

# DESIGN PROTECTION ACT

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Act No. 12288, Jan. 21, 2014

Act No. 13840, Jan. 27, 2016

Act No. 14032, Feb. 29, 2016

Act No. 14686, Mar. 21, 2017

Act No. 15579, Apr. 17, 2018

Act No. 16203, Jan. 8, 2019

## Article 1 (Purpose)

The purpose of this Act is to contribute to developing industries by protecting designs and promoting the use thereof and encouraging new designs.

## Article 2 (Definitions)

The terms used in this Act shall be defined as follows:

1. The term "design" means a shape, pattern, or color of an article *[including parts of an article (excluding those defined under Article 42) and fonts; the same shall apply hereinafter]*, which invokes a sense of beauty through visual perception;
2. The term "font" means a set of characters (including those in the form of numerals, punctuation marks, symbols, etc.) made in a style with common characteristics for recording, marking, or printing;
3. The term "registered design" means a design accepted for design registration;
4. The term "design registration" means either registration of an examined design or partially-examined design;
5. The term "registration of an examined design" means that an application for design registration is registered only when the application successfully passes an examination as to whether it meets all requirements for design registration;
6. The term "registration of a partially-examined design" means that a design is registered if an application successfully passes an examination as to whether it meets only some of the requirements for design registration;
7. The term "working of a design" means producing, using, assigning, renting, exporting, or importing an article that involves a design, or offering to assign or rent such article (including displaying an article for assigning or renting; the same shall apply hereinafter).

### **Article 3 (Persons Eligible for Design Registration)**

(1) A person who creates a design, or his or her successor shall have a right to register the design in accordance with the provisions of this Act: Provided, That no design shall be registered for any employee of the Korean Intellectual Property Office or the Intellectual Property Trial and Appeal Board while he or she is in service, except for a registered design acquired by inheritance or bequest.

(2) If at least two persons jointly create a design, such persons shall jointly have the right to register the design.

### **Article 4 (Legal Capacity of Minors)**

(1) No minor or person under limited guardianship or person under adult guardianship shall file an application or a claim or initiate any other procedure in relation to design registration (hereinafter referred to as “design-related procedure”) without being represented by his or her legal representative: Provided, That the foregoing shall not apply where a minor or a person under limited guardianship is allowed to do a legal act independently.

(2) A legal representative referred to in paragraph (1) may file a written opposition to registration of a partially-examined design sought by an adverse party or a petition for an administrative patent trial or retrial on such petition to object without the guardianship supervisor’s consent thereto.

### **Article 5 (Unincorporated Associations)**

If an unincorporated association or foundation has already appointed a representative or an administrator, such association or foundation may become a person who raises an objection to the registration of a partially-examined design or a petitioner or respondent for an administrative patent trial or retrial on such petition in the name of the association or foundation.

### **Article 6 (Design Administrators for Non-Residents)**

(1) A person who has neither domicile nor a place of business in the Republic of Korea (hereinafter referred to as “non-resident”) shall not initiate any design-related procedure or file a lawsuit against a disposition made by an administrative authority under this Act or pursuant to an order issued under this Act, unless such non-resident is represented by a person who acts as an agent for the non-resident’s designs and has domicile or a place of business in the Republic of Korea (hereinafter referred to as “design administrator”), except when the non-resident (or the representative of the non-resident, if the non-resident is a corporation) sojourns in the Republic of Korea.

(2) A design administrator shall represent his or her principal in a lawsuit filed with respect to a design-related procedure or a disposition made by an administrative authority under this Act or pursuant to an order issued under this Act, within the scope of authority delegated to him or her.

### **Article 7 (Scope of Authority of Agency)**

No agent (including a design administrator; the same shall apply hereinafter) to whom a power of attorney is granted by a person who has domicile or a place of business in the Republic of Korea shall do any of the following acts, unless he or she is expressly so delegated:

1. To abandon or withdraw an application for design registration or to renounce a design right;
2. To withdraw an application;
3. To withdraw a petition;
4. To file a petition for an administrative patent trial under Article 119 or 120;
5. To appoint a sub-agent.

**Article 8 (Proof of Authority of Agency)**

A person who initiates a design-related procedure as an agent shall prove his or her power of attorney in writing.

**Article 9 (Ratification of Defects in Legal Capacity)**

A procedure initiated by a person who lacks legal capacity or authority for legal representation, or by a person who has a defect in his or her power of attorney, any of which is necessary for initiating a design-related procedure, shall take effect retroactively to when relevant acts have been done, if the right party or legal representative, as subsequently amended, ratifies the procedure.

**Article 10 (Non-Extinguishment of Authority of Agency)**

The authority of agency granted to an agent by a person who initiates a design-related procedure shall survive even when any of the following grounds arises:

1. The principal dies or loses legal capacity;
2. The principal disappears as a consequence of a merger, if the principal is a corporation;
3. The principal's duty as a trustee is terminated;
4. The legal representative dies or loses legal capacity;
5. The legal representative's power of attorney is terminated or changed.

**Article 11 (Independence of Representation)**

If a person who initiates a design-related procedure is represented by at least two agents, each of the agents shall independently represent the principal before the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board.

**Article 12 (Order to Appoint or Replace Agent)**

(1) If the Commissioner of the Korean Intellectual Property Office or a presiding administrative patent judge appointed under Article 132 (hereinafter referred to as "chief administrative patent judge") finds that a person who initiates a design-related procedure is unable to properly perform the procedure or to make oral arguments in oral hearings or is incompetent to initiate the procedure on any other ground, he or she may issue an order to appoint an agent who shall initiate the procedure on behalf of the person.

(2) If the Commissioner of the Korean Intellectual Property Office or a chief administrative patent judge finds that an agent who initiates a design-related procedure is unable to properly perform the procedure or to make oral arguments in oral hearings or is incompetent to initiate the procedure on any other ground, he or she may issue an order to replace the agent with another person.

(3) In cases falling under paragraph (1) or (2), the Commissioner of the Korean Intellectual Property Office or a chief administrative patent judge may order a patent attorney to represent the person.

(4) When the Commissioner of the Korean Intellectual Property Office or a chief administrative patent judge issues an order to appoint or replace an agent under paragraph (1) or (2), he or she may completely or partially invalidate the design-related procedure initiated by the person under paragraph (1) or the agent under paragraph (2) before the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board, upon receipt of a request from the person who performs the design-related procedure.

#### **Article 13 (Representation of Multi-Party)**

(1) Where at least two persons jointly follow a design-related procedure, each of them shall represent the others, except for any of the following acts: Provided, That if such persons appoint a person as their representative and report to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board on the appointment, the representative shall represent the others:

1. Abandonment or withdrawal of an application for design registration;
2. Withdrawal of an application;
3. Withdrawal of a petition;
4. Requests for the publication of an application under Article 52;
5. Petitions for an administrative patent trial under Article 119 or 120.

(2) When a report is filed under the proviso of paragraph (1), the appointment of the representative shall be evidenced in writing.

#### **Article 14 (Application Mutatis Mutandis of the Civil Procedure Act)**

Except as otherwise provided in this Act, the provisions of Section 4 of Chapter II of Part I of the Civil Procedure Act shall apply mutatis mutandis to agents.

#### **Article 15 (Jurisdiction over Non-Residents)**

If an non-resident has already appointed a design administrator for his or her design right or any right to a design, the domicile or place of business of the design administrator shall be deemed the place where the property referred to in Article 11 of the Civil Procedure Act is situated, whereas the seat of the Korean Intellectual Property Office shall be deemed the place where such property is situated, if an non-resident has not appointed a design administrator.

#### **Article 16 (Calculation of Period)**

Periods provided in this Act or an order issued under this Act shall be determined as follows:

1. The first day of a period shall not be counted: Provided, That the foregoing shall not apply where a period starts at midnight;
2. If a period is expressed in months or years, it shall be counted according to the calendar;
3. If a period does not start on the first day of a month or year, the period shall expire on the day immediately preceding the date corresponding to the start date of the period in the last month or year: Provided, That if a period is counted in months or years but there is no corresponding day in the last month, the period shall expire on the last day of the month;

4. If the last day of a period for a design-related procedure falls on a Saturday or public holiday (including the Workers' Day under the Designation of Workers' Day Act), the period shall expire on the day immediately following that Saturday or public holiday.

#### **Article 17 (Extension of Period)**

(1) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board may, upon request or ex officio, extend a period for amending grounds, etc. for filing a written opposition to registration of a partially-examined design under Article 69 or a period for filing a petition for an administrative patent trial under Article 119 or 120 only once, by up to 30 days: Provided, That the number of extensions and the period of an extension may be additionally increased or extended for a person from a remote and hard-to-access area, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(2) When the Commissioner of the Korean Intellectual Property Office, the President of the Intellectual Property Trial and Appeal Board, a chief administrative patent judge, or an examiner defined under Article 58 (hereinafter referred to as "examiner") specifies a period for a design-related procedure under this Act, he or she may, upon request, reduce or extend the period or may, ex officio, extend the period. In such cases, the Commissioner of the Korean Intellectual Property Office or other competent authority shall ensure that no parties involved in the procedure shall be unfairly undermined when he or she makes a decision on whether to reduce or extend a period.

(3) When a chief administrative patent judge or an examiner specifies a deadline for a design-related procedure under this Act, he or she may change the deadline, upon request or ex officio.

#### **Article 18 (Invalidation of Procedures)**

(1) If a person ordered to amend a design-related procedure under Article 47 fails to amend the procedure within the specified period, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board may invalidate the procedure.

(2) If the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board invalidates a design-related procedure under paragraph (1) but finds that the invalidation results from an event or cause not attributable to the person ordered to amend the procedure, but fails to amend it within the specified period, he or she may reinstate the invalidated procedure within two months after the event or cause terminates, upon receipt of a request from the person ordered to amend the procedure: Provided, That the foregoing shall not apply where one year has passed since the end of the specified period.

(3) When the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board invalidates a procedure under paragraph (1) or revokes the invalidated procedure under the body of paragraph (2), he or she shall give notice of the disposition to the person ordered to amend the procedure.

#### **Article 19 (Subsequent Amendment of Procedures)**

If a person who initiated a design-related procedure fails to complete the procedure within any of the following periods due to a cause beyond his or her control, he or she may subsequently amend the procedure within two months after the cause ceases to exist: Provided, That the foregoing shall not apply where one year has passed since the end of the specified period. <Amended by Act No. 14032, Feb. 29, 2016>

1. The period for filing a petition for an administrative patent trial under Article 119 or 120;
2. The period for filing a petition for an administrative patent retrial under Article 160.

#### **Article 20 (Succession to Effects of Procedures)**

The effect of a procedure followed with respect to a design right or other rights relating to a design shall be transferred to a successor to the design right or the relevant right relating to the design.

#### **Article 21 (Continuation of Procedures)**

Where a design right or other right relating to a design is transferred while a design-related procedure is pending at the Korean Intellectual Property Office or in the Intellectual Property Tribunal, the Commissioner of the Korean Intellectual Property Office or the chief administrative patent judge may allow the successor to the design right or the relevant right relating to the design to continue the design-related procedure.

#### **Article 22 (Interruption of Procedure)**

In any of the following cases, a design-related procedure pending at the Korean Intellectual Property Office or the Intellectual Property Trial and Appeal Board shall be suspended: Provided, That the foregoing shall not apply where an agent has been authorized to continue the procedure:

1. If a party dies;
2. If a corporate party is extinguished following a merger;
3. If a party loses capacity to follow the procedure;
4. If a party's legal representative dies or forfeits a power of attorney;
5. If the duty of a trustee entrusted by a party terminates;
6. If the representative under the proviso of Article 13 (1) dies or forfeits his or her qualification;
7. If a bankruptcy trustee or a person who has intervened in the procedure for other person in his or her name with a certain qualification forfeits the qualification or dies.

#### **Article 23 (Taking-Over of Suspended Procedures)**

If a procedure pending at the Korean Intellectual Property Office or at the Intellectual Property Trial and Appeal Board is suspended under Article 22, any of the following persons shall take over the procedure:

1. In cases falling under subparagraph 1 of Article 22: The heir, the administrator of the inherited estate, or a person authorized to resume the procedure under any Act: Provided, That no heir may take over the procedure while an heir can renounce inheritance;
2. In cases falling under subparagraph 2 of Article 22: The corporation incorporated following a merger or the corporation surviving a merger;
3. In cases falling under subparagraphs 3 and 4 of Article 22: The party whose capacity to follow the procedure is reinstated or a person who becomes the legal representative;

4. In cases falling under subparagraph 5 of Article 22: The new trustee;
5. In cases falling under subparagraph 6 of Article 22: The new representative or either party;
6. In cases falling under subparagraph 7 of Article 22: An equally qualified person.

#### **Article 24 (Applications for Taking-Over)**

(1) Taking-over of a procedure suspended under Article 22 may be applied for by a person specified in any subparagraph of Article 23. In such cases, the other party may request the Commissioner of the Korean Intellectual Property Office or a administrative patent judge under Article 130 (hereinafter referred to as “administrative patent judge”) to order the person specified in any subparagraph of Article 23 to file an application for taking-over.

(2) Upon receipt of an application for the taking-over of a suspended procedure under Article 22, the Commissioner of the Korean Intellectual Property Office or the chief administrative patent judge shall notify the other party thereof.

(3) If the Commissioner of the Korean Intellectual Property Office or a administrative patent judge finds, as a result of an investigation he or she conducted ex officio, that an application filed for the taking-over of a suspended procedure under Article 22 is groundless, he or she shall dismiss the application.

(4) If a person specified in any subparagraph of 23 fails to take over a suspended procedure, the Commissioner of the Korean Intellectual Property Office or the administrative patent judge shall order the person to resume the procedure within the period he or she specifies ex officio.

(5) If a person ordered to take over a procedure under paragraph (4) fails to succeed the procedure within a period specified under that paragraph, the procedure shall be deemed resumed on the day immediately after the end of the period.

(6) Where a procedure is deemed taken over under paragraph (5), the Commissioner of the Korean Intellectual Property Office or the chief administrative patent judge shall notify the parties thereof.

#### **Article 25 (Abeyance of Proceeding)**

(1) If the Commissioner of the Korean Intellectual Property Office or a administrative patent judge is unable to perform any of his or her duties due to a natural disaster or other cause beyond his or her control, the procedure pending at the Korean Intellectual Property Office or at the Intellectual Property Trial and Appeal Board shall be adjourned until such cause ceases to exist.

(2) If either party is unable to resume a procedure pending at the Korean Intellectual Property Office or at the Intellectual Property Trial and Appeal Board due to a disability, the Commissioner of the Korean Intellectual Property Office or the competent administrative patent judge may issue an order to suspend the procedure until the disability is eliminated.

(3) The Commissioner of the Korean Intellectual Property Office or a administrative patent judge may revoke a decision made under paragraph (2).

(4) When the Commissioner of the Korean Intellectual Property Office or a presiding administrative patent judge adjourns a procedure under paragraph (1) or (2) or revokes a decision under paragraph (3), he or she shall notify each party thereof.

#### **Article 26 (Effects of Interruption or Abeyance)**

When a design-related procedure is interrupted or falls into abeyance, the running of a term shall be suspended, and the entire term shall recommence from the time the succession of the procedure is notified or when the procedure continues.

#### **Article 27 (Foreigners' Legal Capacity to Hold Rights)**

No non-resident foreigner shall enjoy a design right or other right relating to a design, except in any of the following cases:

1. Where the foreigner's country allows nationals of the Republic of Korea to enjoy a design right or other right relating to a design under the same terms and conditions as those applicable to the nationals of the country;
2. Where the foreigner's country allows nationals of the Republic of Korea to enjoy a design right or other right relating to a design under the same terms and conditions as those applicable to the nationals of the country, if the Republic of Korea allows the foreigner to enjoy a design right or other right relating to a design;
3. Where the foreigner is allowed to enjoy a design right or other right relating to a design under a treaty or any arrangement equivalent to a treaty (hereinafter referred to as "treaty").

#### **Article 28 (Effective Dates of Submitted Documents)**

(1) An application, petition, or other document (including articles; hereafter the same shall apply in this Article) filed with the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board under this Act or in accordance with an order issued under this Act, shall take effect on the date it arrives at the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board.

(2) An application, petition, or other document falling under paragraph (1), if filed with the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board by mail, shall be deemed delivered to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board on the date specified in either of the following subparagraphs: Provided, That documents for applying for registration of a design right or other right relating to a design shall take effect on the date they are delivered to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board, if filed by mail: *<Amended by Act No. 15579, Apr. 17, 2018>*

1. If the date indicated by the correspondence date stamp affixed in accordance with statutes or regulations regarding postal service is clear: Such indicated date;
  2. If the date indicated by the correspondence date stamp affixed in accordance with statutes or regulations regarding postal service is unclear: The date submitted to the postal office (meaning the date evidenced by the receipt of the postal article).
- (3) Except as otherwise provided in paragraphs (1) and (2), matters necessary for the submission of documents where the delivery of a postal article is delayed, a postal article is lost, or postal services are



suspended, shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

**Article 29 (Notation of Identification Numbers)**

(1) A person who initiates a design-related procedure shall apply for allocation of an identification number to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Appeal Board, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(2) Upon receipt of an application under paragraph (1), the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board shall allocate an identification number to the applicant and notify the applicant thereof.

(3) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board shall allocate, ex officio, an identification number to a person who fails to apply for an identification number under paragraph (1) and shall notify the person thereof.

(4) A person who is allocated an identification number under paragraph (2) or (3) shall note the identification number in documents specified by Ordinance of the Ministry of Trade, Industry and Energy, when he or she follows a design-related procedure. In such cases, the notation of his or her domicile (or the place of business, if such person is a corporation) in such documents may be omitted, notwithstanding the provisions of this Act or any order issued under this Act.

(5) Paragraphs (1) through (4) shall apply to an agent for a person who follows a design-related procedure.

(6) Matters necessary for applications for allocating identification numbers and the allocation and notification of identification numbers, and other matters necessary for identification numbers shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

**Article 30 (Conduct of Design-Related Procedures by Electronic Documents)**

(1) A person who initiates a design-related procedure may convert an application for design registration and other documents, which he or she intends to submit to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board in accordance with this Act, into electronic form by a method prescribed by Ordinance of the Ministry of Trade, Industry and Energy and submit them via an information and communications network or may submit them as stored in an electronic recording medium, such as a portable storage device or optical disk.

(2) Electronic documents submitted under paragraph (1) shall be as valid as paper documents submitted under this Act.

(3) An electronic document submitted via an information and communications network under paragraph (1) shall be deemed received with the contents recorded in a file stored in the electronic information processing system the Korean Intellectual Property Office or the Intellectual Property Trial and Appeal Board uses for receipt of documents, as at the time the person who submits the document can confirm the filing number via the information and communications network.

(4) The kinds of documents that can be submitted in electronic form under paragraph (1), the method of submission, and other matters necessary for the submission of documents in electronic form shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

### **Article 31 (Reporting on Use of Electronic Documents and Digital Signature)**

(1) A person who intends to follow a design-related procedure shall file a report on the use of electronic documents with the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board and shall affix his or her digital signature to electronic documents submitted to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board to ensure identification of the person who submits the document.

(2) An electronic document submitted under Article 30 shall be deemed submitted by a person whose digital signature under paragraph (1) is affixed thereto.

(3) Matters necessary for the procedure for reporting the use of electronic documents under paragraph (1), the method of affixing digital signatures, etc. shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

### **Article 32 (Notification via Information and Communications Networks)**

(1) If the Commissioner of the Korean Intellectual Property Office, the President of the Intellectual Property Trial and Appeal Board, a chief administrative patent judge, an administrative patent judge, a chief examiner appointed under Article 70 (3) (hereinafter referred to as “chief examiner”), or an examiner intends to give written notice to, or serve a document (hereinafter referred to as “notification or service of documents”) on, a person who has filed a report on the use of electronic documents in accordance with Article 31 (1), he or she may use an information and communications network.

(2) The notification or service of documents via an information and communications network under paragraph (1) shall be as valid as notification or service in writing.

(3) The notification or service of a document under paragraph (1) shall be deemed delivered with the contents recorded in a file stored in the electronic information processing system the Korean Intellectual Property Office or the Intellectual Property Trial and Appeal Board uses for dispatching as at the time the person to whom such notification or service is addressed finds the document via the electronic information processing system used by the person.

(4) Necessary matters regarding the kinds and methods of notification and service via an electronic information processing system under paragraph (1) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

### **Article 33 (Requirements for Design Registration)**

(1) A design usable for an industrial purpose is eligible for design registration, except:

1. A design publicly known or worked in the Republic of Korea or a foreign country before an application for design registration is filed;
2. A design described in a printed publication distributed in the Republic of Korea or a foreign country or made available for public use via telecommunications lines before an application for design registration is filed;

3. A design similar to any of the designs specified in subparagraph 1 or 2.

(2) Notwithstanding paragraph (1), no design (excluding a design specified in paragraph (1)) that could have been easily created by a person who has ordinary skill in the art to which the design pertains by applying any of the following methods before an application for design registration is filed, shall be eligible for design registration:

1. A design specified in paragraph (1) 1 or 2 or a combination of such designs;
2. A shape, pattern, or color, or a combination thereof, widely known in the Republic of Korea or in a foreign country.

(3) Notwithstanding paragraph (1), a design for which an application for design registration is filed is ineligible for design registration, if the design is identical or similar to a part of a design claimed in another application for design registration (limited to an application filed before the date on which the relevant application for design registration is filed), published in the Design Gazette under Article 52, 56, or 90 (3) after the application for registration of the relevant design was filed, or expressed in a drawing, a photograph, or a specimen accompanying such application: Provided, That the foregoing shall not apply where the applicant for registration of the relevant design and the applicant for registration of another design are one and the same person.

#### **Article 34 (Unregistrable Designs)**

Notwithstanding Article 33, none of the following designs is eligible for design registration:

1. A design identical or similar to the national flag or emblem, a military flag, a decoration, an order of merit, or a badge of the Republic of Korea, a medal of any public institution, the national flag or emblem of a foreign country, or the wording or mark of an international organization;
2. A design, the meaning or any content of which offends general morality and good customs of ordinary people, or is likely to disturb public order;
3. A design mistakable as related to an article associated with any other person's business;
4. A design made only in a shape essential for a function of the relevant article.

#### **Article 35 (Related Designs)**

(1) Notwithstanding Articles 33 (1) and 46 (1) and (2), the owner of a design right or the applicant for design registration may have designs similar only to his or her registered design or the design claimed in the application pending for design registration (hereinafter referred to as “principal design”) registered as related designs (hereinafter referred to as “related designs”), only if he or she files an application for registration of such related designs within one year from the filing date of the application for registration of the principal design.

(2) No design similar only to a related design registered or applied for registration under paragraph (1) is eligible for design registration.

(3) If an exclusive license provided in Article 97 (hereinafter referred to as “exclusive license”) has been granted for the design right to a principal design, no related design for the principal design is eligible for design registration, notwithstanding paragraph (1).

### **Article 36 (Exception to Lack of Novelty)**

(1) If a design of the person who has the right to register the design falls under Article 33 (1) 1 or 2 on a certain date, it shall be deemed that the design does not fall under paragraph (1) 1 or 2 of that Article in applying paragraph (1) 1 or 2 of that Article to the design claimed in an application filed by him or her for design registration within 12 months from the date: Provided, That the foregoing shall not apply to a design the application or registration of which is published in the Republic of Korea or in a foreign country under a treaty or an Act. <Amended by Act No. 14686, Mar. 21, 2017>

(2) Any person who intends seek the benefit of the main sentence of paragraph (1) shall submit a document stating his or her intention to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board, along with documents evidencing his or her eligibility, at any of the following times: <Amended by Act No. 14686, Mar. 21, 2017>

1. When a person files an application for design registration under Article 37; in which cases, documents evidencing relevant facts shall be submitted within 30 days from the filing date of the application for design registration;
2. Before a notice is dispatched for the determinations to reject applications for design registration under Article 62 or determinations of design registration under Article 65 (hereinafter referred to as “determination regarding design registration”); in which cases, documents evidencing relevant facts shall be submitted both within 30 days from the date the documents stating his or her intention are filed and before any determination regarding design registration is made;
3. When a person submits a written reply to a written opposition to registration of a partially-examined design under Article 68 (3);
4. When a person submits a written reply to a petition for an administrative patent trial under Article 134 (1) (limited to an administrative patent trial on the invalidation of registration of a design).

### **Article 37 (Applications for Design Registration)**

(1) A person who intends to register a design shall file an application for design registration, stating the following matters, with the Commissioner of the Korean Intellectual Property Office: <Amended by Act No. 11962, Jul. 30, 2013>

1. The name and domicile of the applicant for design registration (or the name and place of business, if the applicant is a corporation);
2. The name and domicile or place of business of the agent, if the applicant for design registration is represented by an agent [*the name and the place of business of the patent firm or the patent firm (limited liability), and the name of the patent attorney in charge, if the agent is a patent firm or a patent firm (limited liability)*];
3. The product or the category of products in relation to which the design is to be used under Article 40 (2) (hereinafter referred to as “category of products”);
4. Whether the application is filed to register an independent design or to register a related design (hereafter referred to as “application for registration of a related design”);

5. The design registration number or the design registration application number of the principal design (applicable only where it is intended to register related designs under Article 35 (1));
6. The name and domicile of the creator of the design;
7. Whether an application is filed for registration of multiple designs under Article 41;
8. The number of designs and the serial number of each design (applicable only to applications for registration of multiple designs under Article 41);
9. Matters specified in Article 51 (3) (applicable only where priority is claimed).

(2) An application for design registration referred to in paragraph (1) shall be accompanied by a drawing depicting the following matters with respect to each design:

1. The product or the category of products in relation to which the design is to be used;
2. A description of the design and the features of the creation;
3. The serial number of each design (applicable to applications for registration of multiple designs under Article 41).

(3) An applicant for design registration may submit a photograph or specimen of the design in lieu of the drawing under paragraph (2).

(4) Designs eligible for an application for registration of a partially-examined design shall be limited to those for products specified by Ordinance of the Ministry of Trade, Industry and Energy, among the categories of products. In such cases, applications for design registration for eligible products shall be limited to those subject to registration of a partially-examined design.

(5) Except as otherwise provided in paragraphs (1) through (4), matters necessary for filing applications for design registration shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 38 (Determination of Filing Date of Application for Design Registration)**

(1) The date on which an application for design registration is delivered to the Commissioner of the Korean Intellectual Property Office shall be deemed the filing date of the application for design registration: Provided, That the foregoing shall not apply:

1. Where an application for design registration fails to clearly indicate an intention to register a design;
2. Where the name or title of the applicant for design registration is omitted or unclearly stated in an application for design registration and thus the applicant for design registration is unidentifiable;
3. Where no drawing, photograph, or specimen has been submitted, or a depiction in a drawing is neither clear nor readable;
4. Where an application for design registration is not written in Korean.

(2) If an application for design registration falls under any subparagraph of paragraph (1), the Commissioner of the Korean Intellectual Property Office shall order the person who intends to have the design registered to amend the application within a reasonably specified period.

(3) Upon receipt of an order to amend under paragraph (2), a person who intends to amend an application for design registration shall submit a document concerning the amendment of procedure (hereafter referred to as “written amendment of procedure” in this Article).

(4) If a person ordered to amend under paragraph (2) amends the relevant application for design registration within the specified period, the Commissioner of the Korean Intellectual Property Office shall deem that the application is filed on the date the written amendment of procedure is delivered to the Commissioner of the Korean Intellectual Property Office: Provided, That, if it is required to amend only some designs claimed in an application filed for multiple designs registration under Article 41, the date on which the written amendment of procedure for such designs is delivered to the Commissioner of the Korean Intellectual Property Office shall be deemed the filing date of the application for registration of all multiple designs.

(5) If a person who has been ordered to make an amendment under paragraph (2) fails to make the amendment within the specified period, the Commissioner of the Korean Intellectual Property Office may reject the application for design registration, deeming it illegitimate. The foregoing shall also apply where a person fails to amend some designs, among designs claimed in an application for multiple designs registration under Article 41.

#### **Article 39 (Joint Applications)**

If a right to have a design registered is jointly owned under Article 3 (2), all co-owners shall jointly file an application for design registration.

#### **Article 40 (Doctrine of One-Design for One-Registration Application)**

(1) An application for design registration shall be filed for each design.

(2) A person who intends to file an application for design registration shall follow the classification of categories of products prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 41 (Multiple Designs Application)**

Notwithstanding Article 40 (1), a person who intends to file an application for design registration may file one application for registration of not exceeding 100 designs for products classified into the same category of products (hereinafter referred to as “application for registration of multiple designs”) according to the classification of categories of products prescribed by Ordinance of the Ministry of Trade, Industry and Energy. In such cases, each design shall be separately represented.

#### **Article 42 (Design for a Set of Articles)**

(1) Where at least two articles are used together as a set of articles, a design for the set of products may be registered as one design, if the design for the set of articles is unitary.

(2) The classification of a set of articles under paragraph (1) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 43 (Secret Designs)**

(1) An applicant for design registration may request that the design be kept secret for a prescribed period of up to three years from the date of registration for the establishment of the design right. It may be also requested to keep confidential all or some of designs claimed in an application for multiple designs registration.

(2) An applicant for design registration may make a request under paragraph (1) during a period between the filing date of the application for design registration and the date on which he or she pays the initial design registration fee: Provided, That such request may be made by the time the Commissioner of the Korean Intellectual Property Office registers the establishment of the design right under any subparagraph of Article 90 (2), if an applicant is exempted from the registration fee under Article 86 (1) 1 or 2.

(3) An applicant for design registration or the owner of a design right may request a reduction or extension of the period designated by him or her under paragraph (1). In such cases, the period so extended shall not exceed three years from the date of registration for establishment of the design right.

(4) In any of the following cases, the Commissioner of the Korean Intellectual Property Office shall accept a request to inspect a secret design:

1. Where a person with consent from the relevant design right-holder makes a request for inspection;
2. Where a party to an examination, petition to object to the registration of a partially-examined design, administrative patent trial or retrial, or lawsuit on a design identical or similar to a secret design or an intervenor in any of such proceedings makes a request for inspection;
3. Where a person who presents prima facie evidence for the fact that he or she has been warned of infringement on a design right;
4. Where a court or the Intellectual Property Trial and Appeal Board makes a request for inspection.

(5) No person who inspects a secret design under paragraph (4) shall retain information about the design by photographing or photocopying it without permission nor divulge the information known to him or her.

(6) If a request to publish an application under Article 52 is filed, a request under paragraph (1) shall be deemed withdrawn.

#### **Article 44 (Applications Filed by Ineligible Person for Design Registration and Protection of Legitimate Right Holders)**

If a trial decision made to reject an application filed by a person who is neither the creator of a design nor a legitimate successor to a right to have a design registered (hereinafter referred to as “ineligible person”) for registration of a design becomes final and conclusive on the ground provided in Article 62 (1) 1, the application filed by the legitimate right-holder for registration of the design after the application for registration of the design is filed by the ineligible person shall be deemed filed at the time the ineligible person filed the application for design registration: Provided, That the foregoing shall not apply where the legitimate right-holder files an application for design registration after 30 days from the date the trial decision to reject the application for design registration becomes final and conclusive.

#### **Article 45 (Design Registration by Ineligible Persons and Protection of Legitimate Right Holders)**

If a ruling to revoke registration of, or invalidation trial of a design becomes final and conclusive on the ground that the registrant is ineligible, the application filed by the legitimate right-holder for registration of the design subsequent to the application filed by the person ineligible to design registration shall be deemed filed at the time the application for the revoked or invalidated registration of the design was filed: Provided, That the foregoing shall not apply where the legitimate right-holder files an application for

design registration after 30 days from the date the ruling to revoke registration or invalidation trial becomes final and conclusive.

#### **Article 46 (Earlier Application)**

(1) If at least two applications are filed on different dates for registration of an identical or similar design, only the first applicant to file an application may have his or her design registered.

(2) If at least two applications are filed on the same date for registration of an identical or similar design, only one applicant selected by the applicants for design registration by agreement among them may have his or her design registered. If the applicants for design registration fail to reach agreement or it is impracticable for them to reach agreement, none of the applicants' designs may be registered.

(3) If an application for design registration is invalidated, withdrawn, or abandoned or if a trial decision to reject an application for design registration under Article 62 becomes final and conclusive, the application for design registration shall be deemed never filed, for the purpose of applying paragraph (1) or (2): Provided, That the foregoing shall not apply in cases falling under the latter part of paragraph (2) and the trial decision to reject an application for design registration under Article 62 becomes final and conclusive.

(4) An application filed by an ineligible person for design registration shall be deemed never filed, for the purpose of applying paragraph (1) or (2).

(5) In cases falling under paragraph (2), the Commissioner of the Korean Intellectual Property Office shall order the applicant to report, to him or her, on the results of their agreement within a specified period, and it shall be deemed that the applicants fail to reach agreement under paragraph (2), if they fail to report the results thereof within the period.

#### **Article 47 (Amendment of Procedures)**

The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board shall order a person who initiates a design-related procedure to amend the procedure within a specified period in any of the following cases:

1. Where the person violates Article 4 (1) or 7;
2. Where the person omits any formality specified by this Act or by an order issued under this Act;
3. Where the person fails to pay a fee payable under Article 85.

#### **Article 48 (Amendment of Applications and Change of Gist)**

(1) An applicant for design registration may amend any description of the application for design registration, any drawing accompanying the application, any description in a drawing, or any photograph or specimen to the extent that the gist of the initial application for design registration remains unchanged.

(2) An applicant for design registration may amend an application for registration of related designs to applications for registration of an independent design or vice versa.

(3) An applicant for design registration may amend an application for registration of a partially-examined design to an application for registration of an examined design or vice versa.

(4) Amendments referred to in paragraphs (1) through (3) may be made at the time specified in the following subparagraphs: <Amended by Act No. 14686, Mar. 21, 2017>



1. Until before a notice of a determination regarding design registration is dispatched;
  2. When a petition for re-examination under Article 64 is filed;
  3. Within 30 days from the filing date of a petition for an administrative patent trial on a determination to reject an application for design registration under Article 120.
- (5) If an amendment made under paragraphs (1) through (3) is found, after the establishment of the relevant design right was registered, as a modification to the gist of the initial application for design registration, the application for design registration shall be deemed filed as at the time the amendment was filed.

#### **Article 49 (Dismissal of Amendments)**

- (1) If an amendment filed under Article 48 is found to change the gist of the relevant application for design registration, the examiner shall dismiss the amendment.
- (2) If an examiner dismisses an application for registration of a design under paragraph (1), he or she shall not determine whether to accept the registration of the design (referring to some of designs, if a determination to dismiss an application with regard to some designs claimed in an application filed for multiple designs registration) as claimed in the application until before the lapse of 30 days from the date a certified copy of the determination is served on the applicant for design registration.
- (3) If an applicant for design registration files a petition for an administrative patent trial in accordance with Article 119 on a determination to dismiss the relevant application under paragraph (1), the examiner shall suspend the examination of the application for registration of the design (referring to some designs, if a petition is filed against a determination to dismiss an application with regard to some designs claimed in an application filed for registration of multiple designs) until a trial decision becomes final and conclusive.
- (4) A determination to dismiss an application under paragraph (1) shall be made in writing and shall state the grounds therefor.

#### **Article 50 (Division of Applications)**

- (1) Any of the following persons may divide an application filed for design registration into at least one new application for design registration and may file the applications additionally:
  1. A person who has filed one application for registration of at least two designs in violation of Article 40;
  2. A person who has filed an application for registration of multiple designs.
- (2) An application for design registration that is divided under paragraph (1) (hereinafter referred to as “divisional application”) shall be deemed filed at the time the initial application for design registration was filed: Provided, That the foregoing shall not apply where Article 36 (2) 1 or 51 (3) or (4) shall apply.
- (3) The division of an application for design registration under paragraph (1) is permissible during a period in which amendments under Article 48 (4) are allowed.

#### **Article 51 (Priority Claim under Treaty)**

- (1) For the purpose of applying Article 33 or 46 to cases where a national of a member State to a treaty that recognizes the priority of a national of the Republic of Korea in filing an application for design

registration files an application for registration of a design in the Republic of Korea after filing an application for registration of an identical design in the member State or another member State and claims priority, the date an application for design registration is filed in the member State or another member State shall be deemed the date another application for design registration is filed in the Republic of Korea. The foregoing shall also apply where a national of the Republic of Korea files an application for registration of a design in the Republic of Korea after filing an application for registration of an identical design in a member State to a treaty that recognizes the priority of a national of the Republic of Korea in filing an application for design registration.

(2) No person who intends to claim priority under paragraph (1) shall claim the priority, unless he or she files an application for design registration within six months from the filing date of the initial application on which the priority claim shall be based.

(3) A person who intends to claim priority under paragraph (1) shall state his or her intention, the name of the State in which the initial application was filed, the filing date of the initial application filed for design registration.

(4) A person who claims priority under paragraph (3) shall submit either of the following documents specified in subparagraph 1 or 2 to the Commissioner of the Korean Intellectual Property Office within three months of the application for design registration: Provided, That the documents specified in subparagraph 2 shall apply only to countries specified by Ordinance of the Ministry of Trade, Industry and Energy. <Amended by Act No. 14686, Mar. 21, 2017>

1. Documents stating the filing date of the application for design registration, recognized by the government of the State in which the application is first filed, and a certified copy of the drawing of the design;

2. Documents stating matters required by Ordinance of the Ministry of Trade, Industry and Energy, including the serial number of the application for design registration issued in the country where the application was first filed and other information evidencing that the application is filed.

(5) If a person who claims priority under paragraph (3) fails to submit documents specified in that paragraph within a period specified in paragraph (4), the priority claim shall become invalid.

#### **Article 52 (Publication of Applications)**

(1) An applicant for design registration may make a request to publish his or her application, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy. In cases of an application for registration of multiple designs, the applicant may make a request to publish all or some of the designs claimed in the application.

(2) Upon receipt of a request to publish an application for design registration under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall publish the application in the Design Gazette under Article 212 (hereinafter referred to as the "Design Gazette"): Provided, That the Commissioner of the Korean Intellectual Property Office may determine to keep an application for design registration confidential, if the design claimed in the application falls under subparagraph 2 of Article 34.

(3) No request to publish an application for design registration under paragraph (1) may be filed after a certified copy of the determination on whether to accept the first application filed for design registration prior to the relevant application for design registration is delivered.

### **Article 53 (Effects of Publication of Applications)**

(1) An applicant for registration of a design may warn, in writing, a person who commercially worked the design claimed in the design application or any other design similar thereto, after the publication of the application under Article 52, that the application for registration of the relevant design has been filed.

(2) An applicant for a design registration may claim compensation, equivalent to the amount he or she would usually charge for working the design or a similar design, against a person who has commercially worked the design claimed in the application or a similar design, after the person was warned thereof under paragraph (1) or became aware of the publication of the application for the design registration under Article 52, for a period from the time he or she was warned thereof or he or she became aware of the publication of the application under Article 52 to the time when the establishment of the relevant design right is registered.

(3) No right to claim compensation under paragraph (2) shall be exercised until after the grant of a design right to the design claimed in the application for design registration is registered.

(4) The exercise of the right to claim compensation under paragraph (2) shall not affect the exercise of the relevant design right.

(5) Articles 114 and 118 of this Act and Articles 760 and 766 of the Civil Act shall apply to the exercise of the right to claim compensation under paragraph (2). In such cases, “the date on which the injured party or his or her legal representative becomes aware of such damage or of the identity of the person who caused it” in Article 766 (1) of the Civil Act shall be deemed “the date on which the grant of the relevant design right is registered.”

(6) If any of the following cases occurs after the publication of the application under Article 52, the right to claim compensation under paragraph (2) shall be deemed never to have been existed:

1. If the application for design registration is abandoned, invalidated, or withdrawn;
2. If a determination made under Article 62 to reject the application for design registration becomes final and conclusive;
3. If a determination made under Article 73 (3) to revoke the registration of the design becomes final and conclusive;
4. If an trial decision rendered under Article 121 at an administrative patent trial to invalidate the registration of the design becomes final and conclusive (excluding cases falling under Article 121 (1) 4).

### **Article 54 (Transfer of Right to Have Design Registered)**

(1) A right to have a design registered is transferable: Provided, That a right to have a principal design registered shall be transferred, together with a right to have related designs registered.

(2) A right to have a design registered shall not be subject to a pledge.

(3) If a right to have a design registered is owned jointly by at least two persons, none of the co-owners may assign his or her share without consent thereto from the rest of the co-owners.

#### **Article 55 (Furnishing Information)**

Any person may inform the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board that a design claimed in a pending application for design registration falls under any subparagraph of Article 62 (1) and thus is ineligible for design registration, along with evidence.

#### **Article 56 (Publication of Rejected Application on Design Gazette)**

When a determination or a trial decision rendered under Article 62 to reject an application for design registration under the latter part of Article 46 (2) becomes final and conclusive, the Commissioner of the Korean Intellectual Property Office shall publish the facts relevant to the application for design registration in the Design Gazette: Provided, That publication may be omitted if the design claimed in an application for design registration falls under subparagraph 2 of Article 34.

#### **Article 57 (Succession to Right to Have Design Registered)**

(1) No person who succeeds to a right to have a design registered before an application is filed for registration of the design shall assert any claim or defense, based on the right, against a third party, unless he or she files an application for registration of the design.

(2) If at least two persons have succeeded to a right to have a design registered from the same person and at least two applications are filed for registration of the design on the same date, succession shall take effect only with respect to the applicant for registration of the design selected from among the applicants.

(3) If succession to a right to have a design registered arises after an application for registration of the design is filed, the succession shall not take effect, unless a report is filed to change the applicant for the design registration, except for conveyance by inheritance or general succession.

(4) If a person succeeds to a right to have a design registered by inheritance or general succession, the successor shall report to the Commissioner of the Korean Intellectual Property Office on the details thereof without delay.

(5) If at least two persons have succeeded to a right to have a design registered from the same person and at least two reports are filed on the change of the applicant for design registration on the same date, such report shall take effect only with respect to a person appointed from among the reporting persons.

(6) Article 46 (5) shall apply mutatis mutandis to cases falling under paragraph (2) or (5).

#### **Article 58 (Examination by Examiners)**

(1) The Commissioner of the Korean Intellectual Property Office shall have examiners examine applications for design registration and objections to registration of partially-examined designs.

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

#### **Article 59 (Designation of Specialized Organizations)**

(1) The Commissioner of the Korean Intellectual Property Office may designate a specialized organization to search prior designs and perform other business affairs specified by Presidential Decree, if he or she deems it necessary for examination of applications for design registration.

(2) The Commissioner of the Korean Intellectual Property Office may request appropriate administrative agencies, organizations specializing in design, or persons who have abundant knowledge of and experience in design to cooperate with him or her in examination or may seek their advice thereon, if deemed necessary to examine applications for design registration. In such cases, the Commissioner of the Korean Intellectual Property Office may reimburse them for expenses or pay allowances within budgetary limits.

(3) Matters necessary for the criteria for the designation of specialized organizations, requests to search prior designs, etc. under paragraph (1) shall be prescribed by Presidential Decree.

#### **Article 60 (Revocation of Designation of Specialized Organizations)**

(1) If a specialized organization designated under Article 59 (1) falls under subparagraph 1, the Commissioner of the Korean Intellectual Property Office shall revoke such designation, or may revoke the designation of a specialized organization or order a specialized organization to completely or partially suspend its business operation for a specified period of up to six months, if the specialized organization falls under subparagraph 2:

1. If a specialized organization obtains the designation by fraud or other improper means;
2. If a specialized organization fails to meet any of the criteria for designation under Article 59 (3).

(2) If the Commissioner of the Korean Intellectual Property Office intends to revoke the designation of a specialized organization under paragraph (1), he or she shall hold a public hearing.

(3) Matters necessary for the detailed criteria and procedures for taking dispositions under paragraph (1) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 61 (Accelerated Examination)**

(1) The Commissioner of the Korean Intellectual Property Office may order an examiner to preferentially examine an application for design registration first among other applications if:

1. It is found that any person, other than the applicant, is commercially working the design claimed in the application for design registration after the publication of the application under Article 52;
2. It is deemed urgently necessary to process an application for design registration specified by Presidential Decree.

(2) When an application for registration of multiple designs is to be preferentially examined under paragraph (1), the Commissioner of the Korean Intellectual Property Office may order an examiner to preferentially examine only some designs that fall under any subparagraph of paragraph (1).

#### **Article 62 (Determinations to Reject Applications for Design Registration)**

(1) An examiner shall determine to reject an application for design registration if:

1. The applicant is not entitled to have a design registered under the main sentence of Article 3 (1) or is ineligible for design registration under the proviso of that paragraph;

2. The applicant is not eligible for design registration under any provision of Articles 27, 33 through 35, 37 (4), 39 through 42, and 46 (1) and (2);
  3. The application contravenes a treaty.
- (2) An examiner shall determine to reject an application for registration of a partially-examined design if:
1. The applicant is not entitled to have a design registered under the main sentence of Article 3 (1) or is ineligible for design registration under the proviso of that paragraph;
  2. The applicant is not eligible for design registration under any provision of Articles 27, 33 (limited to paragraph (1) with the exception of its subparagraphs and paragraph (2) 2), 34, 37 (4), and 39 through 42;
  3. The application contravenes a treaty.
- (3) An examiner shall determine to reject an application for partially-examined registration of a related design under Article 35, if the application falls under any subparagraph of paragraph (2) or falls under any of the following cases:
1. Where the related design already registered or claimed in an application for design registration is indicated as the principal design;
  2. Where the design right to the principal design ceases to exist;
  3. Where the application for registration of the principal design has been invalidated, withdrawn, or abandoned, or a determination to reject the application for registration of the principal design becomes final and conclusive;
  4. Where the applicant for registration of the related design is neither the design right-holder of the principal design nor the applicant for registration of the principal design;
  5. Where the related design is not similar to the principal design;
  6. Where the application for registration of the related design is filed one year from the date the application for registration of the principal design is filed;
  7. Where the related design is ineligible for design registration under Article 35 (3).
- (4) Notwithstanding paragraph (2), an examiner may determine to reject an application for registration of a partially-examined design, based on information and evidence provided under Article 55.
- (5) If a ground exists to reject only some of multiple designs when an examiner intends to determine to reject an application for registration of multiple designs under paragraphs (1) through (3), the examiner may determine to reject the application only with respect to such ineligible designs, among all multiple designs.

#### **Article 63 (Notification of Grounds for Rejection)**

- (1) When an examiner intends to determine to reject an application for design registration under Article 62, he or she shall notify the applicant of the ground for rejection (referring to grounds specified in Article 62 (1) through (3); hereinafter referred to as "ground for rejection") and shall provide the applicant with an opportunity to submit a written argument.

(2) If an examiner finds a ground to reject an application for registration of multiple designs with respect to only some designs among them, he or she shall note the serial number of each ineligible design, and detail products in relation to which each ineligible design is to be used, and the ground for rejection.

#### **Article 64 (Request for Re-Examination)**

(1) Upon receipt of a certified copy of a determination to reject an application for design registration, the applicant for design registration may amend the application in accordance with Article 48 (1) through (3) and may request for re-examination of the application within 30 days (referring to the extended period, if a period under Article 120 is extended pursuant to Article 17 (1)) from the date a certified copy of the determination is delivered to him or her: Provided, That the foregoing shall not apply where a petition for an administrative patent trial under Article 120 is filed.

(2) An applicant for design registration may submit a written argument, along with the request for re-examination under paragraph (1).

(3) If a petition that meets the requirements under the main sentence of paragraph (1) is filed for re-examination, a determination previously made to reject the relevant application for design registration shall be deemed revoked.

(4) No request for re-examination under paragraph (1) may be withdrawn.

#### **Article 65 (Determinations of Design Registration)**

If an examiner finds no ground to reject an application for design registration, he or she shall determine to accept the application for design registration. If the examiner finds no ground for rejection regarding some designs among multiple designs claimed in an application for registration of multiple designs, he or she shall determine to accept the application for design registration with respect to such eligible designs.

#### **Article 66 (Ex Officio Amendments)**

(1) If an examiner finds an obvious error in the details of an application or drawing when he or she intends to determine to accept an application for design registration, he or she may ex officio amend such error (hereinafter referred to as “ex officio amendment”).

(2) When an examiner ex officio amends an error, he or she shall notify the applicant for design registration of the ex officio amendment, along with a certified copy of a determination served under Article 67 (2) to accept the application for design registration.

(3) If an ex officio amendment is entirely or partially unacceptable, the applicant for design registration shall submit a written argument on the ex officio amendment before he or she pays a design registration fee in accordance with Article 79 (1).

(4) If an applicant for design registration submits a written argument in accordance with paragraph (3), the relevant ex officio amendment shall be deemed, wholly or partially, never made.

(5) If an ex officio amendment is deemed, wholly or partially, never made under paragraph (4), the examiner shall revoke the determination to accept the application for design registration and shall re-examine the application from the beginning.

### **Article 67 (Methods of Determining Whether to Accept Applications for Design Registration)**

- (1) A determination regarding design registration shall be made in writing and shall state grounds therefor.
- (2) When a determination regarding design registration is made, the Commissioner of the Korean Intellectual Property Office shall serve the applicant with a certified copy of the determination.

### **Article 68 (Written Oppositions to Registration of Partially-Examined Design)**

(1) Any person may file a written opposition to the registration of a partially-examined design with the Commissioner of the Korean Intellectual Property Office on any of the following grounds during a period from the date the grant of the relevant design right is registered until three months after the date the registration of a partially-examined design is publicly announced. If a case involves the registration of designs claimed in an application for registration of multiple designs, a written opposition to the registration of a partially-examined design shall be filed with respect to each design separately:

1. Where the registrant is not entitled to have the design registered under the main sentence of Article 3 (1) or is not eligible for design registration under the proviso of that paragraph;
2. Where the registration contravenes Article 27, 33, 34, 35 (2) or (3), 39, or 46 (1) or (2);
3. Where the registration contravenes a treaty.

(2) A person who objects to registration of a partially-examined design (hereinafter referred to as “opponent”) shall file a written opposition to the registration of a partially-examined design, describing the following matters, with the Commissioner of the Korean Intellectual Property Office, along with necessary evidence: <Amended by Act No. 11962, Jul. 30, 2013>

1. The name and domicile of the opponent (the name and place of business of the opponent, if the opponent is a corporation);
2. The name and domicile or place of business of the agent, if the opponent is represented by an agent *[the name and the place of business of the patent firm or the patent firm (limited liability), and the name of the patent attorney in charge, if the agent is a patent firm or a patent firm (limited liability)]*;
3. The description of the registered design subject to the written opposition to the registration of a partially-examined design;
4. The purposes of the written opposition to the registration of a partially-examined design;
5. The grounds for the written opposition to the registration of a partially-examined design and the description of necessary evidence.

(3) Upon receipt of a written opposition to the registration of a partially-examined design, the chief examiner shall serve a copy of the written opposition to the registration of a partially-examined design on the design right-holder to the registered design subject to written opposition to the registration of a partially-examined design and shall provide the design right-holder with an opportunity to submit a written reply within a specified period.

(4) Article 121 (4) shall apply mutatis mutandis to written oppositions to registration of a partially-examined design.



### **Article 69 (Amendments of Grounds for Written Oppositions to Registration of Partially-Examined Design)**

A written opposition may amend grounds described in the written opposition to the registration of a partially-examined design within 30 days from the filing date of the petition.

### **Article 70 (Panel of Examiners for Examination and Rulings)**

(1) A panel comprised of three examiners shall examine and rule on a written opposition to the registration of a partially-examined design.

(2) The Commissioner of the Korean Intellectual Property Office shall select examiners who shall form a panel of examiners for each written opposition to the registration of a partially-examined design.

(3) The Commissioner of the Korean Intellectual Property Office shall appoint one of the examiners selected under paragraph (2) as the chief examiner.

(4) Articles 131 (2), 132 (2), and 133 (2) and (3) shall apply mutatis mutandis to a panel of examiners and its chief examiner.

### **Article 71 (Ex Officio Examination in Examining Written Oppositions to Registration of Partially-Examined Design)**

(1) In examining a written opposition to the registration of a partially-examined design, the grounds on which neither the design right-holder nor the opponent fails to assert may be also examined. In such cases, the design right-holder and the opponent shall be provided with opportunities to make arguments thereon.

(2) In examining a written opposition to the registration of a partially-examined design, a registered design to which the opponent has not objected shall not be subject to examination.

### **Article 72 (Integration or Separation of Written Oppositions to Partially-Examined Design Registration)**

The panel of examiners may integrate at least two written oppositions to the registration of a partially-examined design or separate one written opposition into at least two written oppositions to examine and rule on the written oppositions.

### **Article 73 (Determination on Written Oppositions to Registration of Partially-Examined Design)**

(1) A panel of patent examiners shall rule on a written opposition to the registration of a partially-examined design after the end of a period specified in Article 68 (3) or 69.

(2) Notwithstanding Article 68 (3), a chief examiner may render a determination to dismiss, without prejudice, a written opposition to the registration of a partially-examined design after the end of a period specified in Article 69, if the opponent fails to present the ground for the opposition and evidence in support thereof.

(3) If a panel of examiners finds that a written opposition to registration of a partially-examined design has a reasonable ground, it shall determine to revoke the registration of the relevant design (hereinafter referred to as “determination to revoke design registration”).

(4) If a determination to revoke design registration becomes final and conclusive, the design right shall be deemed to have never existed.

(5) If a panel of examiners finds that a written opposition to registration of a partially-examined design is groundless, it shall determine such written opposition dismissed (hereinafter referred to as “determination to dismiss the written opposition”).

(6) No appeal shall be made against a determination to dismiss, without prejudice or on the merits, a written opposition to the registration of a partially-examined design.

#### **Article 74 (Method of Determining on Written Oppositions to Registration of Partially-Examined Design)**

(1) A determination on a written opposition to the registration of a partially-examined design shall be made in writing, specifying the following matters, and the examiners who so determines shall affix their signatures or seals thereto: <Amended by Act No. 11962, Jul. 30, 2013>

1. The case number of the written opposition to the registration of a partially-examined design;
2. Names and domiciles of the owner of the relevant design right and the opponent (the name and place of business of the corporation, if either party is a corporation);
3. Names and domiciles or the places of business of agents, if the owner of the relevant design right and the opponent are represented by agents respectively [*the name and place of business of the patent firm or the patent firm (limited liability), and the name of the patent attorney in charge, if an agent is a patent firm or a patent firm (limited liability)*];
4. A description of the design relevant to the determination;
5. The conclusion of, and the grounds for, the determination;
6. The determination date.

(2) When a determination is made on a written opposition to the registration of a partially-examined design, the chief examiner shall serve the opponent and the owner of the relevant design right with a certified copy of such determination.

#### **Article 75 (Withdrawal of Written Oppositions to Registration of Partially-Examined Design)**

(1) No written opposition to the registration of a partially-examined design may be withdrawn after the opponent is served with a notice to make arguments under the latter part of Article 71 (1) or a certified copy of a determination made under Article 74 (2).

(2) If a written opposition to the registration of a partially-examined design is withdrawn, the written opposition shall be deemed to have never existed.

#### **Article 76 (Application Mutatis Mutandis of Rules on Trials to Examination)**

@Article 135 (excluding subparagraph 6 thereof) shall apply mutatis mutandis to the examination of applications for design registration. In such cases, “trial” shall be construed as “examination”, and “judges” as “examiners”.

#### **Article 77 (Suspension of Examination or Litigation Proceedings)**

(1) If an examiner deems it necessary for examination of an application for design registration, he or she may suspend the process of examination until a trial decision becomes final and conclusive or until legal proceedings are closed.

(2) If a court deems it necessary, it may suspend legal proceedings until a determination made on an application for design registration becomes final and conclusive.

(3) No appeal may be filed against the suspension under paragraph (1) or (2).

#### **Article 78 (Provisions Applicable Mutatis Mutandis)**

@Articles 77, 129, 135 (excluding subparagraph 6) 142 (7), 145, 153 (3) through (6), and 154 shall apply mutatis mutandis to the examination and ruling on written oppositions to the registration of partially-examined designs.

#### **Article 79 (Design Registration Fees)**

(1) A person granted a design right registered under Article 90 (1) shall pay a design registration fee (hereinafter referred to as “registration fee”) for three years from the date the grant of the right is registered, and the owner of a design right shall pay a registration fee for one year thereafter on or before each anniversary of the registration date of the grant of the relevant right.

(2) Notwithstanding paragraph (1), the owner of a design right may pay registration fees for several or all subsequent years in lump sum in the order of the years for which the payment will become due consecutively.

(3) Registration fees referred to in paragraphs (1) and (2), the methods and terms of payment of such fees, and other necessary matters shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 80 (Partial Abandonment of Designs at Time of Payment of Registration Fees)**

(1) A person who obtains a determination to accept an application for the registration of multiple designs may partially abandon designs when he or she pays a registration fee.

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

#### **Article 81 (Payment of Registration Fees by Interested Parties)**

(1) An interested party may pay a registration fee, regardless of the intent of a person who is obliged to pay the registration fee.

(2) An interested party who pays a registration fee pursuant to paragraph (1) may claim reimbursement of the fee against the person who is obliged to pay up to the present benefits the person gains.

#### **Article 82 (Late Payment of Registration Fees)**

(1) A person who seeks to register grant of a design right or the owner of a design right may pay a registration fee within six months (hereinafter referred to as “grace period for late payment”) even after the due date specified in Article 79 (3) for the payment of the registration fee.

(2) A person who pays a registration fee after the due date in accordance with paragraph (1) shall pay the amount specified by Ordinance of the Ministry of Trade, Industry and Energy, which shall not exceed twice the registration fee that the person was otherwise obliged to pay.

(3) If a person who seeks to register grant of a design right fails to pay the registration fee within a grace period for late payment (referring to cases where an underpaid registration fee is not fully paid within a

grace period for the payment thereof, if the period for the payment of the underpaid registration fee under Article 83 (2) has not elapsed even after the end of the grace period for late payment), the application for design registration shall be deemed abandoned, and the design right owned by the person shall be deemed extinguished retroactively to the day immediately following the end of a period for which a registration fee was paid in accordance with Article 79 (1) or (2).

#### **Article 83 (Payment of Underpaid Registration Fees)**

(1) If a person who seeks to register grant of a design right or the owner of a design right fails to fully pay a registration fee within a period specified in Article 79 (3) or 82 (1), the Commissioner of the Korean Intellectual Property Office shall order the person to pay the underpaid registration fee.

(2) Upon receipt of an order to pay an underpaid registration fee under paragraph (1), a person may pay the underpaid registration fee within one month from the date on which he or she receives such order.

(3) A person who pays an underpaid registration fee in accordance with paragraph (2) shall pay the amount specified by Ordinance of the Ministry of Trade, Industry and Energy, which shall not exceed twice the amount he or she is otherwise obliged to pay.

#### **Article 84 (Restoration of Applications for Design Registration and Design Right by Late Payment of Registration Fees or Payment of Underpaid Registration Fees)**

(1) If a person who seeks to register grant of a design right or if the owner of a design right fails to pay a registration fee within the grace period for late payment or an underpaid registration fee within the payment deadline due to a cause beyond his or her control, he or she may pay the registration fee or the underpaid registration fee within two months from the date on which such cause ceases to exist: Provided, That the foregoing shall not apply where one year has passed since the end of the grace period for late payment or the end of the payment deadline of an underpaid registration fee, whichever is later.

(2) Notwithstanding Article 82 (3), if a person pays a registration fee or an underpaid registration fee in accordance with paragraph (1), the relevant application for design registration shall be deemed not abandoned, and the relevant design right shall be deemed perpetual.

(3) If the owner of a design right fails to pay a registration fee within a grace period for late payment or fails to pay an underpaid registration fee within a payment deadline of the underpaid registration fee, and the design right-holder to the relevant registered design is extinguished, the design right may pay twice the registration fee within three months from the end of the grace period for late payment or the end of the payment deadline of the underpaid registration fee to apply for the restoration of the extinguished right. In such cases, the relevant design right shall be deemed perpetual. <Amended by Act No. 13840, Jan. 27, 2016>

(4) The effects of an application for design registration or a design right under paragraph (2) or (3) shall not extend to the working of the relevant design or design similar thereto by another person during a period (hereinafter referred to as "period of limited effects") from the date immediately after the end of a grace period for late payment of the registration fee until the date the registration fee or underpaid registration fee is fully paid.

(5) A person who commercially works, or prepares to commercially work, a design claimed in an application for design registration or a registered design under paragraph (2) or (3), or similar thereto, in good faith, within the Republic of Korea during a period in which its validity is restricted, shall be granted a non-exclusive license for the design that the person works or prepares to work for business purpose.

(6) A person granted a non-exclusive license under paragraph (5) shall pay reasonable consideration therefor to the owner or exclusive licensee of the relevant design right.

#### **Article 85 (Official Fees)**

(1) A person who initiates a design-related procedure shall pay official fees.

(2) Official fees under paragraph (1), the methods and period of payment of the fees, and other necessary matters shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 86 (Full or Partial Exemption from Registration Fees and Other Official Fees)**

(1) Notwithstanding Articles 79 and 85, the Commissioner of the Korean Intellectual Property Office shall provide a full exemption from registration fees and other official fees in the following cases:

1. Registration fees and other official fees otherwise payable for an application for registration of a design that belongs to the State or for a design right owned by the State;
2. Official fees for a trial litigated by an examiner to seek invalidation under Article 121 (1).

(2) Notwithstanding Articles 79 and 85, the Commissioner of the Korean Intellectual Property Office may fully or partially exempt a person eligible for medical care assistance under the National Basic Living Security Act or a person specified by Ordinance of the Ministry of Trade, Industry and Energy from registration fees and other official fees specified by Ordinance of the Ministry of Trade, Industry and Energy for an application filed by the person for design registration or a design right arising from an application filed by the person for design registration. <Amended by Act No. 12288, Jan. 21, 2014; Act No. 13840, Jan. 27, 2016>

(3) A person who intends to be fully or partially exempted from registration fees and other official fees under paragraph (2) shall submit documents specified by Ordinance of the Ministry of Trade, Industry and Energy to the Commissioner of the Korean Intellectual Property Office.

#### **Article 87 (Refunds of Registration Fees and Other Official Fees)**

(1) In any of the following cases, registration fees and other official fees already paid shall be refunded upon request by the payor: <Amended by Act No. 13840, Jan. 27, 2016>

1. Registration fees and other official fees erroneously paid;
2. Registration fees for the years subsequent to the year in which a ruling to revoke the registration of a design or a trial decision that invalidates the registration of a design becomes final and conclusive, or a design right is abandoned, out of registration fees already paid;
3. Fees for filing an application for design registration and for filing a petition for priority claim, out of fees already paid, where an application for design registration is withdrawn or abandoned within one month after filing it: Provided, That the foregoing shall not apply to any of the following applications:

- (a) A divisional application or an application for design registration on which a divisional application is based;
  - (b) An application for design registration, filed for the expedited examination under Article 61 (1);
  - (c) An application for design registration, concerning which the examiner notified a ground for rejection under Article 63 or made a determination to accept design registration under Article 65;
4. Fees for filing a petition for a trial (where it is a retrial, this means fees for filing a petition for a retrial; hereinafter the same shall apply), out of fees already paid, where the determination to dismiss an amendment without prejudice, to reject an application for design registration, or to revoke design registration is cancelled under Article 157 (1) (this includes cases of application mutatis mutandis to a retrial under Article 164, but excludes trials and retrials to which amendment is made in accordance with Article 48 (4) 3 or Article 48 (4) 1 applied mutatis mutandis under Article 124 (1));
5. Half the fees for filing a petition for a trial, out of fees already paid, where such petition for a trial is dismissed without prejudice under Article 128 (2) and such dismissal becomes final (including cases of application mutatis mutandis to a retrial under Article 164);
6. Half the fees for intervention, out of fees already paid, where such application for intervention is withdrawn before receiving notification of the closing of hearings (this includes cases of application mutatis mutandis to a retrial under Article 164);
7. Half the fees for intervention, out of fees already paid, where such application for intervention is dismissed without prejudice (this includes cases of application mutatis mutandis to a retrial under Article 164);
8. Half the fees for filing a petition for a trial, out of fees already paid, where such petition is withdrawn before receiving notification of the closing of hearings (this includes cases of application mutatis mutandis to a retrial under Article 164).
- (2) If registration fees and other official fees already paid fall under any subparagraph of paragraph (1), the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board shall notify the payor of registration fees and other official fees thereof. *<Amended by Act No. 13840, Jan. 27, 2016>*
- (3) No claim for a refund of registration fees and other official fees under paragraph (1) shall be valid after three years from the date on which the claimant is served with a notice under paragraph (2).

#### **Article 88 (Design Register)**

- (1) The Commissioner of the Korean Intellectual Property Office shall keep the Design Register at the Korean Intellectual Property Office and shall enter records of the following matters in the register:
- 1. The grant, transfer, extinguishment, or reinstatement of design rights, or limitations on the disposal of a design right;
  - 2. The grant, maintenance, transfer, modification, or extinguishment of exclusive or non-exclusive licenses or limitations on the disposal of exclusive or non-exclusive licenses;

3. The grant, transfer, modification, or extinguishment of a pledge over design rights or exclusive or non-exclusive licenses or limitations on the disposal of a pledge over design rights or exclusive or non-exclusive licenses.

(2) The Design Register referred to in paragraph (1) may be entirely or partially kept in electronic medium.

(3) Except as otherwise provided in paragraphs (1) and (2), matters necessary for facts to be registered and the procedures for registration shall be prescribed by Presidential Decree.

#### **Article 89 (Issuance of Design Registration Certificates)**

(1) When the grant of a design right is registered, the Commissioner of the Korean Intellectual Property Office shall issue a design registration certificate to the design right-holder, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(2) If any discrepancy arises between a design registration certificate and the Design Register or any other document, the Commissioner of the Korean Intellectual Property Office shall, upon request or ex officio, recall the design registration certificate to correct it or issue a new design registration certificate.

#### **Article 90 (Registration of Grant of Design Rights)**

(1) A design right arises when the grant of the right is registered.

(2) The Commissioner of the Korean Intellectual Property Office shall register the grant of the relevant design right if:

1. The registration fee is paid in accordance with Article 79 (1);
2. The late payment of a registration fee is made in accordance with Article 82 (1);
3. The underpaid registration fee is paid in accordance with Article 83 (2);
4. The registration fee or underpaid registration fee is paid in accordance with Article 84 (1);
5. An applicant is exempted from the registration fee under Article 86 (1) 1 or (2).

(3) When a design right is registered under paragraph (2), the Commissioner of the Korean Intellectual Property Office shall publish the details specified by Presidential Decree, such as the name and domicile of the design right-holder and the design registration number, on the Design Gazette, to publicly announce the registration.

#### **Article 91 (Duration of Design Rights)**

(1) A design right arises on the date the grant of the right is registered under Article 90 (1) and perpetuates until 20th anniversary of the filing date of the relevant application of design registration: Provided, That a design right to a related design registered under Article 35 expires at the end of the duration of the design right to its principal design.

(2) If the grant of a design right claimed in an application filed by a legitimate right-holder for design registration is registered under Article 44 or 45, the duration of the design right under paragraph (1) shall begin on the day immediately after the filing date of an application filed by an ineligible person for design registration.

### **Article 92 (Effects of Design Rights)**

The owner of a design right shall have the exclusive right to work the registered design or any similar design commercially: Provided, That the foregoing shall not apply where an exclusive license for a design right is granted and the exclusive licensee has the exclusive right to work the registered design or any similar design under Article 97 (2).

### **Article 93 (Scope of Protection of Registered Designs)**

The scope of protection of a registered design shall be specified in the contents of the relevant application for design registration, the drawings, photographs, or specimens accompanying the application, and the design depicted in accordance with the description of the design in the drawings.

### **Article 94 (Limits of Design Rights)**

(1) The effect of a design right shall not extend to any of the following:

1. Working of a design registered for conducting research or experiment or any similar design;
2. A ship, aircraft, or vehicle that merely passes through the Republic of Korea, or machines, instruments, equipment, and other things used therein;
3. Things that have already existed in the Republic of Korea when an application for design registration is filed.

(2) Where the grant of a design right for a font is registered, the effects of such design right shall not extend to either of the following cases:

1. If the font is used in the ordinary process of typing, typesetting, or printing;
2. If it is a product made by using the font referred to in subparagraph 1.

### **Article 95 (Relationship with Other Persons' Registered Designs)**

(1) If a registered design is a product made by applying another person's registered design or a design similar thereto, patented invention, registered utility model or registered trademark claimed in an application filed earlier than the filing date of the application for registration of the relevant design, or if a design right conflicts with another person's patent right, utility model right, or trademark right claimed in an application filed prior to the filing date of the application for registration of the relevant design, the design right-holder to the relevant registered design, the exclusive licensee or a non-exclusive licensee for the relevant registered design shall not work the registered design, commercially, without permission from the owner of the relevant design right, patent right, utility model right or trademark right or in breach of Article 123.

(2) If a design similar to a registered design is of a product made by applying another person's registered design or a design similar thereto, patented invention, registered utility model or registered trademark claimed in an application filed earlier than the filing date of the application for registration of the relevant design, or if a design similar to a registered design subject to such design right conflicts with another person's patent right, utility model right, or trademark right under an application filed prior to the filing date of the application for registration of the relevant design, the design right-holder to the registered design, the exclusive licensee or a non-exclusive licensee for the registered design shall not work the



registered design, commercially, for business without permission from the owner of the relevant design right, patent right, utility model right or trademark right or in breach of Article 123.

(3) If a registered design or a design similar thereto is of a product made by applying, or conflicting with, another person's copyright that arose earlier than the filing date of the application for registration of the relevant design, the design right-holder to the registered design or a design similar thereto or the exclusive licensee or a non-exclusive licensee for the registered design or a design similar thereto shall not work the registered design or design similar thereto, commercially, without permission from the copyright owner.

#### **Article 96 (Transfer and Joint Ownership of Design Rights)**

(1) A design right is transferable: Provided, That a design right to a principal design and a design right to related designs shall be transferred in a bundle to the same person.

(2) Where a design right is jointly owned, no co-owner shall transfer his or her share or grant a pledge over his or her share to any person without consent of other co-owners.

(3) Where a design right is jointly owned, any co-owner may work the registered design or any similar design alone without consent of other co-owners, except as otherwise expressly agreed upon by contract.

(4) Where a design right is jointly owned, no co-owner may grant or permit an exclusive or non-exclusive license for the design right to any person without consent of other co-owners.

(5) The design right to multiple registered designs may be divided into multiple design rights that are individually transferable.

(6) Where a design right to the principal design has been extinguished by revocation, abandonment, or invalidation trial, and it is intended to transfer the design right to at least two designs related to a principal design, the design right to such related designs shall be transferred in a bundle to the same person.

#### **Article 97 (Exclusive Licenses)**

(1) The owner of a design right may grant an exclusive license for a design right to a third person: Provided, That the exclusive license for the design rights to a principal design and designs related thereto shall be granted to the same person in a bundle.

(2) An exclusive licensee shall have the right to exclusively work the registered design or any similar design for business purposes within the scope specified in the relevant license agreement.

(3) No exclusive licensee may transfer his or her exclusive license to a third person without consent of the design right-holder, unless he or she transfers the license along with the business to which the design is applied or the license is conveyed by inheritance or general succession.

(4) No exclusive licensee may grant a pledge over, or a non-exclusive license for, his or her exclusive license to any person without consent of the design right-holder.

(5) Article 96 (2) through (4) shall apply mutatis mutandis to an exclusive license.

(6) Where the design right to the principal design has been extinguished by revocation, abandonment, or invalidation trial and it is intended to grant an exclusive license for at least two designs related to a principal design, the exclusive license for such related designs shall be granted in a bundle to the same person.

## **Article 98 (Effects of Registration of Design Rights and Exclusive Licenses)**

(1) None of the following acts shall take effect unless registered:

1. The transfer (excluding conveyance by inheritance or general succession) of a design right, extinguishment of a design right by renunciation, or a limitation on the disposal of a design right;
  2. The grant, transfer (excluding conveyance by inheritance or general succession), modification, or extinguishment (excluding extinguishment by confusion) of an exclusive license or a limitation on the disposal of an exclusive license;
  3. The grant, transfer (excluding conveyance by inheritance or general succession), modification, or extinguishment (excluding extinguishment by confusion) of a pledge over a design right or on an exclusive licence or a limitation on the disposal of a pledge over a design right or an exclusive licence.
- (2) The conveyance of a design right, an exclusive license, or a pledge by inheritance or general succession under paragraph (1) shall be reported to the Commissioner of the Korean Intellectual Property Office without delay.

## **Article 99 (Non-Exclusive Licenses)**

- (1) The owner of a design right may grant a non-exclusive license for his or her design right to a third person.
- (2) A non-exclusive licensee shall have the right to work the registered design or any similar design commercially within the scope specified by this Act or in the relevant license agreement.
- (3) A non-exclusive license under Article 123 shall be transferred along with the relevant design right, exclusive license, or non-exclusive license of the non-exclusive licensee and shall be extinguished simultaneously when the relevant design right, exclusive license, or non-exclusive license is extinguished.
- (4) No non-exclusive license, except those specified in paragraph (3), may be transferred without consent of the design right-holder (or the design right-holder or the exclusive licensee, if a non-exclusive license was granted by an exclusive licensee), unless a non-exclusive license is transferred along with the business to which the design is applied or is conveyed by inheritance or general succession.
- (5) No pledge over a non-exclusive license, except those specified in paragraph (3), may be granted without consent of the design right-holder (or the design right-holder or the exclusive licensee, if a non-exclusive license was granted by an exclusive licensee).
- (6) Article 96 (2) and (3) shall apply mutatis mutandis to non-exclusive licenses.

## **Article 100 (Non-Exclusive Licenses by Prior Use)**

A person who had created a design identical with a design claimed in an application filed for registration of the design or had learned such design from the creator thereof before the application for design registration was filed, without knowledge of the application, and works, or prepares to work, the registered design or any similar design commercially within the Republic of Korea, shall be granted a non-exclusive license for the design right to the design that the person works or prepares to work within the scope of business objectives.

### **Article 101 (Non-Exclusive Licenses by Earlier Application)**

A person who created a design identical to a design claimed in an application filed for registration of the design or learned such design from the creator thereof at the time the grant of the design right to a third person was registered, without knowledge of the application, and worked, or prepared to work, the registered design or any similar design commercially within the Republic of Korea (excluding persons who meet the requirements under Article 100), shall be granted a non-exclusive license for the design right to the design that the person worked or prepared to work within the scope of business objectives, only if:

1. The person is required to have filed an application for registration of the identical design or any similar design at least a day before the date on which another person filed an application for registration of the design to have the grant of the design right registered;
2. The person is required to have worked, or have prepared to work, the design claimed in an application filed for design registration under subparagraph 1 at the time the grant of the design right to another person was registered;
3. It is required that the design claimed in the application filed earlier for design registration, among those referred in subparagraph 1, falls under any subparagraph of Article 33 (1) and that a decision to reject design registration, or trial decision that the registration is to be rejected becomes final and conclusive.

### **Article 102 (Non-Exclusive Licenses Based on Working Prior to Registration of Claim for Ruling of Invalidation)**

(1) If any of the following persons had worked, or had prepared to work, his or her registered design or any similar design commercially within the Republic of Korea without knowing that the registered design was invalid before a petition seeking a trial decision of invalidation of the registration of the design was filed, the person shall be granted a non-exclusive license for the design right to the design that the person works or prepares to work within the scope of business objectives:

1. The original owner of the design right, where one of at least two registered designs was invalidated as an identical or similar design;
2. The original owner of the design right, where the registration of his or her design was invalidated and the legitimate right-holder had his or her identical or similar design registered.

(2) In cases falling under paragraph (1) 1 or 2, a person who had an exclusive or non-exclusive license for the invalidated design right or a non-exclusive license for an exclusive license already granted before a petition seeking a trial decision of invalidation was registered, shall be granted a non-exclusive license, if he or she is either of the following:

1. A person who had the relevant non-exclusive or exclusive license registered;
2. A person who acquires a non-exclusive license falling under Article 104 (2).

(3) A person granted a non-exclusive license under paragraph (1) or (2) shall pay reasonable consideration therefor to the design right-holder or the exclusive licensee.

### **Article 103 (Non-Exclusive Licenses After Expiration of Duration of Design Right)**

(1) Where a design similar to a registered one conflicts with a design right registered by the filing date of an application for registration of the design (hereinafter referred to as "original design right") but the duration of the original design right expires, the owner of the original design right shall have a non-exclusive license for the design right or for an exclusive license that exists for the design right when the duration of original design right expires, within the scope of the original design right.

(2) In cases falling under paragraph (1), the exclusive licensee for the original design right which exists when the duration of the original right expires or a non-exclusive licensee registered under Article 104 (1) shall have a non-exclusive license for the design right or for an exclusive license that exists for the design right when the duration of original design right expires, within the scope of the original design right.

(3) Paragraphs (1) and (2) shall apply mutatis mutandis where a registered design or a design similar thereto conflicts with a patent right or a utility model right registered by the filing date of an application for registration of the design but the duration of the patent right or utility model right expires.

(4) A person granted a non-exclusive license under paragraph (2) (including cases to which that paragraph shall apply mutatis mutandis pursuant to paragraph (3)) shall pay reasonable consideration therefor to the design right-holder or the exclusive licensee for the design right.

### **Article 104 (Effects of Registration of Non-Exclusive Licenses)**

(1) A non-exclusive license, once registered, shall also be effective against any person who subsequently acquires the design right or an exclusive license.

(2) A non-exclusive license granted under Articles 84 (5), 100 through 103, 110, 162, and 163 of this Act and Article 10 (1) of the Invention Promotion Act shall have the same effect as provided in paragraph (1) of this Article, irrespective of whether it has been registered.

(3) No person shall assert his or her claim or defense against a third party, based on the transfer, modification, or extinguishment of a nonexclusive license, a limitation on the disposal of a nonexclusive license, the grant, transfer, modification, or extinguishment of a pledge, or a limitation on the disposal of a pledge, unless such act or event is registered.

### **Article 105 (Abandonment of Design Rights)**

The owner of a design right may abandon the design right. In such cases, the design right to multiple registered designs may be divided into design rights to individual designs and may be separately renounced.

### **Article 106 (Limitations on Abandonment of Design Rights)**

(1) No owner of a design right shall abandon the design right without consent of the exclusive licensee, pledgee, or non-exclusive licensee under Articles 97 (4) and 99 (1) of this Act or Article 10 (1) of the Invention Promotion Act.

(2) No exclusive licensee shall abandon his or her exclusive license without consent of the pledgee or non-exclusive licensee under Article 97 (4).

(3) No non-exclusive licensee shall abandon his or her non-exclusive license without consent of the pledgee.

**Article 107 (Effects of Abandonment)**

Where a design right or an exclusive or non-exclusive license is abandoned, the design right or the exclusive or non-exclusive license shall cease to be effective from the time of renunciation.

**Article 108 (Pledge)**

Where a pledge is granted on a design right or an exclusive or non-exclusive license, no pledgee shall work the registered design, except as otherwise stipulated by contract.

**Article 109 (Subrogation of Pledge)**

A pledge may be exercised against compensation under this Act or against consideration or goods receivable for the working of the registered design: Provided, That such compensation, consideration, or goods shall be seized before being paid or delivered.

**Article 110 (Non-Exclusive Licenses Subsequent to Transfer of Design Rights by Exercise of Pledge)**

If the owner of a design right had worked the registered design or a design similar thereto before a pledge was granted on the design right, he or she shall have a non-exclusive license for the design right even after the design right is transferred to a third person by auction or such. In such cases, the design right-holder shall pay reasonable consideration to the transferee of the design right.

**Article 111 (Extinguishment of Design Right in Absence of Heir)**

A design right shall be extinguished if no heir exists at the time proceedings for inheritance commence.

**Article 112 (Title of Execution on Consideration and Compensation)**

A final and conclusive decision on the amount of consideration or compensation determined by the Commissioner of the Korean Intellectual Property Office under this Act shall have the same effect as an enforceable title of execution. In such cases, the enforceable writ shall be issued by a public official of the Korean Intellectual Property Office.

**Article 113 (Rights to Prohibit Infringement)**

(1) The owner of a design right or an exclusive licensee may file a claim for injunction for, or prevention of, infringement against a person who infringes or is likely to infringe upon his or her rights.

(2) The owner of a design right or an exclusive licensee, who made a request to keep the relevant design confidential under Article 43 (1), cannot file a claim under paragraph (1), unless he or she issues a warning by presenting a document certified by the Commissioner of the Korean Intellectual Property Office on the following matters regarding the design, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy:

1. The name and domicile (or the name and principal place of business, if the claimant is a corporation) of the design right-holder or the exclusive licensee (applicable only where an exclusive licensee files a claim);
2. The serial number and date of an application for design registration;

3. The design registration number and the date of registration;
  4. Details of drawings, photographs, or specimens accompanying the application of design registration.
- (3) When the owner of a design right or an exclusive licensee files a claim under paragraph (1), he or she may seek the destruction of infringing articles, the removal of facilities provided for infringement, and other actions necessary for the prevention of infringement.

#### **Article 114 (Acts Deemed Infringement)**

Engaging in producing, transferring, leasing, exporting, or importing any product used only for producing a product associated with a registered design or any similar design or engaging in offering the sale or rental of such product shall be deemed infringement of the relevant design right or exclusive license.

#### **Article 115 (Estimation of Damages)**

(1) Where the owner of a design right or an exclusive licensee claims compensation for any loss inflicted upon him or her against a person who infringed upon the design right or exclusive license by intention or negligence and the infringing person transferred the products that constituted the infringement to third parties, the amount of the loss that the claimant has sustained may be calculated by multiplying the quantity of the products so transferred by the profit per unit of the products that the design right-holder or the exclusive licensee could have sold if not for the infringement.

(2) The amount of damages calculated under paragraph (1) shall not exceed the amount calculated by multiplying the quantity of products that the design right-holder or exclusive licensee could have produced, less the quantity of products actually sold, by the profit per unit: Provided, That the quantity of products that the design right-holder or exclusive licensee could not sold due to any cause or event, other than the infringement, shall be subtracted therefrom, if such cause or event, in addition to the infringement, prevented the design right-holder or exclusive licensee from selling the products.

(3) Where a design right-holder or an exclusive licensee claims compensation for any loss incurred by a person who infringed upon the design right or exclusive license by intention or negligence, the profits that the infringing person gained by infringement, if any, shall be deemed equivalent to the loss that the design right-holder or exclusive licensee has sustained.

(4) Where a design right-holder or an exclusive licensee claims compensation for any loss incurred by a person who infringed upon the design right or exclusive license by intention or negligence, the design right-holder or the exclusive licensee may claim the amount that he or she would usually receive for working the registered design as the loss that he or she sustained.

(5) Notwithstanding paragraph (4), the amount by which the damages exceed the amount specified in that paragraph may be also claimed as damages. In such cases, the court may consider the fact that the absence of intention or gross negligence on the part of a person who infringed upon the design right or exclusive license in determining damages.

(6) If the court finds in a lawsuit for infringement on a design right or exclusive license that the loss has been incurred by infringement but it is impracticable to find the facts necessary for proving the damages in light of the nature of relevant facts, it may award reasonable damages based on the summation of all

arguments and the results of examination of evidence, notwithstanding paragraphs (1) through (5).

#### **Article 116 (Presumption of Negligence)**

(1) A person who has infringed upon a design right or an exclusive license of a third person shall be presumed to have been negligent by committing the infringement: Provided, That the foregoing shall not apply to infringement of a design right registered as a secret design under Article 43 (1) or an exclusive license for such secret design.

(2) Paragraph (1) shall apply mutatis mutandis where a design right-holder of a design registered through partial examination or an exclusive or non-exclusive licensee for such registered design or any similar design infringes upon a third person's design right or exclusive license.

#### **Article 117 (Restoration of Reputation of Design Right-Holders)**

At the request of a design right-holder or an exclusive licensee, the court may order a person who degrades the business reputation of the design right-holder or exclusive licensee by infringing upon the design right or exclusive license by intention or negligence, to take necessary measures to restore the business reputation of the owner or exclusive licensee in lieu of compensation for damages or in addition thereto.

#### **Article 118 (Submission of Documents)**

In a lawsuit for infringement of a design right or an exclusive license, the court may, at the request of either party, order the other party to submit documents necessary for the assessment of damages caused by the infringement: Provided, That the foregoing shall not apply where a person possessing the documents has a reasonable ground to refuse to submit them.

#### **Article 119 (Trials on Determination to Dismiss Amendment without Prejudice)**

A person who is dissatisfied with any determination to dismiss an amendment without prejudice under Article 49 (1) may file a petition for an administrative patent trial within 30 days from the date the person is served with a certified copy of such determination.

#### **Article 120 (Trials on Determination to Reject Applications for Design Registration or to Revoke Design Registration)**

A person who is dissatisfied with any determination to reject an application for design registration or a determination to revoke the registration of a design may file a petition within 30 days from the date the person is served with a certified copy of such determination.

#### **Article 121 (Trials to Invalidate Design Registration)**

(1) An interested party or examiner may file a petition for an administrative patent trial to invalidate the registration of a design in any of the following cases. If a case involves the registration of designs claimed in an application for registration of multiple designs under Article 41, such petition shall be filed separately for each design:

1. Where the registrant has no right to register the design under the main sentence of Article 3 (1) or is ineligible for registration of the design under the proviso of that paragraph;
2. Where the registration contravenes Articles 27, 33, 34, 35 (2) or (3), 39, or 46 (1) or (2);

3. Where the registration contravenes a treaty;
  4. Where the design right-holder becomes ineligible for the design right under Article 27 or the registration of the design at issue is found to contravene a treaty, after the design is registered.
- (2) A petition for an administrative patent trial under paragraph (1) may be filed even after the relevant design right is extinguished.
- (3) If a invalidation trial of a design registration becomes final and conclusive, the design right shall be deemed never existed: Provided, That if the invalidation trial that invalidates the relevant design registration becomes final and conclusive under paragraph (1) 4, the design right shall be deemed to cease to exist from the time the registration of a design falls under paragraph (1) 4.
- (4) Upon receipt of a petition for an administrative patent trial under paragraph (1), the chief administrative patent judge shall notify the exclusive licensee for the relevant design right or any person who has a registered right to the design of receipt of the petition.

#### **Article 122 (Trials to Confirm Scope of Design Rights)**

A design right-holder, an exclusive licensee, or any interested party may file a petition for an administrative patent trial to have the scope of the design right confirmed in order to ascertain the extent of protection of the registered design. If a case involves the registration of designs claimed in an application for registration of multiple designs under Article 41, such petition shall be filed separately for each design.

#### **Article 123 (Trials for Granting Non-Exclusive Licenses)**

(1) If a design right-holder, or an exclusive or non-exclusive licensee intends to obtain a license to work a third person's registered design that falls under Article 95 (1) or (2) or a design similar thereto but if the person refuses to grant a license without valid cause or if it is impracticable to obtain such license from the person, the design right-holder or the exclusive or non-exclusive licensee may file a petition for an administrative patent trial, seeking the grant of a non-exclusive license to the extent necessary to work the registered design or a design similar thereto.

(2) If a person who granted a non-exclusive license under the ruling made at an administrative patent trial under paragraph (1) needs to work the registered design of the non-exclusive licenses or any design similar thereto but if the non-exclusive licensee fails to grant a license for working the design or if it is impracticable to obtain the license, he or she may file a petition for an administrative patent trial, seeking the grant of a non-exclusive license to the extent necessary to work the registered design or a design similar thereto.

(3) A non-exclusive licensee under paragraphs (1) and (2) shall pay consideration therefor to the patentee, the utility model right-holder, the design right-holder, or the exclusive licensee: Provided, That if it is impracticable to pay consideration due to any cause or event for which he or she is not liable, he or she shall deposit the consideration in the competent court.

(4) No non-exclusive licensee under paragraph (3) shall work a patented invention, a registered utility model, or a registered design or any design similar thereto without paying consideration therefor or



depositing the consideration in the competent court.

**Article 124 (Application Mutatis Mutandis of Provisions regarding Examination to Trials on Determination to Reject Applications for Design Registration)**

(1) Articles 48 (1) through (3), 48 (4) 1, 49, 63, and 65 shall apply mutatis mutandis to an administrative patent trial on a determination to reject an application for design registration. In such cases, “before the notice of a determination to reject an application for design registration under Article 62 or a determination to accept the registration of a design under Article 65 (hereinafter referred to as “determination on whether to accept design registration”) is served” in Article 48 (4) 1 shall be construed as “by a deadline for the submission of a written argument on the notice of a ground for rejection”; “if an applicant for design registration files a petition for an administrative patent trial in accordance with Article 119” in Article 49 (3) as “a person files a lawsuit in accordance with Article 166 (1)”; and “until a trial decision becomes final and conclusive” in that paragraph as “until the ruling rendered by the court becomes final and conclusive.”

(2) Article 63, applicable mutatis mutandis pursuant to paragraph (1), shall apply where a ground found for rejection in the proceedings of an administrative patent trial differs from a ground for a determination to reject an application for design registration.

**Article 125 (Petition for Joint Trial)**

(1) Where persons who jointly own a design right or a right to have a design registered intend to file a petition for an administrative patent trial on the jointly owned right, all co-owners shall jointly file such petition.

(2) Notwithstanding paragraph (1), if at least two persons intend to file a petition for an administrative patent trial, seeking the invalidation of the registration of a design under Article 121 (1) or the confirmation of the scope of a right under Article 122 with respect to the same design right, they may severally or jointly file a petition for an administrative patent trial.

(3) When a person files a petition for an administrative patent trial against owners of a jointly-owned design right, all co-owners shall be named as respondents.

(4) If a ground for the suspension or adjournment of proceedings of an administrative patent trial is applicable to one of petitioners under paragraphs (1) or (2) or one of respondents under paragraph (3), the ground shall be applicable to all of them.

**Article 125-2 (State-Appointed Attorney)**

(1) The President of the Intellectual Property Trial and Appeal Board may appoint an attorney (hereinafter referred to as “State-appointed attorney”) at the request of a party to a trial who meets the requirements prescribed by Ordinance of the Ministry of Trade, Industry and Energy: Provided, That this shall not apply where the application for a trial is clearly groundless or where it is deemed abuse of rights.

(2) Reduction or exemption of fees associated with trial proceedings may be offered to a party represented by a State-appointed attorney.

(3) Matters regarding State-appointed attorneys such as relevant application procedures and fee reduction or exemption shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 126 (Formalities of Petitions for Trials)**

(1) A person who intends to file a petition for an administrative patent trial for the invalidation of the registration of a design, the confirmation of the scope of a right, or the grant of a non-exclusive license under Articles 121 through 123 shall file the petition, stating the following matters, with the President of the Intellectual Property Trial and Appeal Board: <Amended by Act No. 11962, Jul. 30, 2013>

1. The names and domiciles of the parties (or the name and place of business, if either party is a corporation);
2. The name and domicile or place of business of the agent, if either party is represented by an agent *[the name and place of business of a patent firm or a patent firm (limited liability), and the name of a patent attorney in charge, if the agent is a patent firm or a patent firm (limited liability)]*;
3. An indication of the trial case;
4. Claims and the cause of the petition.

(2) No amendment to a petition filed under paragraph (1) for an administrative patent trial shall be permitted to amend the gist of the petition: Provided, That the foregoing shall not apply if:

1. An amendment (including an addition) is made to correct the description of the relevant design right-holder, among the parties involved under paragraph (1) 1;
2. The cause of the petition under paragraph (1) 4 is amended;
3. The respondent argues that the design the petitioner actually works differs from the design in the drawing (referring to the respondent's design contended by the petitioner) subject to the confirmation sought by the design right-holder or an exclusive licensee in the petition filed for the confirmation of the scope of a right under Article 122 and the petitioner amends the drawing of the design subject to the confirmation sought in the petition to make the design identical with the design that the respondent works.

(3) A petition filed for an administrative patent trial on the confirmation of the scope of a right under Article 122 shall be accompanied by drawings for comparison with the registered design.

(4) A petition for an administrative patent trial on the grant of a non-exclusive license under Article 123 (1) shall state the following matters in addition to matters specified in paragraph (1):

1. The registration number and name of the registered design that the petitioner intends to work;
2. The registration number, name, and date of registration of another person's patented invention, registered utility model, or registered design that the petitioner intends to work;
3. The scope and duration of, and the consideration for, a non-exclusive license for the patented invention, registered utility model, or registered design.

#### **Article 127 (Formalities for Petitions for Trials on Determination to Reject Applications for Design Registration)**

(1) A person who intends to file a petition for an administrative patent trial on a determination to dismiss an amendment, a determination to reject an application for design registration, or a determination to revoke the registration of a design under Article 119 or 120 shall file the petition, stating the following matters, with the President of the Intellectual Property Trial and Appeal Board, and, upon receipt of a petition for an administrative patent trial on a determination to revoke the registration of a design under Article 120, the President of the Intellectual Property Trial and Appeal Board shall notify the opponent of the receipt of the petition: <Amended by Act No. 11962, Jul. 30, 2013>

1. The name and domicile of the petitioner (or the name and place of business, if the petitioner is a corporation);
2. The name and domicile or place of business of the agent, if the petitioner is represented by an agent *[the name and place of business of the patent firm or the patent firm (limited liability), and the name of the patent attorney in charge, if the agent is a patent firm or a patent firm (limited liability)]*;
3. The date and number of an application (the registration date and registration number of the design, if the petitioner protests against a determination to revoke design registration);
4. The products or category of products in relation to which the design is to be used;
5. The date of the determination to reject the application for design registration, the date of the determination to revoke design registration, or the date of the determination to dismiss the amendment without prejudice;
6. An indication of the trial case;
7. Claims and the cause of the petition.

(2) No amendment to a petition filed under paragraph (1) for an administrative patent trial shall be permitted to amend the gist of the petition: Provided, That the foregoing shall not apply to either of the following cases:

1. Where an amendment (including an addition) is made to correct the description of the petitioner under paragraph (1) 1;
2. Where the cause of the petition under paragraph (1) 7 is amended.

#### **Article 128 (Dismissal of Petition for Trial without Prejudice)**

(1) The chief administrative patent judge shall order the petitioner to amend the petition within a specified period if:

1. The petition for an administrative patent trial contravenes Articles 126 (1), (3), or (4) or 127 (1);
2. The proceedings of an administrative patent trial fall under any of the following items:
  - (a) If the proceedings of the administrative patent trial contravene Article 4 (1) or 7;
  - (b) If the petitioner fails to pay any fee payable under Article 85;
  - (c) If the proceedings of the administrative patent trial omit any of the formalities prescribed by this Act or by an order issued under this Act.

(2) If a person ordered to amend a petition under paragraph (1) fails to amend it within the specified period, the chief administrative patent judge shall dismiss the petition for the administrative patent trial

without prejudice.

(3) A determination under paragraph (2) shall be made in writing and shall state the grounds therefor.

#### **Article 129 (Rulings to Dismiss Petitions for Trials with Incurable Defects)**

If an inappropriate petition for an administrative patent trial contains a defect incurable by an amendment, such petition may be dismissed by a trial decision without prejudice, without providing the respondent with an opportunity to submit a written reply.

#### **Article 130 (Administrative Patent Judge)**

(1) Upon receipt of a petition for an administrative patent trial, the President of the Intellectual Property Trial and Appeal Board shall allocate the case to administrative patent judges for a trial.

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

(3) Administrative patent judges shall be independent in performing their duty to examine a case on trial.

#### **Article 131 (Designation of Administrative Patent Judges)**

(1) The President of the Intellectual Property Trial and Appeal Board shall designate administrative patent judges who shall form a panel under Article 133 for each trial case.

(2) If any of the administrative patent judges designated under paragraph (1) has a conflict of interest in an administrative patent trial, the President of the Intellectual Property Trial and Appeal Board may designate another administrative patent judge to replace him or her.

#### **Article 132 (Designation of Chief Administrative Patent Judge)**

(1) The President of the Intellectual Property Trial and Appeal Board shall appoint one of the administrative patent judges designated under Article 131 (1) as the chief administrative patent judge.

(2) The chief administrative patent judge shall administer all affairs relating to the case on trial.

#### **Article 133 (Panel for Trial)**

(1) An administrative patent trial shall be conducted by a panel comprised of three or five administrative patent judges.

(2) The panel referred to in paragraph (1) shall make a ruling by a majority vote.

(3) No consultations among administrative patent judges shall be open to the public.

#### **Article 134 (Submission of Written Replies)**

(1) Upon receipt of a petition for an administrative patent trial, the chief administrative patent judge shall serve the respondent with a copy of the petition and shall provide the respondent with an opportunity to submit a written reply within a specified period.

(2) Upon receipt of a written reply, the chief administrative patent judge shall serve the petitioner with a copy of the written reply.

(3) The chief administrative patent judge may directly examine the parties to the administrative patent trial.

#### **Article 135 (Disqualification of Administrative Patent Judges)**

In any of the following cases, an administrative patent judge shall be disqualified from being involved in a trial:

1. Where the administrative patent judge or his or her present or former spouse is a party, an intervenor, or an opponent to the case on trial;
2. Where the administrative patent judge is or was a relative of a party, an intervenor, or an opponent to the case on trial;
3. Where the administrative patent judge is or was the legal representative of a party, an intervenor, or an opponent to the case on trial;
4. Where the administrative patent judge is summoned as a witness or an expert witness or was an expert witness to the case on trial;
5. Where the administrative patent judge is or was an agent of a party, an intervenor, or an opponent to the case on trial;
6. Where the administrative patent judge was involved as an examiner, or an administrative patent judge in a determination to reject an amendment, a determination on whether to accept an application for design registration, or a determination or administrative ruling on a petition for objection to registration of a partially-examined design;
7. Where the administrative patent judge has a direct interest in the case on trial.

#### **Article 136 (Requests for Disqualification)**

If a party or an intervenor finds a ground for disqualification under Article 135, he or she may make a request to disqualify an administrative patent judge.

#### **Article 137 (Challenge to Administrative Patent Judges)**

(1) If a party or an intervenor has a ground to believe that it is impracticable to expect impartiality in a trial from an administrative patent judge, he or she may file a request for a challenge to the administrative patent judge.

(2) No party or intervenor may file a request for a challenge to an administrative patent judge after he or she makes a statement, orally or in writing, to the administrative patent judge concerning the case on trial: Provided, That the foregoing shall not apply where a party or an intervenor did not know that there is a cause of challenge or the cause of challenge arises thereafter.

#### **Article 138 (Prima Facie Case for Disqualification or Challenge)**

(1) A person who intends to move to disqualify or challenge an administrative patent judge under Article 136 or 137 shall file a written motion, stating the cause thereof, with the President of the Intellectual Property Trial and Appeal Board: Provided, that such motion may be verbally filed in an oral hearing.

(2) Prima facie evidence shall be presented for the cause of disqualification or challenge within three days from the filing date of the petition.

#### **Article 139 (Decision on Motion for Disqualification or Challenge)**

(1) A decision on a motion for disqualifying or challenging an administrative patent judge shall be made in a trial.

(2) No administrative patent judge against whom a motion for disqualification or challenge is filed, shall participate in the trial on the disqualification or challenge: Provided, That such administrative patent judge

may make arguments.

(3) A decision under paragraph (1) shall be made in writing stating the grounds therefor.

(4) No appeal shall be permitted against a decision made under paragraph (1).

#### **Article 140 (Suspension of Trial Proceedings)**

If a motion for disqualification or challenge is filed, trial proceedings shall be suspended until a decision is made on the motion: Provided, That the foregoing shall not apply in an emergency.

#### **Article 141 (Avoidance by Administrative Patent Judges)**

If an administrative patent judge has good cause under Article 135 or 137, he or she may voluntarily avoid his or her participation in trials on the relevant case with permission from the President of the Intellectual Property Trial and Appeal Board.

#### **Article 142 (Hearings)**

(1) A hearing in trial proceedings shall be either oral or written: Provided, That a case shall be tried orally if either party requests an oral hearing, unless it is found that a decision can be made in writing.

(2) An oral hearing shall be open to the public: Provided, That the foregoing shall not apply where public order or morality is likely to be disturbed.

(3) When the chief administrative patent judge intends to hold an oral hearing under paragraph (1), he or she shall determine the date and venue of hearing and serve the parties and intervenors with written notice thereof: Provided, That the foregoing shall not apply where such notice is given to the parties and intervenors present at a hearing for the relevant case.

(4) When the chief administrative patent judge presides over an oral hearing under paragraph (1), he or she shall have an official assigned by the President of the Intellectual Property Trial and Appeal Board make a report on the hearing and other necessary facts relevant to each hearing.

(5) The chief administrative patent judge and an official who makes a report under paragraph (4) shall write their names on and affix their seals to the report.

(6) Articles 153, 154, and 156 through 160 of the Civil Procedure Act shall apply mutatis mutandis to reports under paragraph (4).

(7) Articles 143, 259, 299, and 367 of the Civil Procedure Act shall apply mutatis mutandis to administrative patent trials.

(8) The chief administrative patent judge shall maintain order in the trial tribunal.

#### **Article 143 (Intervention)**

(1) A person entitled to file a petition for an administrative patent trial under Article 125 (2) may intervene in the trial before the closing of hearings.

(2) An intervenor under paragraph (1) may continue trial proceedings even after the party for whose favor the intervenor enters the proceedings voluntarily withdraws his or her petition for the trial.

(3) A person who has an interest in the results of an administrative patent trial may intervene in the trial proceedings to assist either party before the close of hearings.

(4) An intervenor under paragraph (3) may participate in all trial proceedings.

(5) If an intervenor under paragraphs (1) or (3) has any cause to suspend or discontinue trial proceedings, such suspension or discontinuance shall have an effect also on the party for whose favor the intervenor entered the proceedings.

#### **Article 144 (Petitions for Intervention and Decisions thereon)**

(1) A person who intends to intervene in an administrative patent trial shall file a petition for intervention with the chief administrative patent judge.

(2) Upon receipt of a petition for intervention, the chief administrative patent judge shall serve each party and other intervenors with a copy of the petition for intervention and shall provide them with an opportunity to submit a written argument within a specified period.

(3) Upon receipt of a petition for intervention, a decision on whether to permit intervention shall be made in a trial.

(4) A decision under paragraph (3) shall be made in writing stating the grounds therefor.

(5) No appeal shall be permitted against a decision rendered under paragraph (3).

#### **Article 145 (Examination and Preservation of Evidence)**

(1) Evidence may be examined or preserved, upon request by a party, intervenor, or interested party or ex officio, in trial proceedings.

(2) The provisions concerning the examination and preservation of evidence in Part II, Chapter III of the Civil Procedure Act shall apply mutatis mutandis to the examination and preservation of evidence under paragraph (1): Provided, That no administrative patent judge shall determine to impose an administrative fine, issue an order to take a person into custody, or require a person to deposit guarantee money.

(3) A request to preserve evidence shall be filed with the President of the Intellectual Property Trial and Appeal Board, if it is filed before filing a petition for an administrative patent trial, or with the chief administrative patent judge, if it is filed while the trial is pending.

(4) Upon receipt of a request for preservation of evidence under paragraph (1) before a petition for an administrative patent trial is filed, the President of the Intellectual Property Trial and Appeal Board shall assign the examination of the request for preservation of evidence to an administrative patent judge.

(5) When the chief administrative patent judge ex officio examines or preserves evidence under paragraph (1), he or she shall serve the parties and intervenors and interested parties with a statement of the findings thereof and shall provide them with an opportunity to present their arguments thereon within a specified period.

#### **Article 146 (Continuation of Trial Proceedings)**

The chief administrative patent judge may proceed with a trial, regardless of whether a party or intervenor neglects a procedure by a statutory deadline or by a specified deadline or fails to appear on a date of hearing under Article 142 (3).

#### **Article 147 (Ex Officio Trial Examinations)**

(1) A cause of action that neither a party nor an intervenor requests to examine may also be examined in trial proceedings. In such cases, the parties and intervenors shall be provided with an opportunity to present arguments thereon within a specified period.

(2) No claim other than the claims asserted by a petitioner in his or her petition may be examined in trial proceedings.

#### **Article 148 (Consolidation or Severance of Hearings or Rulings)**

An administrative patent judge may consolidate hearings or rulings for at least two trials in which both parties or either party is identical, or sever hearings for one trial.

#### **Article 149 (Withdrawal of Petition for Trial)**

(1) A petition for an administrative patent trial may be voluntarily withdrawn before a trial decision becomes final and conclusive: Provided, That withdrawal after a written reply is submitted in accordance with Article 134 (1) is subject to the adverse party's consent thereto.

(2) A petition withdrawn under paragraph (1) shall be deemed never filed.

#### **Article 150 (Trial Decision)**

(1) Except as otherwise provided in any Act, an administrative patent trial shall be closed with a trial decision.

(2) A trial decision referred to in paragraph (1) shall be made in writing stating the following matters, on which administrative patent judges participating in the decision shall write their names and affix their seals: <Amended by Act No. 11962, Jul. 30, 2013>

1. The trial number;
2. Names and domiciles of parties and intervenors (names and the places of business of corporations, if parties are corporations);
3. The name and domicile or place of business of agents, if parties are represented by agents [*the name and the place of business of the patent firm or the patent firm (limited liability), and the name of the patent attorney in charge, if an agent is a patent firm or a patent firm (limited liability)*];
4. An indication of the case on trial;
5. The main sentence of the trial decision (including the scope and duration of the relevant non-exclusive license and the consideration therefor, in the case of a trial under Article 123);
6. Grounds for the trial decision (including claims and the cause of action);
7. The date of trial decision.

(3) When a case becomes sufficiently mature to render a trial decision, the chief administrative patent judge shall notify the parties and intervenors of the close of hearings.

(4) If the chief administrative patent judge deems it necessary, he or she may reopen a case for hearings upon request from a party or intervenor or ex officio, even after he or she gives the notice of the close of hearings under paragraph (3).

(5) A trial decision shall be rendered within 20 days from the date the notice of the close of hearings is given under paragraph (3).



(6) When a trial decision or ruling is rendered, the chief administrative patent judge shall serve the parties, intervenors, and persons whose petition filed to intervene in the trial was rejected, with a copy of the ruling or decision, respectively.

#### **Article 151 (Res Judicata)**

If a trial decision rendered under this Act becomes final and conclusive, no person may file a further petition for an administrative patent trial, based on the same facts and evidence: Provided, That the foregoing shall not apply where a final and conclusive decision is rendered as a decision to dismiss a petition without prejudice.

#### **Article 152 (Relationship to Litigation)**

(1) A chief administrative patent judge may suspend trial proceedings until a determination on a petition filed to object to registration of a partially-examined design in connection with the case on the administrative patent trial or a trial decision rendered in any other administrative patent trial becomes final and conclusive or proceedings of a lawsuit filed in connection with the case are complete.

(2) A court may suspend its proceedings of a lawsuit until a trial decision rendered at an administrative patent trial becomes final and conclusive, if necessary for the proceedings of the lawsuit.

(3) Upon receipt of a lawsuit filed with regard to infringement of a design right or an exclusive license, a court shall notify the President of the Intellectual Property Trial and Appeal Board of the claims asserted in the lawsuit. A notice shall also be given when the proceedings of such lawsuit are closed.

(4) Upon receipt of a petition for an administrative patent trial on the invalidation of the registration of a design right in response to a lawsuit filed on infringement of a design right or an exclusive license under paragraph (3), the President of the Intellectual Property Trial and Appeal Board shall notify the competent court under paragraph (3) of the claims thereof. Notice shall be also given when a determination or trial decision is rendered to dismiss a petition for an administrative patent trial without prejudice or where a petition for an administrative patent trial is voluntarily withdrawn.

#### **Article 153 (Cost of Trial)**

(1) The allocation of the cost of an administrative patent trial under Article 121 (1) or 122 shall be articulated in the judgment, if a trial decision is rendered at the close of the trial, or in a decision, if a decision is rendered in lieu of a trial decision at the close of the trial.

(2) Articles 98 through 103, 107 (1) and (2), 108, 111, 112, and 116 of the Civil Procedure Act shall apply mutatis mutandis to the cost of an administrative patent trial under paragraph (1).

(3) The cost of an administrative patent trial under Article 119, 120, or 123 shall be borne by a petitioner for the trial or an opponent.

(4) Article 102 of the Civil Procedure Act shall apply mutatis mutandis to the cost that shall be borne by a petitioner for an administrative patent trial or an opponent under paragraph (3).

(5) The cost of an administrative patent trial shall be determined by the President of the Intellectual Property Trial and Appeal Board, upon request from a party, after the relevant trial decision or determination becomes final and conclusive.

(6) Relevant provisions of the Costs of Civil Procedure Act shall apply to the scope, amount, and payment of the cost of an administrative patent trial and the payment of the cost required for procedural motions in an administrative patent trial, unless such provisions contravene the nature of the cost.

(7) Fees that a party has paid or shall pay to a patent attorney who has represented the party for an administrative patent trial shall be deemed the cost of the trial up to the amount specified by the President of the Intellectual Property Tribunal. Even where a party has been represented by at least two patent attorneys for an administrative patent trial, the party shall be deemed represented by one patent attorney for the purpose of this paragraph.

#### **Article 154 (Title of Execution of Cost of Trial or Consideration)**

A decision rendered by the President of the Intellectual Property Trial and Appeal Board on the amount of cost of an administrative patent trial or by administrative patent judges on consideration shall be of the same effect as an enforceable title of execution. In such cases, the enforceable writ shall be issued by a public official of the Intellectual Property Trial and Appeal Board.

#### **Article 155 (Special Provisions concerning Trial on Determination to Reject Application for Design Registration)**

@Articles 134 (1) and (2), 143, and 144 shall not apply to an administrative patent trial under Article 119 or 120.

#### **Article 156 (Effects of Proceedings of Examination or Petition to Oppose Registration of Partially-Examined Designs)**

Proceedings previously carried out for examination, or with respect to a petition filed to oppose registration of a partially-examined design shall remain effective in relation to the trial on a determination to reject the registration of the relevant design or a decision to revoke the registration of the relevant design.

#### **Article 157 (Cancellation of Decision to Reject Application for Design Registration)**

(1) When an administrative patent judge upholds claims asserted in a petition filed for an administrative patent trial under Article 119 or 120, he or she shall render a trial decision to cancel the relevant determination to dismiss an amendment without prejudice, to reject an application for design registration, or to revoke the relevant design registration.

(2) When a determination to dismiss an amendment without prejudice, to reject an application for design registration, or to revoke design registration is cancelled in an administrative patent trial, a trial decision that the case shall be subjected to examination may be rendered.

(3) The grounds for cancellation by a trial decision rendered under paragraph (1) or (2) shall bind patent examiners as regards the relevant case.

#### **Article 158 (Petitions for Retrials)**

(1) Either party may file a petition for an administrative patent retrial on a trial decision that has become final and conclusive.

(2) Articles 451 and 453 of the Civil Procedure Act shall apply mutatis mutandis to retrials under paragraph (1).

#### **Article 159 (Petitions to Oppose Decision Obtained by Fraud)**

(1) If the parties to an administrative patent trial conspire to obtain a trial decision by fraud with intent to infringe upon a third party's right or interest, the third party may file a petition for a retrial on the judgment that has become final and conclusive.

(2) In a petition filed for a retrial under paragraph (1), the parties to the relevant administrative patent trial shall be named as joint respondents.

#### **Article 160 (Deadlines for Petition for Retrial)**

(1) A petition for an administrative patent retrial shall be filed within 30 days from the date the petitioner becomes aware of the cause of action for the retrial after the relevant trial decision became final and conclusive.

(2) Where a petition for an administrative patent retrial is filed on the ground of a defect in power of attorney, a period under paragraph (1) shall be counted from the day immediately after the date the petitioner or his or her legal representative becomes aware that a trial decision is rendered upon receipt of a certified copy of the decision.

(3) No petition for an administrative patent retrial may be filed three years from the date the relevant trial decision becomes final and conclusive.

(4) If the cause of action for an administrative patent retrial arises after the relevant trial decision becomes final and conclusive, a period under paragraph (3) shall be counted from the day immediately after the date the cause of action arises.

(5) Paragraphs (1) and (3) shall not apply where a petition for an administrative patent retrial is filed on the ground that the relevant trial decision conflicts with a previous judgment that has become final and conclusive.

#### **Article 161 (Restrictions on Effects of Design Right Restored by Retrial)**

(1) In any of the following cases, the effect of a design right shall not extend to the goods imported or domestically produced or acquired in good faith after the relevant trial decision became final and conclusive but before a petition filed for an administrative patent retrial is registered:

1. Where an invalidated design right (including a design right that has been finally and conclusively revoked in a trial on a determination to revoke design registration) is restored in the retrial;
2. Where a trial decision that a product was outside the scope of a design right became final and conclusive but another judgment that reverses the former judgment subsequently becomes final and conclusive;
3. Where the grant of a design right is registered according to an administrative patent retrial on an application for design registration, which was rejected by a trial decision.

(2) The effect of a design right in any case falling under the subparagraphs of paragraph (1) shall not extend to any of the following acts:

1. Working the relevant design in good faith after the relevant judgment became final and conclusive but before a petition filed for a retrial is registered;
2. Producing, transferring, renting, exporting, or importing the goods used only for the production of the products related to the registered design or offering to transfer or rent such goods, in good faith, after the relevant judgment became final and conclusive but before a petition filed for a retrial is registered.

#### **Article 162 (Non-Exclusive Licenses for Prior Users of Design Right Restored by Retrial)**

In any case falling under any subparagraph of Article 161 (1), a person who works, or prepares to work, the relevant design for business in good faith within the Republic of Korea after the relevant trial decision became final and conclusive but before a petition filed for an administrative patent retrial is registered shall be granted a non-exclusive license for the design right to the design that the person works or prepares to work within the scope of business objectives.

#### **Article 163 (Non-Exclusive Licenses for Former Right Holders Deprived of Non-Exclusive Licenses by Retrial)**

(1) If a trial decision to grant a non-exclusive license to a person under Article 123 (1) or (2) is reversed by another judgment that was rendered in a retrial and becomes final and conclusive after the former judgment became final and conclusive, a person who works, or prepares to work, the relevant design for business in good faith within the Republic of Korea before a petition filed for an administrative patent retrial is registered shall be granted a non-exclusive license for the design right to the design that the person works or prepares to work or the exclusive license existing at the time the trial decision rendered in the retrial becomes final and conclusive within the scope of business objectives.

(2) A person granted a non-exclusive license under paragraph (1) shall pay reasonable consideration therefor to the relevant design right-holder or exclusive licensee.

#### **Article 164 (Application Mutatis Mutandis of Provisions concerning Trials to Retrials)**

The provisions concerning trial proceedings shall apply mutatis mutandis to an administrative patent retrial, unless such provisions are contrary in nature thereto.

#### **Article 165 (Application Mutatis Mutandis of the Civil Procedure Act)**

@Article 459 (1) of the Civil Procedure Act shall apply mutatis mutandis to a petition for an administrative patent retrial.

#### **Article 166 (Appeals against Trial Decision)**

(1) The Patent Court of Korea shall have exclusive jurisdiction over appeals against a trial decision rendered by administrative patent judges, lawsuits against a determination to dismiss a petition without prejudice under Article 49 (1), appeals against a determination to dismiss a petition for an administrative patent trial or retrial without prejudice, to which the aforesaid provisions shall apply mutatis mutandis pursuant to Article 124 (1) (including where the aforesaid provisions shall apply mutatis mutandis pursuant to Article 164).

(2) An appeal referred to in paragraph (1) may be filed only by a party, an intervenor, or a person whose petition filed to intervene in the relevant administrative patent trial or retrial was rejected.

(3) An appeal referred to in paragraph (1) shall be filed within 30 days from the date a certified copy of the relevant trial decision or determination rendered in an administrative patent trial is served.

(4) The period referred to in paragraph (3) shall be a peremptory period.

(5) A chief administrative patent judge may ex officio add a period to the peremptory period under paragraph (3) for the benefit of a person who has his or her domicile or abode in a remote or hard-to-access area.

(6) An appeal on a subject matter of an administrative patent trial may be filed only against a trial decision.

(7) No appeal referred to in paragraph (1) shall be filed independently for a trial decision on the consideration under Article 150 (2) 5 or a trial decision or a determination on the cost of trial under Article 153 (1).

(8) A judgment rendered by the Patent Court of Korea under paragraph (1) may be appealed to the Supreme Court.

#### **Article 167 (Standing to Be Sued)**

In an appeal filed under Article 166 (1), the Commissioner of the Korean Intellectual Property Office shall be the defendant: Provided, That, the petitioner or respondent shall be sued as the defendant in an appeal filed against a trial decision rendered in an administrative patent trial or retrial under Article 121 (1), 122, or 123 (1) or (2).

#### **Article 168 (Notification of Lawsuit and Sending of Authenticated Copy of Written Judgment)**

(1) Upon receipt of an appeal filed against a trial decision, a final appeal against a determination to dismiss a petition without prejudice under Article 49 (1), which shall apply mutatis mutandis pursuant to Article 124 (1) (including where the aforesaid provisions shall apply mutatis mutandis pursuant to Article 164), or a final appeal filed under Article 166 (8), the competent court shall notify the President of the Intellectual Property Trial and Appeal Board of the appeal without delay.

(2) When the proceedings of an appeal filed under the proviso of Article 167 are complete, the competent court shall dispatch an authenticated copy of the judgment rendered by the court at each level on the case to the President of the Intellectual Property Trial and Appeal Board without delay.

#### **Article 169 (Cancellation of Trial Decision or Ruling)**

(1) If a court upholds claims asserted in an appeal filed under Article 166 (1), it shall render a trial decision to cancel the relevant administrative ruling or decision.

(2) When a judgment to cancel a trial decision or decision under paragraph (1) becomes final and conclusive, administrative patent judges shall hold a further hearing to render another trial decision or ruling.

(3) The grounds for cancellation by a judgment rendered under paragraph (1) shall bind the Intellectual Property Trial and Appeal Board as regards the relevant case.

#### **Article 170 (Lawsuit against Trial Decision or Ruling on Consideration)**

(1) A person who is dissatisfied with a trial decision or ruling rendered on consideration under Article 123 (3) may file a lawsuit in court.

(2) A lawsuit referred to in paragraph (1) shall be filed within 30 days from the date a certified copy of the relevant trial decision or ruling is served.

(3) The period referred to in paragraph (2) shall be a peremptory period.

#### **Article 171 (Defendants in Lawsuit on Consideration)**

In a lawsuit filed under Article 170 on the consideration under Article 123 (3), a non-exclusive licensee, an exclusive licensee, or a design right-holder shall be sued as a defendant.

#### **Article 172 (Patent Attorney's Fee and Cost of Litigation)**

@Article 109 of the Civil Procedure Act shall apply to fees payable to patent attorneys representing either party to a lawsuit. In such cases, the term "attorney at law" shall be construed as "patent attorney".

#### **Article 173 (International Applications)**

A person who intends to file an application for international registration (hereinafter referred to as "international registration") under Article 1 (vi) of the Hague Agreement concerning the International Registration of Industrial Designs (referring to the treaty adopted at the Diplomatic Conference in 1999 by the World Intellectual Property Organization; hereinafter referred to as "the Hague Agreement") may file an international application under Article 1 (vii) of the Hague Agreement via the Korean Intellectual Property Office (hereinafter referred to as "international application via the Korean Intellectual Property Office").

#### **Article 174 (Persons Entitled to File International Applications)**

In order for a person to be entitled to file an international application via the Korean Intellectual Property Office, he or she shall meet any of the following requirements. If at least two persons intend to jointly file an application, each of them shall meet any of the following requirements:

1. A national of the Republic of Korea;
2. A person domiciled in the Republic of Korea (referring to the place of business, if an applicant is a corporation);
3. A person with an abode in the Republic of Korea, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 175 (Procedures for International Applications)**

(1) A person who intends to file an international application via the Korean Intellectual Property Office shall submit a written international application prepared in the manner prescribed by Ordinance of the Ministry of Trade, Industry and Energy and the documents required for the application (referring to documents required by specific Contracting Parties to the Hague Agreement) with the Commissioner of the Korean Intellectual Property Office.

(2) An international application shall state describe the following matters or shall be accompanied by a statement stating such matters:

1. Claims asserted in the international application under Article 1 (vii) of the Hague Agreement;
2. The name and domicile of the person who intends to file an International Application via the Korean Intellectual Property Office (referring to the name and place of business of the applicant, if the applicant is a corporation). If at least two persons intend to jointly file an international application but their domiciles differ and they are not represented by an agent, an address for contact shall be additionally specified;
3. Matters specified in the subparagraphs of Article 174;
4. The States in which it is intended to have the relevant design protected (including intergovernmental organizations under Article 1 (xii) of the Hague Agreement; hereinafter referred to as “designated Contracting Parties”);
5. Drawings (including photographs; the same shall apply hereinafter);
6. The product or category of products in relation to which the design is to be used;
7. The payment method for fees referred to in Article 5 (1) (vi) of the Hague Agreement;
8. Other matters specified by Ordinance of the Ministry of Trade, Industry and Energy.

(3) If a person who intends to file an international application via the Korean Intellectual Property Office intends to request deferment of publication under Article 5 (5) of the Hague Agreement, he or she may submit a specimen specified by Ordinance of the Ministry of Trade, Industry and Energy in lieu of drawings, along with the international application.

(4) A person who intends to file an international application via the Korean Intellectual Property Office shall state the following matters in the international application, if requested by a designated Contracting Party:

1. The name and domicile of the creator of the design;
2. Notes about drawings or characteristic features of the design;
3. The scope of claims under the design right.

#### **Article 176 (Effective Date of Submission of International Applications and Other Documents)**

An international application, documents required for the application, and documents under Article 177 (2) shall take effect on the date the documents are delivered to the Commissioner of the Korean Intellectual Property Office. The foregoing shall also apply where the documents are submitted by mail.

#### **Article 177 (Examinations of Contents)**

(1) The Commissioner of the Korean Intellectual Property Office shall note the arrival date of an international application on the international application, dispatch the international application to the International Bureau under Article 1 (xxviii) of the Hague Agreement (hereinafter referred to as “the International Bureau”), and send a copy of the international application to a person who filed the international application via the Korean Intellectual Property Office (hereafter referred to as “international applicant” in this Article).

(2) Notwithstanding paragraph (1), the Commissioner of the Korean Intellectual Property Office shall submit documents necessary for the supplementation of contents of an international application (hereafter

referred to as “replacement documents” in this Chapter) within a reasonable time specified by him or her in any of the following cases:

1. Where the international application is not written in a language designated by Ordinance of the Ministry of Trade, Industry and Energy;
  2. Where the claims of the international application are unclearly stated;
  3. Where it is impracticable to identify the international applicant because the name of a person who filed the international application via the Korean Intellectual Property Office is omitted or is not clearly stated;
  4. Where an address for contacting the international applicant (referring to his or her agent, if his or her agent complies with the procedure for the design) is unclearly stated;
  5. Where no drawings or specimens accompany the international application;
  6. Where no designated State is indicated.
- (3) If a person ordered to submit replacement documents under paragraph (2) submits such documents within a specified period, the relevant application shall be deemed delivered on the date the replacement documents are delivered to the Commissioner of the Korean Intellectual Property Office.

#### **Article 178 (Payment of Transmittal Fee)**

- (1) A person who intends to file an international application via the Korean Intellectual Property Office shall pay the amount of money required for transmitting the international application and other documents necessary for the application to the International Bureau (hereinafter referred to as “transmittal fees”) to the Commissioner of the Korean Intellectual Property Office.
- (2) Transmittal fee, methods and deadline of the payment thereof, and other necessary matters shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.
- (3) If a person who intends to file an international application via the Korean Intellectual Property Office fails to pay the transmittal fees, the Commissioner of the Korean Intellectual Property Office shall order the person to pay them within a reasonable period specified by him or her.
- (4) If a person ordered to pay the transmittal fees under paragraph (3) fails to pay them within a specified period, the Commissioner of the Korean Intellectual Property Office may declare the relevant procedure invalid.

#### **Article 179 (Applications for International Design Registration)**

- (1) An application for international registration under Article 1 (vi) of the Hague Agreement (hereinafter referred to as “application for international design registration”) shall be deemed an application filed for design registration under this Act, if the application designates the Republic of Korea as a designated Contracting Party.
- (2) The date of international registration under Article 10 (2) of the Hague Agreement shall be deemed the filing date of an application for design registration under this Act.
- (3) The name and address of an international registrant (referring to the name and place of business of the corporation, if the registrant is a corporation), the drawings, the product or category of products in relation



to which the design is to be used, the name and address of the creator of the design, and the description of the design, which are recorded in the International Register under Article 1 (viii) of the Hague Agreement (hereinafter referred to as the “International Register”), shall be deemed the name and address of an applicant for design registration (referring to the name and seat of business place of the corporation, if the applicant is a corporation), the drawings, the product or category of products in relation to which the design is to be used, the name and address of the creator of the design, and the description of the design under this Act.

**Article 180 (Special Cases concerning Requirements for Design Registration)**

In applying Article 33 (3) to an application for international design registration, “the Design Gazette under Articles 52, 56, or 90 (3)” in the aforesaid provisions shall be construed as “the publication of the international registration under Article 10 (3) of the Hague Agreement and the Design Gazette under Articles 56 or 90 (3)”.

**Article 181 (Special Cases concerning Applications for Design Registration)**

(1) In applying this Act to applications for international design registration, the publication of international registration shall be deemed the filing of an application for design registration under Article 37 (1).

(2) In applying this Act to applications for international design registration, the matters and drawings recorded in the International Register shall be deemed the contents of an application for design registration and relevant drawings under Article 37 (1) and (2).

(3) The provisions concerning brief description of the creation in Article 37 (2) 2 and Article 37 (3) shall not apply to applications for international design registration.

**Article 182 (Special Cases concerning Filing Dates of Applications)**

@Article 38 shall not apply to applications for international design registration.

**Article 183 (Withdrawal of Applications for International Design Registration or Renunciation of Internationally Registered Design Rights Following Termination of International Registration)**

(1) If the international registration is fully or partially terminated according to the recording of any change, such as the renunciation under Article 16 (1) (iv) of the Hague Agreement or any limitation under Article 16 (1) (v) of said Agreement, the relevant application for international design registration shall be deemed voluntarily withdrawn, fully or partially, to the extent of such termination, and the relevant design right internationally registered (referring to the design right, the grant of which is registered by the applicant for the international design registration in the Republic of Korea under Article 198 (2); the same shall apply hereinafter) shall be deemed fully or partially renounced.

(2) Withdrawal or renunciation under paragraph (1) shall take effect on the date the relevant change in the international registration is recorded in the International Register.

**Article 184 (Special Cases concerning Secret Designs)**

@Article 43 shall not apply to applications for international design registration.

**Article 185 (Inspection of Applications for International Design Registration subject to Requests for Deferment of Publication of International Registration)**

(1) In either of the following cases, the Commissioner of the Korean Intellectual Property Office shall accept a request to permit the inspection of a confidential copy of an application for international design registration under Article 10 (5) (a) of the Hague Agreement, regarding which a request for the deferment of publication of the international registration is filed under Article 11 of the Hague Agreement:

1. Where a party to a dispute makes a request to permit him or her to inspect the relevant application for international design registration for administrative or judicial proceedings concerning the entitlement of a person who has filed an application for international design registration (hereafter referred to as “applicant for international design registration” in this Section);

2. Where a person who has obtained consent from the international registrant recorded in the International Register makes a request to permit an inspection.

(2) No person who inspects a confidential copy under paragraph (1) shall divulge or misappropriate the information acquired or known to him or her by photographing or photocopying the inspected contents without authorization.

#### **Article 186 (Special Cases concerning Amendments to Applications)**

(1) In applying Article 48 (1) to applications for international design registration, “any description in a drawing or any photograph or specimen” in the aforesaid provisions shall be construed as “any description in a drawing”.

(2) Article 48 (3) shall not apply to applications for international design registration;

(3) In applying Article 48 (4) to applications for international design registration, “paragraphs (1) through (3)” in the aforesaid provisions shall be construed as “paragraphs (1) and (2)”, and “a determination to reject an application for design registration under Article 62” as “a determination to reject an application for design registration under Article 62 from the date the international registration is published under Article 10 (3) of the Hague Agreement”.

(4) In applying Article 48 (5) to applications for international design registration, “paragraphs (1) through (3)” in the aforesaid provisions shall be construed as “paragraphs (1) and (2)”

#### **Article 187 (Special Cases concerning Divided Applications)**

(1) In applying Article 50 (1) to applications for international design registration, “part of an application filed for design registration” in the aforesaid provisions shall be construed as “part of an application filed for design registration only upon receipt of a notice of the grounds for rejection under Article 63”.

(2) In applying Article 50 (3) to an application for international design registration, “Article 48 (4)” in the aforesaid provisions shall be construed as “Article 186 (3)”.

#### **Article 188 (Special Cases concerning Priority Claims under Treaty)**

In applying Article 51 (4) to applications for international design registration, “the filing date of an application for design registration” in the aforesaid provisions shall be construed as “the date the international registration was published under Article 10 (3) of the Hague Agreement”.

#### **Article 189 (Special Cases concerning Publication of Applications)**

@Article 52 shall not apply to applications for international design registration.

**Article 190 (Special Cases concerning Effects of Publication of Applications)**

In applying Article 53 (1) to applications for international design registration, “the publication of the application under Article 52” in the aforesaid provisions shall be construed as “the publication of international registration under Article 10 (3) of the Hague Agreement”, while “the publication of an application for design registration under Article 52” as “the publication of international registration under Article 10 (3) of the Hague Agreement” in applying Article 53 (2) and (6) to applications for international design registration.

**Article 191 (Special Cases concerning Succession to Rights to Have Design Registered)**

(1) In applying Article 57 (3) to applications for international design registration, “unless a report is filed on the change of an applicant of design registration, except conveyance by inheritance or general succession” in the aforesaid provisions shall be construed as “unless a report is filed by an applicant for international design registration with the International Bureau on the change of the registrant.”

(2) Article 57 (4) and (5) shall not apply to applications for international design registration.

(3) In applying Article 57 (6) to applications for international design registration, “paragraphs (2) and (5)” shall be construed as “paragraph (2).”

**Article 192 (Special Cases concerning Expedited Examination)**

In applying Article 61 (1) 1 to applications for international design registration, “the publication of the application under Article 52” shall be construed as “the publication of international registration under Article 10 (3) of the Hague Agreement.”

**Article 193 (Special Cases concerning Decisions to Reject)**

Cases specified in Article 62 (1) 2 in which an applicant not entitled to design registration under Article 37 (4) shall not apply to applications for international design registration.

**Article 194 (Special Cases concerning Notification of Grounds for Rejection)**

In applying Article 63 (1) to applications for international design registration, “the applicant for design registration” in the aforesaid provisions shall be construed as “the applicant for international design registration via the International Bureau.”

**Article 195 (Special Cases concerning Ex Officio Amendments)**

@Article 66 shall not apply to applications for international design registration.

**Article 196 (Special Cases concerning Registration Fees and Official Fees)**

(1) A person who intends to renew the duration of a design right internationally registered under Article 17 (2) of the Hague Agreement or an applicant for international design registration shall pay the prescribed designation fees under Article 7 (1) of the Agreement or the individual designation fees under Article 7 (2) of the Agreement to the International Bureau according to the classification of products or category of products prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(2) Matters necessary for the prescribed designation fees and individual designation fees under paragraph (1) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(3) Articles 79 through 84 and 86 (excluding provisions concerning fees for a petition for an administrative patent trial on invalidation under paragraph (1) 2) shall not apply to applications for international design registration or an internationally registered design right.

**Article 197 (Special Cases concerning Refund of Registration Fees and Official Fees)**

In applying Article 87 to applications for international design registration, paragraph (1) 3 of that Article shall not apply to applications for international design registration.

**Article 198 (Special Cases concerning Registration of Grant of Design Rights)**

(1) Article 90 (2) shall not apply to applications for international design registration.

(2) When a decision is made to register a design under Article 65 in regard to an application for international design registration, the Commissioner of the Korean Intellectual Property Office shall register the grant of the design right.

**Article 199 (Special Cases concerning Duration of Design Rights)**

(1) An internationally registered design right shall arise on the date the grant of the design right is registered in the Republic of Korea under Article 198 (2) and shall remain effective until the fifth anniversary of the date of the international registration under Article 10 (2) of the Hague Agreement (hereinafter referred to as the “date of the international registration”): Provided, That a design right, the grant of which is registered in the Republic of Korea under Article 198 (2) according to a decision rendered after the fifth anniversary of the date of the international registration (hereafter referred to as “expiry date of the international registration” in this paragraph) to register the design right, shall arise on the registration date of the grant of the right and shall remain effective until the fifth anniversary of the expiry date of the international registration.

(2) The duration of an internationally registered design right under paragraph (1) may be renewed for additional five consecutive years under Article 17 (2) of the Hague Agreement.

**Article 200 (Special Cases concerning Scope of Protection of Registered Designs)**

In applying Article 93 to an internationally registered design right, the scope of protection of the internationally registered design right shall be determined as follows:

1. If no amendment under Article 48 is made: The description recorded in the International Register, drawings, and a description of the design;
2. If an amendment under Article 48 is made: The description in the amended application for design registration, amended drawings, and an amended description of the design.

**Article 201 (Special Cases concerning Effects of Registration of Design Rights)**

(1) The assignment of an internationally registered design right, extinguishment of an internationally registered design right by renunciation, or renewal of the duration of an internationally registered design right shall take effect when such event is recorded in the International Register: Provided, That the foregoing shall not apply where the Commissioner of the Korean Intellectual Property Office notifies the International Bureau that the assignment of an internationally registered design right does not take effect because the assignment contravenes the proviso of Article 96 (1) or paragraph (2) of that Article.

(2) In applying Article 98 (1) 1 to internationally registered design rights, “the assignment (excluding conveyance by inheritance or general succession) or extinguishment of a design right by renunciation or a limitation on the disposal of a design right” in the aforesaid provisions shall be construed as “a limitation on the disposal of a design right.”

(3) In applying Article 98 (2) to internationally registered design rights, “a design right, an exclusive license” in the aforesaid provisions shall be construed as “an exclusive license.”

**Article 202 (Special Cases concerning Renunciation of Design Rights)**

(1) Article 106 (1) shall not apply to internationally registered design rights.

(2) In applying Article 107 to internationally registered design rights, “a design right, an exclusive license” in the aforesaid provisions shall be construed as “an exclusive license.”

**Article 203 (Effects of Correction of International Register)**

(1) If a correction to the International Register under Article 1 (viii) of the Hague Agreement (hereafter referred to as “correction” in this Article) is made, the relevant application for international design registration shall remain effective as corrected.

(2) A correction shall take effect retroactively from the date of international registration of the relevant application for international design registration.

(3) If a correction is related to a matter specified by Ordinance of the Ministry of Trade, Industry and Energy and is notified of a decision on whether to register the relevant application for international design registration, the decision on whether to register the application shall be deemed never made.

**Article 204 (Special Cases concerning Rights to Seek Injunction against Infringements)**

@Article 113 (2) shall not apply to internationally registered design rights.

**Article 205 (Special Cases concerning Inspection of Documents)**

In applying Article 206 (2) to applications for international design registration, “the publication of an application under Article 52” shall be construed as “the publication of international registration under Article 10 (3) of the Hague Agreement.”

**Article 206 (Inspection of Documents)**

(1) A person may request the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board to certify an application for design registration or an administrative trial, issue a certified copy of or extract from a document, or permit him or her to inspect or photocopy the Design Register or any other document, as he or she requires.

(2) Upon receipt of a request under paragraph (1), the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board may determine not to permit the certification, inspection, or photocopying of the documents relating to an application for design registration in which the application has not been published under Article 52 and the grant of the design right has not yet been registered, and documents that are likely to disturb public order or morality.

**Article 207 (Prohibition against Removal or Disclosure of Documents Relating to Applications, Examinations, and Trials)**

(1) Except in any of the following cases, an application for design registration, the documents relating to the examination of such application, a petition to oppose registration of a partially-examined design, documents relating to an administrative patent trial or retrial, or the Design Register shall not be removed from the office:

1. Where an application for design registration or documents relating to the examination of such application are removed from the office for searching for prior designs under Article 59 (1) or (2);
2. Where an application for design registration, documents relating to the examination of such application, a petition to oppose registration of a partially-examined design, documents relating to an administrative patent trial or retrial, or the Design Register are removed from the office for the entrustment of digitization of design documents under Article 208 (2);
3. Where documents relating to an application for design registration and examination thereof, a petition to oppose registration of a partially-examined design, or administrative patent trial, or retrial, or the Design Register are removed from the office for the online remote service under Article 32 (2) of the Electronic Government Act.

(2) Neither testimony as an expert witness or as a witness nor an answer to an inquiry can be given with regard to an application for design registration, the examination of such application, a case pending for an administrative patent trial or retrial, a decision or a trial decision on whether to register a design, or a decision on any other matter.

#### **Article 208 (Entrustment of Digitization of Design Documents)**

(1) In order to efficiently perform design-related procedures, the Commissioner of the Korean Intellectual Property Office may perform services for digitizing applications for design registration, documents relating to the examination of such applications, petitions to oppose registration of partially-examined designs, or documents relating to administrative patent trials or retrials, or the Design Register or similar services (hereinafter referred to as “services for digitization of design documents”) by using electronic information processing systems and applied technology for electronic information processing systems.

(2) The Commissioner of the Korean Intellectual Property Office may entrust the services for digitization of design documents to corporations equipped with facilities and human resources prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(3) No current or former executive officer or employee of a person to whom the services for digitization of design documents are entrusted under paragraph (2) (hereinafter referred to as “agency for digitizing design documents”) shall divulge or misappropriate confidential information about the design claimed in an application for design registration and known to him or her in the course of performing his or her duties.

(4) The Commissioner of the Korean Intellectual Property Office may digitize applications for design registration not filed in the form of electronic document under Article 30 (1) and other documents specified by Ordinance of the Ministry of Trade, Industry and Energy in accordance with paragraph (1) and store such applications and documents in the files in the electronic information processing systems

used by the Korean Intellectual Property Office and the Intellectual Property Trial and Appeal Board.

(5) Contents stored in a file under paragraph (4) shall be deemed the same as contents written in relevant paper documents.

(6) Methods for digitization of design documents and other matters necessary for the services for digitization of design documents shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(7) If an agency for digitizing design documents fails to meet the standards prescribed by Ordinance of the Ministry of Trade, Industry and Energy for facilities and human resources under paragraph (2) or if any of its executive officers or employees divulges or misappropriates confidential information about the design claimed in an application for design registration and known to him or her in the course of performing his or her duties, the Commissioner of the Korean Intellectual Property Office may order the agency to take a corrective measure or may terminate entrustment, if an agency for digitizing design documents fails to comply with an order to take the corrective measure. An agency for digitizing design documents shall be provided with an opportunity to explain its position before issuing such order. *<Amended by Act No. 15579, Apr. 17, 2018>*

#### **Article 209 (Service of Documents)**

Matters regarding procedures for serving documents specified in this Act shall be prescribed by Presidential Decree.

#### **Article 210 (Service by Public Notice)**

(1) If it is impracticable to serve a document on a person because of unknown whereabouts of the person, the service on the person shall be made by public notice.

(2) Public notice in lieu of service shall be made by publishing the statement that the relevant document is available for delivery to a person on whom it is to be served at any time in the Design Gazette.

(3) Public notice in lieu of initial service shall take effect two weeks after the date of publication in the Design Gazette: Provided, That public notice in lieu of subsequent service to the same party shall take effect on the day immediately after the date of publication in the Design Gazette.

#### **Article 211 (Service on Non-Residents)**

(1) Documents to be served on a non-resident shall be delivered to his or her design administrator, if the non-resident has a design administrator.

(2) Documents to be served on a non-resident may be dispatched to the non-resident by registered airmail, if the non-resident has no design administrator.

(3) If documents are dispatched by registered airmail under paragraph (2), such documents shall be deemed served on the mailing date of the documents.

#### **Article 212 (Design Gazette)**

(1) The Commissioner of the Korean Intellectual Property Office shall publish the Design Gazette.

(2) The Design Gazette may be published in an electronic medium, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(3) If the Design Gazette is published in an electronic medium, the Commissioner of the Korean Intellectual Property Office shall notify the issuance of the Design Gazette, its main contents, and matters concerning official notice in lieu of service through the information and communications networks.

(4) Information to be published in the Design Gazette shall be prescribed by Presidential Decree.

#### **Article 213 (Submission of Documents)**

The Commissioner of the Korean Intellectual Property Office or an examiner may require a party to submit documents and other articles necessary for any proceeding other than the proceedings of an administrative patent trial or retrial.

#### **Article 214 (Indication of Design Registration)**

A design right-holder or an exclusive or non-exclusive licensee may place a mark indicating design registration on products to which the registered design is applied or containers or packaging materials of such products.

#### **Article 215 (Prohibition of False Indication)**

No person shall commit any of the following offences:

1. Placing a mark indicating design registration or application pending for design registration or any mark that can be easily mistaken as such mark on a product with no registered design or with no application for design registration or the container or packaging materials of such product;
2. Transferring, renting, or displaying any product with a mark referred to in subparagraph 1;
3. Placing a mark indicating design registration or application pending for design registration for a product with no registered design or with no application for design registration or any mark that can be easily mistaken as such mark on an advertisement, signboard, or tag in order to produce, use, transfer, or rent such product.

#### **Article 216 (Restrictions on Appeals)**

(1) No appeal may be filed under any other Act against a determination to dismiss an amendment without prejudice, a determination on whether to accept an application for design registration, a determination or a trial decision to cancel the registration of a design, or a determination to dismiss a petition for an administrative patent trial or retrial without prejudice, and no appeal may be filed under any other Act against any disposition against which no appeal is permitted under this Act.

(2) An appeal against any disposition other than the dispositions specified in paragraph (1) shall be governed by the Administrative Appeals Act or the Administrative Litigation Act.

#### **Article 217 (Orders to Maintain Confidentiality)**

(1) If a party to a lawsuit on infringement of a design right or an exclusive license established a prima facie case for either of the following grounds with respect to his or her own trade secret (referring to a trade secret defined under subparagraph 2 of Article 2 of the Unfair Competition Prevention and Trade Secret Protection Act; the same shall apply hereinafter), the court may order, by decision upon the party's request, the counterparty (the representative of the corporation, if the counterparty is a corporation), the person representing the party for the lawsuit, and other persons who become aware of the trade secret in



the course of the lawsuit to refrain from using the trade secret for any purpose other than the continuation of the lawsuit or disclosing the trade secret to any person other than those to whom the aforementioned order is issued under this paragraph: Provided, That the foregoing shall not apply where the counterparty (the representative of the corporation, if the counterparty is a corporation), the person representing the party for the lawsuit, or other person who becomes aware of the trade secret in the course of the lawsuit has already acquired the trade secret by any means other than the reading of briefs or the examination of evidence as referred to in subparagraph 1:

1. The trade secret is stated in a brief already submitted or to be submitted or in the evidence already examined or to be examined;
  2. It is necessary to limit the use or disclosure of the trade secret to prevent the requesting party's business from being harmed by the possible use or disclosure of the trade secret referred to in subparagraph 1 for any purpose other than the proceedings of the lawsuit.
- (2) A request for an order under paragraph (1) (hereinafter referred to as "order for confidentiality") shall be made in writing, stating the following matters therein:
1. Persons to whom the order for confidentiality shall be issued;
  2. Facts sufficient to identify the trade secret to be protected by the order for confidentiality;
  3. Facts relevant to a ground specified in either subparagraph of paragraph (1).
- (3) A court that decides to issue an order for confidentiality shall serve a written decision on persons who shall comply with the order for confidentiality.
- (4) An order for confidentiality shall take effect at the time a written decision under paragraph (3) is served on persons who shall comply with the order for confidentiality.
- (5) An immediate complaint may be filed against a determination to dismiss, on the merits or without prejudice, a request to issue an order for confidentiality.

#### **Article 218 (Revocation of Orders of Confidentiality)**

- (1) If any of the requirements provided in Article 217 (1) is not met or ceases to be met, a person who has requested an order for confidentiality or a person who has been subjected to an order for confidentiality may request the court in which trial records are preserved (or the court that issued the order for confidentiality, if the trial records are not preserved in any court) to revoke the order for confidentiality.
- (2) When a court makes a decision on a request for revocation of an order for confidentiality, it shall serve a written decision on the person who has filed the request and the counterparty.
- (3) An immediate complaint may be filed against a decision on a request for revocation of an order for confidentiality.
- (4) A decision to revoke an order for confidentiality takes effect when it becomes final and conclusive.
- (5) If any person is subject to an order for confidentiality to keep trade secret confidential, in addition to a person who filed a request for revocation of an order for confidentiality or the counterparty, the court that makes a decision to revoke the order for confidentiality shall notify the person immediately of the decision to revoke the order for confidentiality.

### **Article 219 (Notification of Requests for Permission for Inspection, etc. of Trial Records)**

(1) If a decision under Article 163 (1) of the Civil Procedure Act was rendered with respect to trial records concerning a lawsuit in relation to which an order for confidentiality was issued (excluding lawsuits in which an order for confidentiality has been revoked) and the party who has filed a request to permit the inspection of confidential records defined under that paragraph is not a person subject to the order for confidentiality in the relevant lawsuit, the court official of Grade IV, V, VI, or VII in charge (hereinafter referred to as “court official”) shall notify the party who has filed the request under Article 163 (1) of the Civil Procedure Act (excluding a person who filed a request for permission for inspection; the same shall also apply in paragraph (3)) of the fact that the request for permission for inspection was filed immediately after such request.

(2) In cases falling under paragraph (1), no court official shall permit a person who has filed a request for permission for inspection of confidential records under paragraph (1) to inspect such confidential records before two weeks elapse from the filing date of the request under paragraph (1) (or before the date a decision on the request to issue an order for confidentiality to a person who filed the request under paragraph (1) becomes final and conclusive, if the request for the order for confidentiality was filed before the date).

(3) Paragraph (2) shall not apply where a person who filed a request for permission for inspection under paragraph (1) is permitted to inspect confidential records under paragraph (1) with consent of all the parties who filed a request under Article 163 (1) of the Civil Procedure Act.

### **Article 220 (Infringements)**

(1) Any person who infringes upon a design right or an exclusive license shall be punished by imprisonment with labor for not more than seven years or by a fine not exceeding 100 million won.

(2) A prosecution for a crime under paragraph (1) shall be instituted only if a criminal complaint thereof is filed.

### **Article 221 (Perjury)**

(1) Any witness, expert witness, or interpreter who makes a false statement under oath under this Act in his or her testimony, expert opinion, or interpretation before the Intellectual Property Trial and Appeal Board shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding 50 million won. <Amended by Act No. 14686, Mar. 21, 2017>

(2) If a person who committed a crime provided in paragraph (1) surrenders himself or herself to justice before a determination on whether to accept an application for design registration or a determination or administrative ruling on a petition to oppose registration of a partially-examined design becomes final and conclusive with respect to the relevant case, the sentence imposed upon him or her may be mitigated or revoked.

### **Article 222 (Offense of False Indication)**

Any person who violates Article 215 shall be punished by imprisonment with labor for not more than three years or by a fine not exceeding 30 million won. <Amended by Act No. 14686, Mar. 21, 2017>

### **Article 223 (Fraud)**

Any person who obtains design registration or a trial decision by fraud or other improper means shall be punished by imprisonment with labor for not more than three years or by a fine not exceeding 30 million won. <Amended by Act No. 14686, Mar. 21, 2017>

### **Article 224 (Breach of Orders for Confidentiality)**

(1) Any person who breaches an order for confidentiality issued under Article 217 (1), inside or outside the Republic of Korea, without valid cause shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding 50 million won.

(2) A prosecution for a crime under paragraph (1) shall be instituted only if a criminal complaint thereof is filed by a person who has requested an order for confidentiality.

### **Article 225 (Offense of Divulging Secrets)**

(1) Any employee of the Korean Intellectual Property Office or the Intellectual Property Trial and Appeal Board that divulges or misappropriates confidential information which becomes known to him or her about a design claimed in a pending application for design registration (including designs claimed in a pending application for international design registration, for which a request for deferment has been filed under Article 11 of the Hague Agreement) in the course of performing his or her duties shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding 50 million won.

(2) Any employee of the Korean Intellectual Property Office or the Intellectual Property Trial and Appeal Board that divulges confidential information which becomes known to him or her about a secret design under Article 43 (1) in the course of performing his or her duties shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding 50 million won.

(3) Any person who divulges information acquired or known to him or her about a secret design by photographing or photocopying it without permission in violation of Article 43 (5), while inspecting the confidential information under Article 43 (4), (excluding persons specified in Article 43 (4) 4) shall be punished by imprisonment with labor for not more than two years or by a fine not exceeding 20 million won.

(4) Any person who divulges information acquired or known to him or her about a confidential copy by photographing or photocopying it without permission in violation of Article 185 (2), while inspecting the confidential copy under Article 185 (1), shall be punished by imprisonment with labor for not more than two years or by a fine not exceeding 20 million won.

### **Article 226 (Legal Fiction as Public Official of Executive Officers and Employees of Specialized Organizations)**

Any current or former employee or executive officer of a specialized organization referred to in Article 59 (1) or an agency for the digitization of design documents under Article 208 shall be deemed a current or former employee of the Korean Intellectual Property Office for the purposes of Article 225.

### **Article 227 (Joint Penalty Provisions)**

If the representative of a corporation or an agent, employee, or other servant of the corporation or an individual commits an offence provided for in Articles 220 (1), 222, or 223 in connection with the business of the corporation or the individual, not only shall such offender be punished, but also the corporation shall be punished by a fine prescribed in either of the following subparagraph and the individual by a fine prescribed in the relevant Article: Provided, That the foregoing shall not apply where such corporation or individual has not been negligent in giving due attention and supervision concerning the relevant duties to prevent such offence:

1. For a violation of Article 220 (1): A fine not exceeding 300 million won;
2. For a violation of Article 222 or 223: A fine not exceeding 60 million won.

#### **Article 228 (Confiscation)**

(1) Any article made by conduct that constitutes the infringement provided in Article 220 (1) or any article obtained by such infringement shall be confiscated or ordered to be delivered to the injured party upon the injured party's request.

(2) If an injured party accepts an article delivered under paragraph (1), he or she may claim damages only for the portion that exceeds the value of the article among the total amount of his or her damages.

#### **Article 229 (Administrative Fines)**

(1) Any of the following persons shall be punished by an administrative fine not exceeding 500,000 won:

1. A person who makes a false statement before the Intellectual Property Trial and Appeal Board under oath taken under Article 299 (2) or 367 of the Civil Procedure Act, which shall apply mutatis mutandis pursuant to Article 145;
2. A person ordered by the Intellectual Property Trial and Appeal Board to submit or present a document or any other article in connection with the examination or preservation of evidence, but fails to comply with the order without valid cause;
3. A person summoned by the Intellectual Property Trial and Appeal Board to appear as a witness, expert witness, or interpreter, but fails to comply with the summons or refuses to take oath, make statements, give a testimony or expert opinion, or serve as an interpreter without valid cause.

(2) Administrative fines provided in paragraph (1) shall be imposed and collected by the Commissioner of the Korean Intellectual Property Office, as prescribed by Presidential Decree.

### ADDENDA

#### **Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2014: Provided, That the amended provisions of Article 4, and Article 11 of the Addenda shall enter into force on July 1, 2013, and the amended provisions of Chapter IX (Articles 173 through 205) shall enter into force on the date the Republic of Korea becomes bound by the Hague Agreement.

#### **Article 2 (General Applicability)**

This Act shall apply to applications filed for design registration after this Act enters into force.

### **Article 3 (Applicability to Exceptions to Expanded Prior Applications)**

The amended proviso of Article 33 (3) shall apply to applications filed for design registration after this Act enters into force.

### **Article 4 (Applicability to Application for Registration of Related Designs)**

(1) The amended provisions of Article 35 (1) shall also apply to designs claimed as related designs in an application filed for design registration within one year after this Act enters into force, among designs registered before this Act enters into force or the designs similar only to a design claimed in an application filed for design registration before this Act enters into force.

(2) The amended provisions of Article 35 (3) shall also apply to designs claimed as related designs in an application filed for design registration after this Act enters into force, among designs similar only to a design for which an exclusive license was granted before this Act enters into force.

### **Article 5 (Applicability to Amendments to Response to Petition for Administrative Patent Trial)**

The amended provisions of Article 48 (4) 3 shall also apply where a decision is made after this Act enters into force to reject an application filed for design registration before this Act enters into force.

### **Article 6 (Applicability to Suspension of Examination Following Determination to Dismiss Amendments to Applications for Registration of Multiple Designs)**

The amended provisions of Article 49 (3) shall also apply where a decision is made after this Act enters into force to dismiss an amendment without prejudice with regard to some designs claimed in an application filed for registration of multiple designs before this Act enters into force.

### **Article 7 (Applicability to Ex Officio Amendments)**

The amended provisions of Article 66 shall also apply where a decision is made after this Act enters into force to accept an application filed for design registration before this Act enters into force.

### **Article 8 (Applicability to Petitions to Oppose Registration of Partially-Examined Design of Multiple Designs)**

The amended provisions of Article 68 (1) shall apply to applications filed for design registration after this Act enters into force.

### **Article 9 (Applicability to Late Payment and Refund of Registration Fees)**

The amended provisions of Articles 84 (1) and 87 (1) 3 shall apply to applications filed for design registration after this Act enters into force.

### **Article 10 (Applicability to Duration of Design Rights)**

The amended provisions of Article 91 shall apply to the design right to a design applied for and registered after this Act enters into force.

### **Article 11 (Applicability to Renunciation of Registered Multiple Designs)**

The amended provisions of Article 105 shall also apply to design right to multiple designs registered before this Act enters into force.

#### **Article 12 (Applicability to Trial on Invalidation of Design Registration)**

The amended provisions of Article 121 (1) shall apply to applications filed for design registration after this Act enters into force.

#### **Article 13 (Applicability to Trial on Confirmation of Scope of Design Right)**

The amended provisions of Article 122 shall apply to applications filed for design registration after this Act enters into force.

#### **Article 14 (Transitional Measures concerning Persons Declared Incompetent, etc.)**

“Incompetent under the adult guardianship and quasi-incompetent under the limited guardianship” in the amended provisions of Article 4 (1) shall be deemed to include persons upon whom a declaration of incompetence or quasi-incompetence remains effective under Article 2 of the Addenda to the partial amendment (Act No. 10429) to the Civil Act.

#### **Article 15 (Transitional Measures concerning Similar Designs)**

Notwithstanding the amended provisions of Articles 35, 37, 49, 54, 62, 91, 92, 96, 97, and 121 concerning related designs, designs claimed in an application for design registration or registered as similar designs under previous provisions before this Act enters into force shall be governed by the previous provisions.

#### **Article 16 (Transitional Measures concerning Denial of Applications Abandoned or Rejected Following Amendments to Previous Act as Prior Application)**

The previous provisions (referring to Article 16 (3) of the Design Protection Act before amended by the partial amendment (Act No. 8187)) shall apply where an application filed for design registration before July 1, 2007 is abandoned or a determination or ruling to reject such application becomes final and conclusive.

#### **Article 17 (Transitional Measures concerning Publication of Applications Rejected in Design Gazette Following Amendments to Former Act)**

The provisions of Article 23-6 (corresponding to the amended provisions of Article 56 of this Act) of the partial amendment (Act. No. 8187) to the Design Protection Act shall not apply where a decision rendered to reject an application filed for design registration before July 1, 2007 becomes final and conclusive.

#### **Article 18 (Transitional Measures concerning Non-Exclusive Licenses of Prior Applications Following Amendments to Previous Act)**

The provisions of Article 50-2 (corresponding to the amended provisions of Article 101 of this Act) of the partial amendment (Act. No. 8187) to the Design Protection Act shall not apply to applications filed for design registration before July 1, 2007, even where such applications meet the requirements for a non-exclusive license otherwise granted for prior application.

#### **Article 19 Omitted.**

#### **Article 20 (Relationship to Other Statutes or Regulations)**

A citation of any provision of the former Design Protection Act by any other statute or regulation in force as at the time this Act enters into force shall be deemed a citation of the relevant provisions of this Act in lieu of the previous provision, if such provisions exists herein.

ADDENDA <Act No. 13840, Jan. 27, 2016>

**Article 1 (Enforcement Date)**

This Act shall enter into force three months after the date of its promulgation.

**Article 2 (Applicability to Application for Restoration of Design Right)**

The amended provisions of Article 84 (3) shall begin to apply from the first applications filed for the restoration of design right after this Act enters into force.

**Article 3 (Transitional Measures concerning Applications for Registration of Design Filed by Persons Eligible for Medical Care Assistance under Article 5 of the Previous National Basic Living Security Act)**

Notwithstanding the amended provisions of Article 86 (2), previous provisions shall apply to applications for registration of a design filed before this Act enters into force.

**Article 4 (Applicability to Refunds of Registration Fees)**

The amended provisions of Article 87 (1) 2 shall begin to apply from the first case where a design right is relinquished, after this Act enters into force.

**Article 5 (Applicability to Cancellation of Determination to Dismiss Amendment without Prejudice, to Reject Application for Design Registration, or to Revoke Design Registration)**

The amended provisions of Article 87 (1) 4 shall begin to apply from the first petition for a trial (this includes petitions for a retrial; hereafter the same shall apply in the Addenda) for which the determination to dismiss an amendment without prejudice, to reject an application for design registration, or to revoke design registration is cancelled.

**Article 6 (Applicability to Dismissal without Prejudice of Petition for Trial)**

The amended provisions of Article 87 (1) 5 shall begin to apply from the first petition for a trial, of which the dismissal without prejudice becomes final, after this Act enters into force.

**Article 7 (Applicability to Withdrawal of Application for Intervention)**

The amended provisions of Article 87 (1) 6 shall begin to apply from the first withdrawal of an application for intervention, after this Act enters into force.

**Article 8 (Applicability to Dismissal without Prejudice of Application for Intervention)**

The amended provision of Article 87 (1) 7 shall begin to apply from the first application for intervention, which is dismissed without prejudice after this Act enters into force.

**Article 9 (Applicability to Withdrawal of Petition for Trial)**

The amended provision of Article 87 (1) 8 shall begin to apply from the first withdrawal of a petition, after this Act enters into force.

ADDENDA <Act No. 14032, Feb. 29, 2016>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation.

**Article 2 (Transitional Measures concerning Subsequent Amendment of Procedures)**

Notwithstanding the amended provisions of Article 19, previous provisions shall apply where the period for subsequent amendment has already elapsed under former provisions as at the time this Act enters into force.

ADDENDA <Act No. 14686, Mar. 21, 2017>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation.

**Article 2 (General Applicability)**

The amended Article 36, Article 48 (4), and Article 51 (4) shall apply to applications for design registration filed after this Act enters into force.

ADDENDUM <Act No. 15579, Apr. 17, 2018>

This Act shall enter into force six months after the date of its promulgation: Provided, That the amended provisions of Article 28 (2) 1 and 2 shall enter into force on the date of its promulgation.

ADDENDUM <Act No. 16203, Jan. 8, 2019>

This Act shall enter into force six months after the date of its promulgation.

Last updated : 2020-12-14