who have submitted a translated version of an international patent application under paragraph (1) shall appoint a patent administrator and report that fact to the Commissioner of the KIPO within the period prescribed by Ordinance of the

Ministry of Knowledge Economy.

- (3) An international application is deemed to have been withdrawn if the appointment of a patent administrator is not reported within the period prescribed under paragraph (2).

Article 207

Special Provision on the Time and Effect of Laying Open an Application

- (1) For the laying open of an international patent application, "more than one year and six months after the date prescribed in any of the following subparagraphs" in Article 64(1) is deemed "when the period for submitting domestic documents has elapsed (where the applicant made a request for examination within the period for submitting domestic documents and where the international application has been internationally laid open according to Article 21 of the Patent Cooperation Treaty, the time shall be more than one year and six months after the priority date or the date of request for examination, whichever is later)".
- (2) Notwithstanding paragraph (1), with regard to an international application filed in Korean, when the international application is laid open according to Article 21 of the Patent Cooperation Treaty before the international application is laid open according to paragraph (1), the international application is deemed to have been laid open at the time of the laying open according to Article 21 of the Patent Cooperation Treaty.
- (3) The applicant of an international patent application may, after the domestic laying open (in the case of an international application filed in Korean, after an international laying open according to Article 21 of the Patent Cooperation Treaty, the same applies hereinafter in this paragraph) and after having given a warning in the form of a document describing the contents of the invention claimed in the international patent application, demand of a person who has worked the invention as a business, after the warning but before the registration of a patent right, the payment of compensation equivalent to what the applicant would normally receive for working the invention. Even in the absence of a warning, the same demand may be made of a person who worked the invention as a business before the registration of a patent right and who had known that the invention was the one claimed in the international patent application domestically laid open. However, the applicant may not exercise the right to demand compensation until the patent has been registered.

Article 208

Special Provision on Amendment

- (1) Notwithstanding Article 47(1), no amendment (excluding the amendments under Article 204(2) and 205(2)) to an international patent application may be made unless all of the following subparagraphs are satisfied:
 - (i) the fees prescribed under Article 82(1) have been paid;

- (ii) a translated version of the application (except for an international patent application filed in Korean) under Article 201(1) has been submitted; and
 - (iii) the reference date (which, if the reference date is the date on which a request is made to examine the international patent application, refers to the time of day on which the request to examine the patent application is made) has passed.
- (2) Deleted.
- (3) With regard to the scope of an amendment made to an international patent application filed in foreign language, "the matters disclosed in the description or the drawing(s) originally attached to the written patent application" in Article 47(2) reads "the matters disclosed in a translated version of the description, claim(s) or the drawing(s) (only the descriptive text of the drawing(s)) of the international patent application submitted on the international filing date or the matters disclosed in the drawing(s) (except in the descriptive text of the drawing(s)) of the international patent application".
- (4) Deleted.
- (5) Deleted.

Article 209

Restriction on Time of Conversion of Application

Notwithstanding Article 53(1) of this Act, a person may not convert a international application, which is deemed to have been a utility model registration application under Article 34(1) of the Utility Model Act, to a patent application unless the person pays the official fees referred to in Article 17(1) of the Utility Model Act and submits a translated version of the international application in accordance with Article 35(1) of the Utility Model Act (except where the application for international utility model registration was filed in Korean); (in the case where the converted application is based on an international application deemed to have been filed on a date that can be recognized as the international application date under Article 40(4) of the Utility Model Act, after a ruling under Article 40(4) of the Utility Model Act has been made).

Article 210

Restriction on time of a Request for an Examination

Notwithstanding Article 59(2), an applicant of an international patent application may not request an examination of the application until the proceedings (except for international patent applications filed in Korean) under Article 201(1) have been taken and the fees under Article 82(1) have been paid. A person other than the applicant of an international patent application may not request an examination of the international patent application until the period under Article 201(1) has elapsed.

Article 211

Order Concerning Submission of Documents Cited in the International Search Report etc.

The Commissioner of the KIPO may require an applicant of an international patent application to submit, within a designated period, copies of the documents cited in the international search report under Article 18 of the Patent Cooperation Treaty or the International Preliminary Examination Report under Article 35 of the Patent Cooperation Treaty.

Article 212

Deleted

Article 213

Special Provisions on an Invalidation Trial of a Patent

A request of a trial may be made to invalidate a patent for an international patent application filed in a foreign language on the grounds that the patented invention does not fall under either of the following subparagraphs or under any subparagraph of Article 133(1):

- (i) the invention commonly disclosed in the description, claim(s) or the drawing(s) (only the descriptive text of the drawing(s)) of an international application submitted on the international filing date and in the translated version; or
- (ii) the invention disclosed in the drawing(s) (excluding the descriptive text of the drawing(s)) of an international application submitted on the international filing date.

Article 214

International Application Deemed to be a Patent Application by a Ruling

(1) An applicant of an international application may request the Commissioner of the KIPO as provided by Ordinance of the Ministry of Knowledge Economy to make the decision referred to in Article 25(2)(a) of the Treaty within the period prescribed by the Ordinance of the Ministry of Knowledge Economy, if the international application (pertaining exclusively to a patent application) in which the Republic of Korea is a designated State referred to in Article 4(1)(ii) of the Patent Cooperation Treaty applies to any of the following:

- (i) where the receiving office referred to in Article 2(xv) of the Patent Cooperation Treaty has made a refusal referred to in Article 25(1)(a) of the Treaty;
- (ii) where the receiving office referred to in Article 2(xv) of the Patent Cooperation

- Treaty has made a declaration referred to in Article 25(1)(a) or (b) of the Treaty; or
- (iii) the International Bureau has made a finding referred to in Article 25(1)(a) of the Treaty on an international patent application.
- (2) A person who makes a request under paragraph (1) shall submit, to the Commissioner of the KIPO, a translated version of the description, claim(s) and the drawing(s) (only the descriptive text of the drawing(s)) as well as other documents related to the international application prescribed by Ordinance of the Ministry of Knowledge Economy.
- (3) Where a request is made under paragraph (1), the Commissioner of the KIPO shall decide by a ruling whether the refusal, declaration or finding referred to in the request is justified under the Patent Cooperation Treaty and its Regulations.
- (4) Where the Commissioner of the KIPO decides that the refusal, declaration or finding under paragraph (3) is not justified under the Patent Cooperation Treaty and its Regulations, the international application concerned is Deemed to be a patent application filed on the date that would have been recognized as the international filing date if the refusal, declaration or finding had not been made.
- (5) Where a ruling is made under paragraph (3) as to whether a refusal, declaration or finding is justified, the Commissioner of the KIPO shall deliver a certified copy of the ruling to the applicant of an international application.
- (6) Articles 199(2), 200, 201(4) to (8), 202(1) and (2), 208, 210 and 213 apply *mutatis mutandis* to an international application deemed to be a patent application under paragraph (4).
- (7) For the laying open of an international application deemed to be a patent application under paragraph (4), "filing date of an application for a patent" in Article 64(1) reads "priority date referred to in Article 201(1)."

CHAPTER XI SUPPLEMENTARY PROVISIONS

Article 215

Special Provisions for a Patent or Patent Right with Two or More Claims

Where Articles 65(6), 84(1)(ii), 85(1)(i) (only for extinguishment), 101(1)(i), 104(1)(i), (iii) or (v), 119(1), 133(2) or (3), 136(6), 139(1), 181 and 182 of this Act and Article 26(1)(ii), (iv) or (v) of the Utility Model Act apply to a patent or patent right with two or more claims, a patent is deemed to have been granted for each claim, and a patent right is deemed to have been established for each claim.

Article 215bis

Special Provisions for Registering a Patent Application with Two or More Claims

- (1) Where a person who has received a decision to grant a patent for a patent application with two or more claims pays the patent fees, the person may abandon the claims individually.
- (2) Necessary matters concerning abandoning the claim(s) under paragraph (1) are prescribed by Ordinance of the Ministry of Knowledge Economy.

Article 216

Inspection of Documents etc.

- (1) A person may request the Commissioner of the KIPO or the President of the IPT for a certificate concerning a patent or a trial, a certified copy or extract of documents, or to inspect or copy the Patent Register or other documents.
- (2) The Commissioner of the KIPO or the President of the IPT may reject the request referred to in paragraph (1) if it relates to documents concerning a patent application that has not been registered or laid open, or if it relates to matters liable to contravene public order or virtuous manners and customs.

Article 217

Prohibition on Opening or Carrying out Documents Related to a Patent Application, Examination, Trial, Retrial or the Patent Register etc.

- (1) The documents related to a patent application, examination, trial, retrial or the Patent Register shall not be carried out except for any of the following cases:
 - (i) where documents related to a patent application or examination are carried out for the purpose of prior art searches etc. under Article 58(1) or (2) ;
 - (ii) where documents related to a patent application, examination, trial, retrial or the Patent Register are carried out for the purpose of commissioning the affairs of digitizing patent documents under Article 217bis(1) of this Act; or
 - (iii) where documents related to a patent application, examination, trial, retrial or the Patent Register are carried out for the purpose of on-line remote performance of duties under Article 30 of the Electronic Government Act.
- (2) A response shall not be given to a request for an expert opinion, testimony or an inquiry on the contents of a patent application, examination, trial, or retrial that are pending, nor on the contents of a decision of patentability, trial decision or ruling.

Article 217bis

Agency for Digitizing Patent Documents

- (1) When considered necessary for dealing effectively with patent procedures, the Commissioner of the KIPO may entrust a juridical person that meets the standards of facilities and human resources as prescribed by Ordinance of the Ministry of Knowledge Economy with the affairs for digitizing documents related to patent applications, examinations, trials, retrials or the Patent Register through an electronic information processing system and the technology for using the electronic information processing system or the similar affairs concerned(referred to as " the affairs for digitizing patent documents", hereinafter).
- (2) Deleted.
- (3) Present or former officers or employees of a person entrusted with digitizing patent documents under paragraph (1) (referred to as "an agency for digitizing patent documents", hereinafter) may not divulge or appropriate an invention disclosed in a pending application about which they obtained knowledge during the course of their duties.
- (4) The Commissioner of the KIPO may, under paragraph (1), convert into electronic form a written patent application or other documents prescribed by Ordinance of the Ministry of Knowledge Economy that were not submitted as electronic documents as prescribed in Article 28ter (1), and may save them in a file of an electronic information processing system operated by the KIPO or the IPT.
- (5) The contents of a file under paragraph (4) of this Article are deemed to be the same as the contents of the documents concerned.
- (6) The method of digitizing patent documents under paragraph (1) and other matters necessary for digitizing patent documents are determined by Ordinance of the Ministry of Knowledge Economy.
- (7) Where an agency digitizing patent documents fails to meet the standards of facilities and human resources as prescribed by Ordinance of the Ministry of Knowledge Economy in accordance with paragraph (1) and fails to comply with a request from the Commissioner of the KIPO to take corrective action, the Commissioner may cancel the commission of the affairs for digitizing patent documents. In such cases, the Commissioner shall give the agency a prior opportunity to present its opinions.

Article 218

Delivery of Documents

Necessary matters concerning procedures etc. of the delivery of the documents under this Act are prescribed by Presidential Decree.

Article 219

Delivery by Public Notification

- (1) When documents cannot be delivered because the residential or business address of the addressee is unclear, the documents shall be delivered by public notification.
- (2) The public notification is conducted by publishing a notice in the Patent Gazette that the documents to be delivered are available at any time to the addressee.
- (3) The first public notification is effective after passing two weeks from the date on which the public notification is published in the Patent Gazette; however, a subsequent public notification for the same party is deemed to have been served on the day after its publication in the Patent Gazette.

Article 220

Delivery of Documents to Overseas Residents

- (1) Documents to be delivered to an overseas resident who has a patent administrator shall be delivered to the patent administrator.
- (2) Documents to be delivered to an overseas resident who does not have a patent administrator may be sent to the overseas resident by registered airmail.
- (3) When documents have been sent by registered airmail under paragraph (2), the documents are deemed to have been served on the mailing date.

Article 221

Patent Gazette

- (1) The KIPO shall publish the Patent Gazette.
- (2) The Patent Gazette may be published in electronic format under conditions determined by Ordinance of the Ministry of Knowledge Economy.
- (3) When publishing the Patent Gazette in electronic media, the Commissioner of the KIPO shall publicize on an information communication network matters regarding the Patent Gazette's publication, main contents and public notification.

Article 222

Submission of Documents etc.

The Commissioner of the KIPO or examiner may order a concerned party to submit documents and articles necessary for dealing with proceedings unrelated to the proceedings of a trial or retrial.

Article 223

Patent Indication

A patentee or an exclusive or non-exclusive licensee may put on a manufactured product an indication of the patent for an invention of either a product or a process. If the indication is not possible to be placed on the product, the indication may be put on the product's container or package.

Article 224

Prohibition of False Indication

A person may not perform any of the following acts:

- (i) the act of marking with an indication that a patent has been granted or a patent application has been filed or with any sign likely to cause easily confusion of the indication, a product that a patent has not been granted or that a patent application is not pending or manufactured by a process that a patent has not been granted or a patent application is not pending, or the product's container or package;
- (ii) the act of assigning, leasing or displaying a product that has been marked with an indication referred to in subparagraph (i);
- (iii) for the purpose of manufacturing, using, assigning or leasing a product referred to in subparagraph (i), the act of marking advertisements, signboards or tags, with an indication that a patent has been granted or a patent application had been filed or manufactured by a process that a patent has been granted or a patent application is pending, or marking with any sign likely to cause easily confusion of the indication; or
- (iv) for the purpose of using, assigning or leasing a process for which a patent has not been granted or a patent application is not pending, the act of marking advertisements, signboards or tags, with an indication that a patent has been granted or a patent application had been filed for the process, or marking with any sign likely to cause easily confusion of the indication.

Article 224bis

Restriction on Appeal

- (1) A ruling to dismiss an amendment, a decision of patentability, a trial decision or a ruling to dismiss a request for a trial or retrial may not be appealed under any other Act, and any measure against which an appeal is not permitted under this Act may not be appealed under any other Act.
- (2) Any appeal against measures other than those under paragraph (1) is subject to the Administrative Appeals Act or the Administrative Litigation Act.

CHAPTER XII PENAL PROVISIONS

Article 225

Offense of Infringement

- (1) A person who infringes a patent right or exclusive licensee is 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) is initiated when an injured party files a complaint.

Article 226

Offense of Divulging Secrets etc.

Any present or former employees of the KIPO or the IPT who have divulged or appropriated an invention disclosed in a pending application (including an invention disclosed in an international application) to which they had access during the course of their duties are liable to imprisonment with labor not exceeding five years or to a fine not exceeding 50 million won.

Article 226bis

Officers and Employees of Special Agency deemed to be Public Officials

When applying Article 226, a person who is a present or former officer or employee of a specialized organization prescribed under Article 58(1) or agency for digitizing patent documents is deemed to be a present or former employee of the KIPO.

Article 227

Offense of Perjury

- (1) A witness, expert witness or interpreter who, having taken an oath under the law, has made a false statement or given a false expert opinion or interpreted falsely before the IPT is liable to imprisonment with labor not exceeding five years or to a fine not exceeding 10 million won.
- (2) A person who has committed an offense under paragraph (1) and confesses it before the trial decision becomes final and binding may be partially or totally reduced the sentence.

Article 228

Offense of False Indication

A person who violates Article 224 is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

Article 229

Offense of Fraud

A person who has obtained a patent, the registration of an extension of the patent term, or a trial decision by means of a fraudulent or any other unjust act is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

Article 230

Dual Liability

Where a representative director of a juridical person or a representative, an employee or any other servant of a juridical person or natural person violates Articles 225(1), 228 or 229 with regard to the business of the juridical person or natural person, the juridical person is liable to a fine as prescribed in either of the following subparagraphs, and the natural person is liable to a fine prescribed in the relevant Article, in addition to the offender:

- (i) under Article 225(1), a fine not exceeding 300 million won;
- (ii) under Articles 228 or 229, a fine not exceeding 60 million won.

However, this provision shall not apply where the juridical person or natural person exercised reasonable care and supervision with regard to the business to prevent the acts of violation.

Article 231

Confiscation etc.

- (1) Any product that is the subject of an infringing act under Article 225(1) or any product arising out of the infringing act shall be confiscated or, upon request of the injured party, a judgment must be made requiring the article to be delivered to the injured party.
- (2) Where a product is delivered to an injured party under paragraph (1), the injured party may claim compensation for damages in excess of the value of the product.

Article 232

Administrative Fine

- (1) A person who commits any of the following acts is liable to an administrative fine not exceeding 500,000 won:
 - (i) making a false statement before the IPT after having taken an oath under Articles 299(2) and 367 of the Civil Procedure Act;
 - (ii) failing to comply, without justifiable reasons, with an order of the IPT to submit or show documents or other materials related to taking or preserving evidence;
 - (iii) deleted; or
 - (iv) failing to comply, without justifiable reasons, with a subpoena of the IPT to appear as a witness, expert witness or interpreter, or refusing to take an oath, make a statement, testify, give an expert opinion or interpret.
- (2) The administrative fine referred to in paragraph (1) is imposed and collected by the Commissioner of the KIPO as prescribed by Presidential Decree.
- (3) Any person who objects to the imposition of an administrative fine under paragraph (2) may lodge a protest with the Commissioner of the KIPO within thirty days of the date of being notified of the imposition.
- (4) The Commissioner of the KIPO, upon receipt of a protest under paragraph (3) by a person who was fined under paragraph (2), shall immediately notify the competent court accordingly; the competent court shall adjudicate the case of the administrative fine under the Noncontentious Case Litigation Procedure Act.
- (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 KIPO shall collect it in accordance with the rules of collecting national taxes in arrears through the head of the competent tax office.

ADDENDUM

<No. 4207, January 13, 1990>

Article 1 Date of Entry into Force

This Act enters into force on September 1, 1990. However, Articles 201, 205 and 211 of this Act, regarding Chapter II of the Patent Cooperation Treaty, enter into force on the date on which Chapter II of the Patent Cooperation Treaty enters into force in the Republic of Korea.

Article 2 General Transitional Measures

This Act applies to matters that occur before this Act enters into force except for the special cases prescribed in Articles 3 and 9 of this Addendum. However, this act does not affect the validity under the previous provisions.

Article 3 Transitional Measures on Patent Applications etc.

Any appeal against an examination or a decision to reject a patent application initiated before this Act enters into force is subject to the previous provisions.

Article 4 Transitional Measures on Trials Related to the Granting of a Patent Right

Any trial, appeal, retrial or litigation related to a patent whose application was filed before this Act enters into force is subject to the previous provisions.

Article 5 Transitional Measures on the Submission of Priority Documents for Inventions under the Treaty

When priority is claimed in a patent application in the Republic of Korea before this Act enters into force, the period for submitting the priority documents for the inventions in the patent application is subject to the previous provisions.

Article 6 Transitional Measures on the Dismissal of Amendments

An amendment made before this Act enters into force is subject to the previous provisions.

Article 7 Transitional Measures on the Term of a Patent Right

The term of a patent right for any patent granted before this Act enters into force is subject to the previous provisions.

Article 8 Transitional Measures on Expropriation of a Patent Right

Any limitation, expropriation, or revocation of patent right, or any disposition or litigation on the working of a patent right requested before this Act enters into force are subject to the previous provisions.

Article 9 Transitional Measures on the Procedure and Expenses of Trials and Compensation for Damages etc.

The procedure, expenses and compensation for damages in a trial, appeal, retrial or litigation that were requested before this Act enters into force are subject to the previous provisions.

ADDENDUM (Government Organization Act)

<No. 4541, March 6, 1993>

Article 1 Date of Entry into Force

This Act enters into force on the date of its promulgation. (Proviso deleted.)

Article 2 and Article 3 Deleted

Article 4 Amendment of Other Acts by the New Establishment of the Ministry of Commerce, Industry and Energy

(1) to <46> Deleted.

<47> The following provisions of the Patent Act are amended as follows.

In Articles 16(1), 28(4), 42(6), 79(2), 82(3), 83(2) and (3), 90(1)(vi), 192(iv), 193(1) and (5), 194(4), 195(iv), 196(1)(ii) to (iii) and (2), 197(2), 198(2), 200, 206(2) and 214(1) and (2), "Ordinance of the Ministry of Commerce and Industry" reads "Ordinance of the Ministry of Knowledge Economy".

<48> to <100> Deleted.

Article 5 Deleted

ADDENDUM

<No. 4594, December 10, 1993>

Article 1 Date of Entry into Force

This Act enters into force on January 1, 1994.

Article 2 Transitional Measures on the Period for Refunding Patent Fees etc.

The provisions on the refund of patent fees and other fees paid by mistake before this Act enters into force are subject to the previous provisions.

Article 3 Application Examples on Refunding Patent Fees

Amended Article 84(1)(ii) and (iii) of this Act, which concerns refunding patent fees due to a final and binding decision on the invalidation of a patent, apply to final and binding decisions on invalidation made after this Act enters into force.

ADDENDUM (Invention Promotion Act)

<No. 4757, March 24, 1994>

Article 1 Date of Entry into Force

This Act enters into force on the date of its promulgation.

Articles 2 Deleted

Article 3 Amendment of Other Acts

The provisions of the Patent Act are amended as follows:

Article 40(4) is deleted.

Articles 4 and 5 Deleted

ADDENDUM

<No. 4892, January 5, 1995>

Article 1 Date of Entry into Force

This Act enters into force on March 1, 1998.

Article 2 Transitional Measures on Pending Cases

(1) Any request for a trial or appeal against a decision of rejection, a decision of cancellation, or a decision to dismiss an amendment that is lodged before this Act enters into force is deemed, under this Act, to have been lodged at the IPT and to be pending in the IPT.

(2) Any request for an appeal against a trial decision or any immediate appeal against a decision to dismiss a request for a trial that is lodged before this Act enters into force is deemed under this Act to have been lodged at the Patent Court and to be pending in the Patent Court.

Article 3 Transitional Measures on Cases that May Be Appealed

(1) Where the decision of a trial, the decision to dismiss a request for a trial, a decision of rejection, or a decision to dismiss an amendment by the examiner has been given when this Act enters into force, and if no appeal is brought to the Board of Appeals under the previous provisions within thirty days of the enforcement date of this Act, then, under Article 186(1) of this Act, a person may file a litigation against the decision of a trial and against the decision to dismiss a request for trial; or, under Article 132ter or 132quater of this Act, the person may request a trial against a decision of rejection or against the decision to dismiss an amendment by the examiner. However, this provision shall not apply if the period for appeal has expired under the previous provisions when this Act enters into force.

(2) Where a trial decision of the Board of Appeal, a decision to dismiss a request for an appeal and a decision to dismiss an amendment by an administrative patent judge has been

given when this Act enters into force, and if the decision has not been appealed at the Supreme Court, a person may lodge an appeal with the Supreme Court. However, this provision shall not apply if the period for appeal has expired under the previous provisions when this Act enters into force.

(3) Any case in which an appeal has been lodged at the Supreme Court under paragraph (2) of this Article before this Act enters into force is deemed to have been lodged at the Supreme Court under this Act or to be pending in the Supreme Court.

Article 4 Transitional Measures on Retrials

Articles 2 and 3 of the addendum apply *mutatis mutandis* to a pending retrial.

Article 5 Transfer etc. of Documents

(1) The Commissioner of the KIPO shall immediately transfer the documents of a pending case referred to in Article 2(1) of this addendum (including those applied *mutatis mutandis* under Article 4 of this addendum) to the President of the IPT.

(2) The Commissioner of the KIPO shall immediately transfer the documents of a pending case referred to in Article 2(2) of this addendum (including those applied *mutatis mutandis* under Article 4 of this addendum) to the presiding administrative patent judge. In this case, matters necessary for the transfer etc. of documents are prescribed by Supreme Court regulations.

Article 6 Amendment of Other Acts

In Article 37(5) of the Government Organization Act, "business of an examination, a trial and a trial of appeal" reads "business of an examination and a trial"

ADDENDUM

<No. 5080, December 29, 1995>

Article 1 Date of Entry into Force

This Act enters into force on July 1, 1996.

Article 2 Transitional Measures on the Invention of Substances to be

Manufactured by a Nuclear Conversion Method

(1) When this Act enters into force, where an applicant has a patent application pending in the KIPO (and no certified copy of the decision to grant the patent has been transmitted), and the invention is for a substance that is manufactured by a nuclear conversion method as stated in the description or drawings attached to the original patent application, the applicant may amend the description or drawings within six months of this Act entering into force.

(2) The amendment referred to in paragraph (1) of this Article is considered as that made before a copy of the decision on the public notice of application has been transmitted.

Article 3 Transitional Measures on the Term of a Patent Right

(1) This Act shall not apply to a patent whose term has expired under the previous provisions before this Act enters into force.

(2) The previous provisions apply to the term of any patent that exists when this Act enters into force and to any patent whose term is reduced when this Act enters into force among the pending patent applications at the KIPO.

Article 4 Special Case of Recognizing an Ordinary License for those Preparing an Working Project

(1) Where a patent on an invention of a substance to be manufactured by a nuclear conversion method is established under amended Article 32 of this Act, the person conducting or preparing to work the invention in the Republic of Korea before January 1, 1995, is entitled to have an ordinary license to the patent on the invention, limited to the object of the invention or the working.

(2) Where the term of a patent is extended by the enforcement of this Act, a person who is preparing to work the invention in the Republic of Korea before January 1, 1995, in anticipation of the expiry of the patent under the previous provisions is entitled to have an ordinary license for the patent, limited to the object of the invention and business that the person is preparing, during the period extended by the enforcement of this Act from the end of the period prescribed by the previous provisions.

(3) A person who holds an ordinary license under paragraphs (1) and (2) of this Article shall pay reasonable compensation to the patentee or exclusive licensee.

(4) Article 118(2) of this Act applies *mutatis mutandis* to the ordinary license referred to in paragraphs (1) and (2) of this Article.

Article 5 Transitional Measures on the Procedure and Expenses of Trials and Liability for Damages etc.

Any procedure, expense, liability for damages etc. for a trial, appeal, retrial and litigation

requested against any act committed before this Act enters into force is subject to the previous provisions

ADDENDUM

<No. 5329, April 10, 1997>

Article 1 Date of Entry into Force

This Act enters into force on July 1, 1997. However, Articles 15(2), 16(1) and (2), 46, 132ter, 140bis, 164(1), 170, 171(2), 172, 176(1) and (2), 224bis of this Act and Articles 2(1) and 3(1) of the addendum of the amended Patent Act, Act No. 4892, enter into force on March 1, 1998.

Article 2 Special Example on Oppositions Against a Patent

(1) In applying Article 6 of this Act, "request an appeal against a decision of rejection under Article 167" reads "request an appeal against a decision of rejection or cancelation under Article 167" until February 28, 1998.

(2) In applying Article 164(1) of this Act, "until the decision of other trials or appeals has become final and binding" reads "a decision on an opposition to a patent, of other trials or appeals, has become final and binding" until February 28, 1998.

(3) In applying Article 170(1) of this Act, "Articles 50, 51, 63 and 66 to 75" in the first part of the same paragraph reads "Articles 51, 63 and 66", and the latter part of the same paragraph is deemed to be deleted until February 28, 1998; in applying paragraph (3) of the same Article, "Article 51(4) to (6)" in the same paragraph reads "Article 51(1) and (5)" until February 28, 1998.

(4) In applying Article 171(3) and (4) of this Act, "a decision of rejection" in the same paragraph reads "a decision for rejection or cancelation" until February 28, 1998.

(5) In applying Article 172 of this Act, "procedure for the patent, which was taken for the examination or trial" reads "procedure for the patent, which was taken for the opposition against examination and patent or trial" until February 28, 1998.

(6) In applying Article 176 of this Act, "shall reverse the decision of rejection or decision on a trial" reads "shall reverse or revoke the decision of rejection, decision of cancelation or decision on a trial" until February 28, 1998.

Article 3 Transitional Measures on Modification of the System for Opposition to a Patent

(1) Where a copy of the decision to publish a patent application has been transmitted, with respect to a patent application that is pending in the KIPO when this Act enters into force, the application and any patent, patent right, trial or retrial related to the patent application is subject to the previous provisions.

(2) Notwithstanding amended Article 29(3) of this Act, where a patent application for which a copy of the decision to publish the application has been served or a patent application applying for the same invention as an invention or device described in the description or drawing(s) attached to the original patent application after the application date of the utility model registration is subject to the previous provisions.

Article 4 Transitional Measures on Penal Provisions

The application of penal provisions against acts committed before this Act enters into force is subject to the previous provisions.

Article 5 Amendment of Other Acts

(1) The following provisions of the Trademark Act are amended as follows:

Article 16(2) is amended as follows and paragraph (3) in the same Article is newly created as follows:

(2) Where an amendment of a trademark or the designated goods of an application for trademark registration filed before the transmittal of a certified copy of the decision to publish the application is considered to change the gist of the application after the establishment of the trademark right, the trademark application is deemed to have been filed when a document of the amendment was submitted.

(3) Where an amendment of a trademark or the list of designated goods of an application for trademark registration filed after the transmittal of a certified copy of the decision to publish the application is considered to have violated Article 15 of this Act after the establishment of the trademark right, the trademark application is deemed that a trademark right which the application for the trademark has not been made the amendment is granted.

Article 89(2) of this Act becomes paragraph (4) of the same Article, and paragraphs (2) and (3) of the same Article are newly created as follows:

(2) The Trademark Gazette may be published in electronic media as prescribed by ordinance of the Ministry of Knowledge Economy.

(3) When publishing the Trademark Gazette in electronic media, the Commissioner of the KIPO shall use an electronic network to publicize matters regarding the Trademark Gazette's publication, main contents and service.

(2) The following provisions of the Industrial Design Act are amended as follows:

"Articles 77 and 78(1) in this Act" in Article 30 reads "Articles 68 and 78 in this Act," and the later part of the same Article is deleted.

Article 78(2) becomes paragraph (4), and paragraphs (2) and (3) in the same Article are newly created as follows:

(2) The Design Gazette may be published in electronic media as prescribed by ordinance of the Ministry of the Commerce, Industry and Energy.

(3) When publishing the Design Gazette in electronic media, the Commissioner of the KIPO shall use an electronic network to publicize matters regarding the Design Gazette's publication, main contents and service.

ADDENDUM

<No. 5576, September 23, 1998>

Article 1 Date of Entry into Force

This Act enters into force on January 1, 1999. However, Articles 193(1) and 198bis of this Act, amendments concerning the effect of the description, claim(s), drawing(s) and abstract of an international patent application made in the Korean language under Article 201(6) of this Act, amendments concerning the exemption of submission of translations for an international patent application made in the Korean language under Article 208(1) of this Act and amendments concerning the exemption of submission of translations for an international patent application made in the Korean language under Article 210 of this Act, enter into force on the day on which a convention that the Government of the Republic of Korea concludes with the International Bureau in connection with the appointment of an international searching authority enters into force, and amended Articles 6, 11, 29, 36, 49, 53, 55, 56, 59, 69, 87, 88, 102, 104, 133, 202, 209 and 215 of this Act and Articles 21 and 22 of the Industrial Design Act in Article 5(2) of the addendum enter into force on July 1, 1999.

Article 2 General Transitional Measures

When this law enters into force, any examination, patent registration, patent right, opposition to a patent, trial, review and litigation related to a patent application filed after January 1, 1999, is subject to the previous provisions.

Article 3 Application of Disposition of Procedures Related to Filing a Patent Application by Means of Electronic Documents

The provisions on procedures related to filing a patent application and oppositions to the grant of a patent under amended Articles 28ter and 217bis(5) of this Act apply to any patent

application filed after January 1, 1999.

Article 4 Application of Requirements for Patents

Amended Article 29(3) of this Act applies when an invention for which a patent application filed after this Act enters into force (referred to as "a later-filed invention" in this Article) is the same as a device described in the description or drawing(s) attached to a written application for utility model registration filed before this Act enters into force and laid open after the filing date of the patent application for a later-filed invention.

Article 5 Amendment of Other Acts

(1) The following provisions of the Industrial Design Act are amended as follows:

"Articles 3 to 28 of the Patent Act" in Article 4 reads "Article 3 to 28quinquies of the Patent Act";

Articles 21 and 22 are deleted;

"Article 218 of the Patent Act" in Article 81 reads "Article 217bis of the Patent Act," and "Article 231 of the Patent Act" in Article 89 reads "Articles 229bis and 231 of the Patent Act."

(2) The following provisions of the Trademark Act are amended as follows:

"Article 28 of the Patent Act" in Article 5 reads "Article 28 to 28quinquies the Patent Act," and "Article 218 of the Patent Act" in Article 92 reads "Article 217bis of the Patent Act."

ADDENDUM (National Basic Living Security Act)

<No. 6024, September 7, 1999>

Article 1 Date of Entry into Force

This Act enters into force on October 1, 2000. (Proviso deleted.)

Article 2 Deleted

Article 3 Amendment of Other Acts

(1) to (6) Deleted.

(7) The following provisions of the Patent Act are amended as follows:

"An entitled person under Article 3 of the National Basic Livelihood Security Law" of Article 83(2) reads "the recipient under the provision of Article 5 of the National Basic Livelihood Security Act."

(8) to (10) Deleted

Article 4 to Article 13 Deleted

ADDENDUM

<No. 6411, February 3, 2001>

Article 1 Date of Entry into Force

This Act enters into force on July 1, 2001. However, amended Articles 56(1), 84(2) and (3), Article 217(1) and Article 229bis of this Act enter into force on the day this Act is promulgated.

Article 2 Application of Requirements for Patents

Amended Articles 29(1)(ii) and 30(1)(i)(c) of this Act apply to a patent application initiated after this Act enters into force.

Article 3 General Transitional Measures

The previous provisions apply to an examination, patent registration, patent right, opposition to a patent, trial, retrial and litigation related to a patent application made under the previous provisions when this Act enters into force, except under any of the following circumstances:

(i) where an opposition to a patent is made, Article 136(9) of this Act as applied *mutatis mutandis* under amended Article 77(3) of this Act applies;

(ii) where a patent application or patent right is deemed to have retroactive effect, amended Article 81bis of this Act applies;

(iii) where a trial to invalidate a patent is requested, amended Article 133bis(1) and (2) of this Act, amended Articles 136(3) to (5), (7) to (11), 139(3), 140(1), (5) and 136(1) of this Act as applied *mutatis mutandis* under amended Article 133bis(3) of this Act applies;

(vi) where a trial against a trial decision to reject a patent application is requested, the exception of amended Article 140bis(1) and (3) of this Act applies; or

(v) where individual claims of a patent application with two or more claims are abandoned, amended Article 215bis of this Act applies

ADDENDUM

<No. 6582, December 31, 2001>

Article 1 Date of Entry into Force

This Act enters into force six months after its promulgation.

Article 2 Transitional Measures on National and Public Patent Rights

A patent right and the right to obtain a patent for official inventions created by the faculty of national and public schools owned by the State and local government entities may be transferred to the organization of the school concerned when this Act enters into force.

Article 3 Transitional Measures on National and Public Utility Model Rights

For official utility models and a utility model right for an official creation, the right to obtain a utility model, the utility model right and transferring the right to obtain a utility model by the faculty of national and public schools owned by the State and local government entities, amended Article 39 of this Act and the addendum as applied *mutatis mutandis* under Article 20 of the Utility Model Act and Article 24 of the Industrial Design Act apply when this Act enters into force.

ADDENDUM (Civil Procedure Act)

<No. 6626, January 26, 2002>

Article 1 Date of Entry into Force

This Act enters into force on July 1, 2002.

Articles 2 to 5 Deleted

Article 6 Amendment of Other Acts

(1) to (22) Deleted.

(23) The following provisions of the Patent Act are amended as follows:

"Article 9 of the Civil Procedure Act" in Article 13 reads "Article 11 of the Civil Procedure Act."

"Articles 142, 143 and 145 to 149 of the Civil Procedure Act" in Article 154(7) reads "Articles 153, 154 and 156 to 160 of the Civil Procedure Act", and "Articles 133, 271 and 339 of the Civil Procedure Act" in Article 154(8) reads "Articles 143, 299 and 367".

"Articles 89 to 94, 98(1) and (2), 99, 101, 102 and 106 of the Civil Procedure Act" in Article 165(2) reads "Articles 98 to 103, 107(1) and (2), 108, 111, 112 and 116 of the Civil Procedure Act" and "Article 93 of the Civil Procedure Act" in Article 165(4) reads "Article 102 of the Civil Procedure Act".

"Articles 422 and 424 of the Civil Procedure Act" in Article 178(2) reads "Articles 451 and 453 of the Civil Procedure Act."

"Article 429(1) of the Civil Procedure Act" in Article 185 reads "Article 459(1) of the Civil Procedure Act."

"Articles 38 to 41, 43 and 44 of the Civil Procedure Act" in Article 188bis(1) reads "Articles 42 to 45, 47 and 48 of the Civil Procedure Act."

"Articles 271(2) and 339 of the Civil Procedure Act" in Article 232(1)(i) reads "Articles 299(2) and 367 of the Civil Procedure Act."

(24) to (29) deleted

Article 7 Deleted

ADDENDUM

<No. 6768, December 11, 2002>

Article 1 Date of Entry into Force

This Act enters into force five months after its promulgation; however, the amended Article 201(1) of this Act enters into force three months after its promulgation.

Article 2 Application of Treatment of Oppositions against the Grant of a Patent

Amended Article 78bis of the Act applies to an opposition against the granting of a patent initially filed after the enforcement of this Act.

Article 3 Transitional Measures on Domestic Period for Submitting the Documents of an International Patent Application

Notwithstanding amended Article 201(1) of this Act, the previous provisions apply to an international patent application of which the domestic period for submitting documents expires when this Act enters into force.

ADDENDUM (Industrial Design Protection Act)

<No. 7289, December 31, 2004>

Article 1 Date of Entry into Force

This Act enters into force after six months after its promulgation.

Article 2 to Article 4 Deleted

Article 5 Amendment of Other Acts

(1) to (7) deleted

(8) The following provisions of the Patent Act are amended as follows:

In Article 55(3), "Industrial Design Act" [uijang] reads the "Industrial Design Protection Act"[dizain].

In Article 98, "registered design" [uijang] reads "registered design" [dizain], "design" [uijang] reads "design" [dizain], "design right" [uijang] reads "design right" [dizain] and "holder of design right" [uijang] reads "holder of design right" [dizain].

In Article 102(4), "Industrial Design Act" [uijang] reads "Industrial Design Protection Act" [dizain] and "design right" [uijang] reads "design right" [dizain].

In Article 105, "Design Right" [uijang] in the title reads "Design Right" [dizain], and "design right" [uijang] in paragraph (1) of the same Article reads "design right" [dizain], "holder of original design right" [uijang] reads "holder of original design right" [dizain], and "original design right" [uijang] reads "original design right" [dizain], and, in paragraph (2) of the same Article, "design right" [uijang] reads "design right" [dizain] and "Industrial Design Act" [uijang] reads the "Industrial Design Protection Act" [dizain].

In Article 132-2 (1), "design" [uijang] reads "design" [dizain].

In the main part of Article 138(4), "the owner of the design right" [uijang] reads "the owner of the design right" [dizain], and, in paragraph (5) of the same Article, "registered design" [uijang] reads "registered design" [dizain] and "design" [uijang] reads "design" [dizain].

In Article 140(4)(ii) and (iii), "registered design" [uijang] reads "registered design" [dizain].

In Article 191(iii), "holder of design right" [uijang] reads "holder of design right" [dizain].

(9) or (16) Deleted.

In these articles, the English word "design" remains unchanged but, in the Korean version, the word for design, "uijang," has been changed to the more widely used term "dizain."

ADDENDUM (Civil Act)

<No. 7427, March 31, 2005>

Article 1 Date of Entry into Force

This Act enters into force on the date of its promulgation; however, (deleted) Article 7 of this Addendum (except for paragraph (2) and paragraph (29)) enters into force on January 1, 2008.

Articles 2 to 6 deleted

Article 7 Amendment of Other Laws

(1) to (23) Deleted.

<24> The Patent Act is partly amended as follows:

"Blood relative, head of the household, family member" in Article 148(ii) reads "blood relative."

(25) to (29) Deleted.

ADDENDUM

<No. 7554, May 31, 2005>

This Act enters into force six months after its promulgation; however, the amended Article 81ter enters into force on September 1, 2005.

ADDENDUM (Invention Promotion Act)

<No. 7869, March 3, 2006>

Article 1 Date of Entry into Force

This Act enters into force six months after its promulgation. (proviso deleted.)

Articles 2 to 5 Deleted

Article 6 Amendment of Other Laws

(1) The Patent Act is partly amended as follows:

Articles 39 and 40 are both deleted.

(2) and (3) Deleted.

ADDENDUM

<No. 7871, March 3, 2006>

Article 1 Date of Entry into Force

This Act enters into force on the date of its promulgation; however, the following amendments enter into force on October 1, 2006: the amendments to Articles 3(3), 6, 7bis, 11(1), 20(vii), 21(vi), 29(1), 29(3) and 29(4), which are related to the Utility Model Act; the amendments to Articles 31, 36(3), 49, 52, 53, 55(1), 55(3) and 55(4), which are related to the Utility Model Act; the amendments to Articles 56(1), 58, 58bis, 59ter, 62, 63bis, 64, 87(2), 88(4) and 102(4), which are related to the Utility Model Act; the amendments to Articles 104(1), 133(1), 133bis(4), 135(1), 154(8), 193(1) and 202(3), which are related to the Utility Model Act; the amendments to Articles 202(4), 204 and 205, which are related to reference dates; the amendments to Articles 208(3), 209, 213 and 215, which are related to the Utility Model Act; and the amendments to Article 229bis; in addition, the following amendments enter into force on July 1, 2007: the amendments to Articles 3(2), 4, 15(1), 35 and 55(3), which are related to an opposition to a patent; the amendments to Articles 57(1), 65(6), 69 to 78, 78bis, 84(1), 132ter, 136(1), 136(6), 137(1), 140bis, 148, 164(1), 165(3) and 165(4), which are related to an opposition to a patent; the amendments to Articles 171(2), 172, 176(1), 176(2), 181(1), 212, 214(5), 215 and 217(1), which are related to an opposition to a patent; the amendments to Articles 217(2), 217bis(1) and 217bis(2), which are related to an opposition to a patent; the amendments to Article 224bis(1), which is related to an opposition to a patent; and the amendments to Articles 226(2) and 228.

Article 2 Application Examples on Patent Requirements, etc.

The application of amended Articles 29(1)(i), 30(1) and 36(4) begins with the first patent application filed after this Act enters into force.

Article 3 Application Examples on the Refund of Patent Fees

The application of amended Articles 84(2) and 84(3) begins when a decision to cancel a patent, a trial decision to invalidate a patent or a trial decision to invalidate the registration of the extended term of a patent right becomes final and binding after this Act enters into force.

Article 4 Application Examples on the Modification of a Patent Invalidation Trial

The application of the amended proviso of Article 133(1) (except for subparagraphs (vii) and (viii)) begins when a patent right is established and registered after this Act enters into force.

Article 5 Application Examples on Remuneration for Patent Attorneys

The application of amended Article 191bis begins when a patent attorney represents a relevant party in a litigation after this Act enters into force.

Article 6 General Transitional Measures

Where a patent application is submitted before this Act enters into force, any examination, patent registration, patent right, trial, retrial or lawsuit of that application is subject to the previous provisions; however, amended Article 133bis(4) applies in a request for a trial to invalidate a patent, and amended Article 135(1) applies in a request for a trial to confirm the scope of rights.

Article 7 Transitional Measures Regarding Abolishment of Opposition to Patents

An opposition to any patent rights established and registered before July 1, 2007, are subject to the previous provisions.

ADDENDUM (Act on Promotion of the Digitization of Administrative Affairs, etc. for the Creation of Electronic Government)

<No. 8171, January 3, 2007>

Article 1 Date of Entry into Force

This Act enters into force six months after its promulgation. (Proviso deleted.)

Articles 2 to 5 Deleted

Article 6 Amendment of Other Laws

(1) to (3) Deleted.

(4) A partial amendment to the Patent Act (No. 7871) is partly amended as follows:

"Act on Promotion of the Digitization of Administrative Affairs, etc. for the Creation of Electronic Government" in Article 217(1)(iii) reads "Electronic Government Act."

ADDENDUM

<No. 8197, January 3, 2007>

Article 1 Date of Entry into Force

This Act enters into force on July 1, 2007.

Article 2 Application Examples on Patent Applications, etc.

The application of amended Articles 42, 47(1) and 55(3), the proviso of Article 59(2), Articles 62(iv) and 63bis, the proviso of Article 64(1), the latter part of Article 170(1), and the latter part of Article 174(2) begins when the first patent application is filed after this Act enters into force.

Article 3 Application Examples on Cancellation of the Designation as a Specialized Search Organization

The application of amended Article 58bis begins when the first violation occurs after the Act enters into force.

Article 4 Application Examples on the Refund of Fees for Patent Applications, etc.

The application of amended Article 84(1)(iv) begins when the first patent application is filed after this Act enters into force.

Article 5 Application Examples on Patent Correction in a Patent Invalidation Trial

The application of amended Articles 133bis and 137 begins when the first patent invalidation trial is requested after this Act enters into force.

Article 6 Application Examples on Correction of Descriptions and Drawings in a Trial to Confirm the Scope of Rights

The application of amended Article 140(2)(ii) begins with the first trial to confirm the scope of rights is requested after this Act enters into force.

Article 7 General Transitional Measures

Where a patent application is submitted before the Act enters into force, any examination, trial, retrial or lawsuit of that application is subject to the previous provisions.

ADDENDUM (Invention Promotion Act)

<No. 8357, April 11, 2007>

Article 1 Date of Entry into Force

This Act enters into force on the date of its promulgation; however, (deleted) amended Article 6(4) of this Addendum enters into force on July 1, 2007.

Articles 2 to 5 Deleted

Article 6 Amendment of Other Laws

(1) and (2) Deleted.

(3) The Patent Act is partly amended as follows:

"Article 29 of the Invention Promotion Act" in Article 109 reads "Article 41 of the Invention Promotion Act."

(4) A partial amendment to the Patent Act (No. 8197) is partly amended as follows:

"Article 8(1) of the Invention Promotion Act" in Article 118(2), 119(1) and 136(7) reads "Article 10(1) of the Invention Promotion Act."

Article 7 Deleted

ADDENDUM

<No. 8462, May 17, 2007>

Article 1 Date of Entry into Force

This Act enters into force six months after its promulgation.

Articles 2 Application Examples on Refunding Patent Fees, etc.

Amended Article 84(3) of this Act also applies to patent fees and other fees if the refund period specified in the previous provisions has not elapsed when this Act enters into force.

ADDENDUM

<No. 9381, January 30, 2009>

Article 1 Date of Entry into Force

This Act enters into force on July 1, 2009. However, enforcement of amended Articles 15(1), 29(4), 55, 56, 58(1), 63(2), 81ter, 90(6), 140, 140bis(2), 202, 204, 205, 207, 208, 214, 216, 226, 226bis and 227 to 230 of this Act begins on the promulgation date of the Act.

Article 2 Special Examples on Patent Requirements, etc., for International Patent Applications filed in Korean

Enforcement of amended Articles 29(4), 204, 205, and 207 of this Act begins when the first international patent application is filed in Korean on or after January 1, 2009.

Article 3 Special Examples on Amendments, etc., made to Patent Applications

Enforcement of amended Articles 47, 51(1) (main body) and the amended portion related to deletion of Article 47(4) begins with the first amendment made after this Act enters into force. If the amendment is made to a patent application filed before this Act enters into force, "the periods (in case of subparagraph (iii), at the time of a retrial" in the proviso except for subparagraphs of the Article 47(1) reads "the period", "Where the applicant requests a retrial under Article 67bis." in the subparagraph (iii) of the same paragraph reads "Where the trial against a decision to reject a patent application is requested, 30 days from the date of request of the trial", and "47(i)(ii) or (iii)" in Article 51(1) (main body) reads "47(1)(ii)".

Article 4 Special Examples on a Request for Retrial

Enforcement of amended Articles 47 and 51 related to the request for retrial and amended Article 67bis begins with the first patent application filed after this Act enters into force.

Article 5 Special Examples on Divisional Applications

Enforcement of amended Article 52 begins with a divisional application based on the first patent application filed after this Act enters into force.

Article 6 Special Examples on Amendment Ex Officio, etc.

Enforcement of amended Article 66bis begins with the first patent granted after this Act enters into force.

Article 7 Special Examples on Late Payment, Remainder on Payment of Patent Fees, etc.

Enforcement of amended Articles 79, 81 and 81bis begins when the first payment of patent fees is made or the first late payment or remainder payment on patent fees is made after this Act enters into force.

Article 8 Special Examples on the Application to Register an Extension of the Term of a Patent Right.

Enforcement of amended Article 90(6) begins when the first application to register an extension of the term of a patent right is filed after this Act enters into force.

Article 9 Special Examples on an Amendment Made to a Request for Trial, etc.

Enforcement of amended Articles 140 and 140bis(2) begins when the first request for trial is filed after this Act enters into force.

Article 10 General Transitional Measures

Previous provisions (except for Articles 15(1) and 216) apply to patent applications filed before this Act enters into force.

Article 11 Amendment to Other Acts

The following provision of the Design Law is amended as follows.

"Article 229bis of the Patent Act" in Article 89 reads "Article 226bis of the Patent Act."