

# PATENT ACT

Wholly Amended by Act No. 4207, Jan. 13, 1990

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Act No. 4594, Dec. 10, 1993

Act No. 4757, Mar. 24, 1994

Act No. 4892, Jan. 5, 1995

Act No. 5080, Dec. 29, 1995

Act No. 5329, Apr. 10, 1997

Act No. 5576, Sep. 23, 1998

Act No. 6024, Sep. 7, 1999

Act No. 6411, Feb. 3, 2001

Act No. 6582, Dec. 31, 2001

Act No. 6626, Jan. 26, 2002

Act No. 6768, Dec. 11, 2002

Act No. 7289, Dec. 31, 2004

Act No. 7427, Mar. 31, 2005

Act No. 7554, May 31, 2005

Act No. 7871, Mar. 3, 2006

Act No. 7869, Mar. 3, 2006

Act No. 8197, Jan. 3, 2007

Act No. 8171, Jan. 3, 2007

Act No. 8357, Apr. 11, 2007

Act No. 8462, May 17, 2007

Act No. 8852, Feb. 29, 2008

Act No. 9249, Dec. 26, 2008

Act No. 9381, Jan. 30, 2009

Act No. 9985, Jan. 27, 2010

Act No. 10012, Feb. 4, 2010

Act No. 10716, May 24, 2011

Act No. 11117, Dec. 2, 2011

Act No. 11654, Mar. 22, 2013

Act No. 11690, Mar. 23, 2013

Act No. 11848, May 28, 2013  
Act No. 11962, Jul. 30, 2013  
Act No. 12313, Jan. 21, 2014  
Act No. 12753, jun. 11, 2014  
Act No. 13096, Jan. 28, 2015  
Act No. 13317, May 18, 2015  
Act No. 14035, Feb. 29, 2016  
Act No. 14112, Mar. 29, 2016  
Act No. 14371, Dec. 2, 2016  
Act No. 14691, Mar. 21, 2017  
Act No. 15093, Nov. 28, 2017  
Act No. 15582, Apr. 17, 2018  
Act No. 16208, Jan. 8, 2019  
Act No. 16804, Dec. 10, 2019  
Act No. 17422, jun. 9, 2020  
Act No. 17536, Oct. 20, 2020  
Act No. 17730, Dec. 22, 2020  
Act No. 18098, Apr. 20, 2021  
Act No. 18409, Aug. 17, 2021  
Act No. 18505, Oct. 19, 2021  
Act No. 19007, Oct. 18, 2022



## CHAPTER I GENERAL PROVISIONS

### **Article 1 (Purpose)**

The purpose of this Act is to promote the development of technologies and to contribute to industrial development by protecting and supporting inventions and promoting the use of inventions.

### **Article 2 (Definitions)**

The terms used in this Act are defined as follows: *<Amended on Dec. 10, 2019>*

1. The term "invention" means the highly advanced creation of a technical idea utilizing the laws of nature;
2. The term "patented invention" means an invention for which a patent has been granted;
3. The term "practice" means any of the following acts:

- (a) An invention of a product: Manufacturing, using, assigning, leasing, or importing the product or offering to assign or lease the product (including displaying the product for the purpose of assigning or leasing; hereinafter the same shall apply);
- (b) An invention of a process: Using the process or subscribing to the use thereof;
- (c) An invention of a process of manufacturing a product: Using, assigning, leasing, or importing the product manufactured by the process or offering to assign or lease the product, other than the acts specified in item (b).

### **Article 3 (Legal Capacity of Minors)**

(1) Neither minor, person under limited guardianship, nor person under adult guardianship shall file any application or request or initiate any other procedure in connection with any patent (hereinafter referred to as "patent-related procedure") unless represented by his or her legal representative: Provided, That the foregoing shall not apply where a minor or a person under limited guardianship is able to engage in a legal act independently.

(2) The legal representative referred to in paragraph (1) may take procedures to request revocation of a granted patent under Article 132-2 (hereinafter referred to as "request for revocation of a granted patent") or for a trial or retrial initiated by the other party, without consent of the supervisor of guardianship.  
<Amended on Feb. 29, 2016>

### **Article 4 (Unincorporated Associations)**

A representative or an administrator appointed by an unincorporated association or foundation may become a petitioner requesting the examination of a patent application, request for revocation of a granted patent, or a petitioner or defendant for a trial or retrial in the name of the unincorporated association or foundation. <Amended on Feb. 29, 2016>

### **Article 5 (Patent Administrators for Overseas Residents)**

(1) No person with no domicile or place of business in the Republic of Korea (hereinafter referred to as "overseas resident") shall initiate any patent-related procedure or file legal proceedings against a disposition made by an administrative authority under this Act or an order issued under this Act, unless he or she is represented by a patent attorney or patent agent, who has a domicile or place of business in the Republic of Korea (hereinafter referred to as "patent administrator"), except where the overseas resident (or the representative if the overseas resident is a corporation) sojourns in the Republic of Korea.

(2) A patent administrator shall represent his or her principal in all patent-related procedures and legal proceedings filed with respect to a disposition made by an administrative authority under this Act or an order issued under this Act, within the scope of authority delegated to him or her.

#### **Article 6 (Scope of Agency Authority)**

An agent to whom agency authority is granted by a person who has a domicile or place of business in the Republic of Korea may conduct any of the following acts, only if expressly authorized so. The foregoing shall also apply to a patent administrator: <Amended on Feb. 29, 2016>

1. To modify, abandon, or withdraw a patent application;
2. To relinquish a patent;
3. To withdraw an application for registering the extension of the term of a patent;
4. To withdraw an application;
5. To withdraw a request;
6. To claim a priority under Article 55 (1) or withdraw a priority claim;
7. To file a petition for trial under Article 132-17;
8. To appoint a sub-agent.

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

A person who initiates a patent-related procedure as an agent (including a patent administrator; hereinafter the same shall apply) shall verify his or her agency authority in writing.

#### **Article 7-2 (Ratification of Acts of Persons Lacking Legal Capacity)**

Procedures initiated by a person who lacks legal capacity or authority for legal representation or by a person whose delegated authority is defective, which is necessary for initiating a patent-related procedure, shall take effect retroactively back to the time such procedures were initiated, if the procedures are ratified by the principal or legal representative when he or she has gained capacity to proceed.

#### **Article 8 (Survival of Agency Authority)**

The agency authority granted to an agent by a person who initiates a patent-related procedure shall survive even in any of the following events:

1. The principal's death or loss of legal capacity;
2. The corporate principal's dissolution in the course of a merger;
3. The termination of the principal's duty as a trustee;
4. The legal representative's death or loss of legal capacity to act;
5. The termination of, or a change in, the legal representative's agency authority.

#### **Article 9 (Independence of Representation)**

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

### **Article 10 (Orders to Appoint or Replace Agents)**

(1) If the Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge appointed under Article 145 (1) (hereinafter referred to as “presiding judge”) finds that a person initiating a patent-related procedure is unable to properly perform the procedure or to make a statement in oral hearings or is incompetent in initiating 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 presiding judge finds that an agent who initiates a patent-related procedure is unable to properly perform the procedure or to make a statement in oral hearings or is incompetent in initiating the procedure on any other ground, he or she may issue an order to replace the agent with another agent. *<Amended on Dec. 10, 2019>*

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

(4) When the Commissioner of the Korean Intellectual Property Office or a presiding judge orders a person to appoint or replace his or her agent under paragraph (1) or (2), he or she may completely or partially invalidate the patent-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 Korean Intellectual Property Trial and Appeal Board. *<Amended on Dec. 10, 2019>*

### **Article 11 (Representation by at Least Two Persons)**

(1) Where at least two persons jointly perform a patent-related procedure, each of them shall represent all, except for any of the following acts: Provided, That if they appoint their representative and report to the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board on the appointment, the representative only may represent all of them: *<Amended on Feb. 29, 2016>*

1. To modify, abandon, or withdraw a patent application;
2. To withdraw an application for registering the extension of the term of a patent;
3. To withdraw an application;
4. To withdraw a request;
5. To claim a priority under Article 55 (1) or withdraw a priority claim;
6. To file a petition for trial under Article 132-17.

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

### **Article 12 (Application Mutatis Mutandis of the Civil Procedure Act)**

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

### **Article 13 (Jurisdiction over Overseas Residents)**

If an overseas resident has appointed a patent administrator for his or her patents or any right in a patent, the domicile or place of business of the patent administrator shall be deemed the place where the property is situated under Article 11 of the Civil Procedure Act, whereas the location of the Korean Intellectual Property Office shall be deemed the place where such property is located, if an overseas resident has not appointed a patent administrator.

### **Article 14 (Calculation of Periods)**

The periods specified by this Act or any 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 commences at midnight;
2. If a period is expressed in months or years, it shall be counted according to the calendar;
3. If the start of a period does not coincide with the beginning of a month or year, the period shall expire on the day immediately preceding the date in the last month or year of the period corresponding to the date when the period commenced: Provided, That if a period is counted by months or years but there is no corresponding day in the last month, the period shall expire on the last day of that month;
4. If the last day of a period for performing a patent-related procedure falls on an official holiday (including the Workers' Day designated under the Designation of Workers' Day Act and Saturdays), the period shall expire on the working day following such official holiday.

### **Article 15 (Extension of Periods)**

(1) Upon request or ex officio, the Commissioner of the Korean Intellectual Property Office may extend the period for filing a petition for trial under Article 132-17 only once by not more than 30 days: Provided, That the number of extensions and the period may be additionally increased or extended for the benefit of a person from an area with poor accessibility, such as an island or a remote area, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy. *<Amended on Feb. 29, 2016>*

(2) When the Commissioner of the Korean Intellectual Property Office, the President of the Korean Intellectual Property Trial and Appeal Board, a presiding judge, or an examiner referred to in Article 57 (1) (hereinafter referred to as "examiner") sets a period for initiating a patent-related procedure under this Act, he or she may reduce or extend the period, upon request, or may extend the period, ex officio. In such cases, the Commissioner of the Korean Intellectual Property Office or other competent authority shall ensure that the interests of relevant parties in the procedure are not unfairly infringed on when determining whether to reduce or extend such period.

(3) Where a presiding judge specifies a deadline for initiating a patent-related procedure under this Act, he or she may change the deadline, upon request or ex officio.

### **Article 16 (Invalidation of Procedure)**

(1) When a person ordered to make an amendment under Article 46 fails to do so within a specified period, the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board may invalidate the patent-related procedure: Provided, That if a person ordered to make an amendment for his or her failure to pay petition fees for an examination under Article 82 (2) fails to pay the petition fees, the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board may invalidate the amendment to the specification accompanying the patent application.

(2) When a patent-related procedure has been invalidated under paragraph (1), but it is deemed that the failure to make an amendment within the specified period was due to good cause, the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board may revoke the invalidation within two months after the relevant cause ceases to exist, upon receipt of a request from the person ordered to make such amendment: Provided, That the foregoing shall not apply where one year has passed since the expiration of the specified period. <Amended on Oct. 19, 2021>

(3) When the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board invalidates a procedure under the main clause of or the proviso of paragraph (1) or revokes invalidation under the main clause of paragraph (2), he or she shall give written notice of such measure to the person ordered to make an amendment.

### **Article 17 (Subsequent Completion of Procedure)**

If a person who has initiated a patent-related procedure fails to complete the procedure within either of the following periods due to a cause not attributable to him or her, he or she may subsequently complete 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 expiration of the specified period: <Amended on Feb. 29, 2016>

1. A period for filing a petition for trial under Article 132-17;
2. A period for filing a petition for retrial under Article 180 (1).

### **Article 18 (Succession of Procedural Effects)**

The effects of a procedure taken with respect to a patent or any other right in a patent shall extend to the successor to the patent or the right in the patent.

### **Article 19 (Continuation of Procedure)**

Where a patent or any other right in a patent is transferred while a patent-related procedure is pending before the Korean Intellectual Property Office or the Korean Intellectual Property Trial and Appeal Board, the Commissioner of the Korean Intellectual Property Office or the presiding judge may permit the successor to the patent or the right in the patent to continue the patent-related procedure.

## **Article 20 (Interruption of Procedure)**

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

1. If the relevant party dies;
2. If the relevant corporate party dissolves in the course of a merger;
3. If the relevant party loses the capacity to perform the procedure;
4. If the party's legal representative dies or loses the agency authority;
5. If the duty of a trustee of the party terminates;
6. If the representative appointed under the proviso of Article 11 (1), with the exception of the subparagraphs, dies or becomes disqualified;
7. If a bankruptcy trustee or a person who has intervened in the procedure for another person in his or her name with a certain qualification becomes disqualified or dies.

## **Article 21 (Resumption of Interrupted Procedure)**

If a procedure pending before the Korean Intellectual Property Office or the Korean Intellectual Property Trial and Appeal Board is interrupted under Article 20, any of the following persons shall resume the procedure:

1. In cases falling under subparagraph 1 of Article 20: The deceased party's heir, the administrator of inherited estate, or a person authorized to resume the procedure under any Act: Provided, That no heir may resume the procedure during the period in which he or she can renounce inheritance;
2. In cases falling under subparagraph 2 of Article 20: The corporation established in the course of the merger or the corporation surviving the merger;
3. In cases falling under subparagraph 3 or 4 of Article 20: The party whose capacity to perform the procedure is reinstated or a person appointed as the legal representative;
4. In cases falling under subparagraph 5 of Article 20: A new trustee;
5. In cases falling under subparagraph 6 of Article 20: A new representative or either party;
6. In cases falling under subparagraph 7 of Article 20: An equally qualified person.

## **Article 22 (Applications for Resumption)**

(1) An application to resume a procedure interrupted under Article 20 can be filed by a person specified in any subparagraph of Article 21. In such cases, the other party can request the Commissioner of the Korean Intellectual Property Office or the administrative patent judge referred to in Article 143 (hereinafter referred to as "administrative patent judge") to order the person specified in any subparagraph of Article 21 to file an application to resume.



- (2) Upon receipt of an application to resume an interrupted procedure under Article 20, the Commissioner of the Korean Intellectual Property Office or the presiding judge shall notify the other party thereof.
- (3) If the Commissioner of the Korean Intellectual Property Office or the administrative patent judge deems that no grounds exist to accept an application to resume an interrupted procedure under Article 20, after examining the application ex officio, he or she shall determine to dismiss the application.
- (4) Upon receipt of an application to resume an interrupted procedure, the Commissioner of the Korean Intellectual Property Office or the administrative patent judge shall determine whether to permit the resumption of the procedure interrupted after a certified copy of a decision or trial ruling is served.
- (5) If a person specified in any subparagraph of 21 fails to resume the interrupted procedure, the Commissioner of the Korean Intellectual Property Office or the administrative patent judge shall, ex officio, order the person to resume the procedure within a specified period.
- (6) If the procedure is not resumed within the period specified in paragraph (5), it shall be deemed resumed on the day following the expiration of the period.
- (7) Where the procedure is deemed resumed under paragraph (6), the Commissioner of the Korean Intellectual Property Office or the presiding judge shall notify all relevant parties thereof.

#### **Article 23 (Suspension of Procedure)**

- (1) If the Commissioner of the Korean Intellectual Property Office or an administrative patent judge is unable to perform any of his or her duties due to a natural disaster or other extraordinary circumstances, the procedure pending before the Korean Intellectual Property Office or the Korean Intellectual Property Trial and Appeal Board shall be suspended until such circumstances cease to exist.
- (2) If a relevant party is unable to resume a procedure pending before the Korean Intellectual Property Office or the Korean Intellectual Property Trial and Appeal Board due to an obstacle that persists for an indefinite duration, the Commissioner of the Korean Intellectual Property Office or the competent administrative patent judge may determine to order the suspension of the procedure until the obstacle is removed.
- (3) The Commissioner of the Korean Intellectual Property Office or an administrative patent judge may revoke the determination made under paragraph (2).
- (4) When the Commissioner of the Korean Intellectual Property Office or the presiding judge suspends a procedure under paragraph (1) or (2) or revokes a determination under paragraph (3), he or she shall notify all relevant parties thereof.

#### **Article 24 (Effects of Interruption or Suspension)**

When a patent-related procedure is interrupted or suspended, the running of the relevant period shall be interrupted, and the entire period shall commence from the time the resumption of the procedure is notified or the procedure is resumed.

### **Article 25 (Legal Capacity of Foreigners to Hold Rights)**

Overseas-resident foreigner shall enjoy neither a patent nor any right in a patent, except in any of the following cases:

1. Where the country to which a foreigner belongs allows nationals of the Republic of Korea to enjoy a patent or any right in a patent under the same terms and conditions as those applicable to the nationals of the country;
2. Where the country to which a foreigner belongs allows nationals of the Republic of Korea to enjoy a patent or any right in a patent 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 patent or any right in a patent;
3. Where a foreigner is allowed to enjoy a patent or any right in a patent under a treaty or any arrangement equivalent to a treaty (hereinafter referred to as "treaty").

**Article 26 Deleted.** <Dec. 2, 2011>

**Article 27 Deleted.** <Feb. 3, 2001>

### **Article 28 (Effective Date of Submission of Documents)**

(1) An application, request, or any other document (including things; hereafter the same shall apply in this Article) filed with the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board under this Act or any order issued under this Act shall take effect on the date when it is issued to the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board. <Amended on Jun. 11, 2014>

(2) If an application, request, or any other document referred to in paragraph (1) is filed with the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board by post, it shall be deemed issued to the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board on the date specified in either of the following, whichever is relevant: Provided, That if documents for applying for registration of a patent or any right in a patent or documents regarding international applications defined in Article 2 (vii) of the Patent Cooperation Treaty (hereinafter referred to as "international application") are submitted by post, such documents shall take effect on the date when they are issued to the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board: <Amended on Jun. 11, 2014>

1. If the date stamped on the post by a postal authority is clear: The date stamped thereon;
2. If the date stamped on the post by a postal authority is unclear: The date evidenced by the receipt of the post.

(3) Deleted. <Sep. 23, 1998>

(4) Except as provided for in paragraphs (1) and (2), matters necessary for submitting documents where the delivery of post is delayed, post is lost, or postal service is interrupted shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy. <Amended on Jun. 11, 2014>

#### **Article 28-2 (Entry of Identification Number)**

(1) A person specified by Ordinance of the Ministry of Trade, Industry and Energy, who initiates a patent-related procedure, shall apply for issuance of his or her identification number to the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board.

(2) Upon receipt of an application under paragraph (1), the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board shall issue 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 Korean Intellectual Property Trial and Appeal Board shall, ex officio, issues an identification number to a person who initiates a patent-related procedure, if the person fails to apply for his or her identification number under paragraph (1), and shall notify the person thereof.

(4) A person issued his or her identification number under paragraph (2) or (3) shall state the identification number in the documents specified by Ordinance of the Ministry of Trade, Industry and Energy, when he or she takes a patent-related procedure. In such cases, he or she may elect not to state his or her domicile (if such person is a corporation, its place of business) in such documents, notwithstanding this Act or any order issued under this Act.

(5) Paragraphs (1) through (4) shall apply mutatis mutandis to an agent of a person who takes a patent-related procedure.

(6) Filing applications for issuance of an identification number, and issuance and notification of an identification number, and other matters necessary for identification numbers shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 28-3 (Procedures for Filing Patent Applications by Electronic Documents)**

(1) A person who initiates a patent-related procedure may convert a patent application and other documents to be filed with the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board under this Act, into electronic documents by the method prescribed by Ordinance of the Ministry of Trade, Industry and Energy, and submit them via an information and communications network or by means of any electronic recording medium, such as a portable storage device.

(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 as the contents recorded in the file saved in the electronic information processing system used by the Korean Intellectual Property Office or the Korean Intellectual Property Trial and Appeal Board to receive documents 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 by electronic documents under paragraph (1), the method of submission, and other matters necessary for submitting documents as electronic documents shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 28-4 (Reporting on Use of Electronic Documents and Digital Signature)**

(1) A person who intends to take a patent-related procedure using electronic documents shall report such use of electronic documents to the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board, and shall affix his or her digital signature on electronic documents submitted to the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board to identify the person who submits the documents.

(2) Electronic documents submitted under Article 28-3 shall be deemed submitted by a person whose digital signature is affixed thereon under paragraph (1).

(3) Procedures for reporting the use of electronic documents and the method of affixing a digital signature under paragraph (1), and other necessary matters shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 28-5 (Notification via Information and Communications Networks)**

(1) If the Commissioner of the Korean Intellectual Property Office, the President of the Korean Intellectual Property Trial and Appeal Board, a presiding judge, an administrative patent judge, or an examiner intends to give notice of or serve a document (hereinafter referred to as “notification or service of documents”) to or on a person who has reported on the use of electronic documents under Article 28-4 (1), he or she may do so via 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 made as the contents recorded in the file stored in the electronic information processing system used by the Korean Intellectual Property Office or the Korean Intellectual Property Trial and Appeal Board for forwarding documents at the time the person to whom such notification or service is addressed accesses the document via the electronic information processing system used by the person.

(4) Matters necessary for the kinds and methods of notification and service via an electronic information and communications system under paragraph (1) shall be prescribed by Ordinance of the Ministry of

## CHAPTER II REQUIREMENTS FOR PATENT REGISTRATION AND PATENT APPLICATIONS

### **Article 29 (Requirements for Patent Registration)**

(1) An invention having industrial applicability, other than the following, is patentable:

1. An invention publicly known or practiced in the Republic of Korea or in a foreign country prior to the filing of a patent application;
2. An invention published in a publication distributed in the Republic of Korea or in a foreign country or an invention disclosed to the public via telecommunications lines prior to the filing of a patent application.

(2) Notwithstanding paragraph (1), an invention easily creatable by a person with ordinary knowledge in the technical field of the invention, on the basis of the invention referred to in any subparagraph of paragraph (1), prior to the filing of a patent application, shall not be patentable.

(3) Notwithstanding paragraph (1), an invention shall not be patentable, if the invention for which a patent application is filed is identical to an invention described in the specification or drawings initially accompanying a separate patent application that meets all the following requirements: Provided, That the foregoing shall not apply where the inventor of the patent application at issue and the inventor of another patent are the same person, or where the applicant who has filed the patent application at issue and the applicant for a separate patent application are the same person:

1. The patent application had been filed before the filing date of the patent application at issue;
2. The patent application has been laid open under Article 64 or the patent has been registered and published under Article 87 (3) after the patent application at issue was filed.

(4) Notwithstanding paragraph (1), an invention shall not be patentable, if the invention for which a patent application is filed is identical to a design described in the specification or drawings initially accompanying an application for registration of a utility model that meets all the following requirements: Provided, That the foregoing shall not apply where the inventor of the patent application at issue and the designer of the utility model for which an application is filed to register are the same person, or where the applicant who has filed the patent application at issue and the applicant for registration of a utility model are the same person:

1. The application for registration of a utility model has been filed before the filing date of the patent application at issue;
2. The application for registration of a utility model has been laid open under Article 64 of this Act, which shall apply mutatis mutandis pursuant to Article 15 of the Utility Model Act, or the utility model has been registered and published under Article 21 (3) of the Utility Model Act.

(5) For the purposes of paragraph (3), if a separate patent application is an international patent application defined in Article 199 (2) (including an international application deemed a patent application under Article 214 (4)), "specification or drawings initially accompanying a separate patent application" in the main clause of paragraph (3) shall be construed as "specification, claims, or drawings submitted by the international application date", and "laid open" in subparagraph 2 of the same paragraph as "laid open or published internationally under Article 21 of the Patent Cooperation Treaty", respectively.

(6) For the purposes of paragraph (4), if an application for registration of a utility model is an international application for registration of a utility model under Article 34 (2) of the Utility Model Act (including an international application deemed an application for registration of a utility model under Article 40 (4) of the same Act), "specification or drawings initially accompanying an application" in the main clause of paragraph (4) shall be construed as "specification, claims, or drawings of a design submitted by the international application date", and "laid open" in subparagraph 2 of the same paragraph as "laid open or published internationally under Article 21 of the Patent Cooperation Treaty", respectively.

(7) For the purposes of paragraph (3) or (4), no international patent application deemed withdrawn under Article 201 (4) or an application for registration of a utility model deemed withdrawn under Article 35 (4) of the Utility Model Act shall be deemed either a separate patent application or another application for registration of a utility model.

### **Article 30 (Inventions Not Deemed to Be Publicly Known)**

(1) If any of the following applies to a patentable invention, but a patent application is filed within 12 months from the relevant date, the invention shall not be deemed to fall under any subparagraph of Article 29 (1), for the purposes of Article 29 (1) or (2):

1. When a person entitled to a patent has caused his or her invention to fall under any subparagraph of Article 29 (1): Provided, That this shall not apply where the relevant application has been laid open, or the patent has been registered and published, in the Republic of Korea or in any foreign country under a treaty or an Act;
2. When the invention falls under any subparagraph of Article 29 (1) contrary to the will of the person entitled to a patent.

(2) A person who seeks to claim entitlement under paragraph (1) 1 shall file a patent application to that effect and submit documents evidencing the relevant facts to the Commissioner of the Korean Intellectual Property Office within 30 days from the filing date of the patent application in the manner prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(3) Notwithstanding paragraph (2), if the amendment fee prescribed by Ordinance of the Ministry of Trade, Industry and Energy has been paid, documents stating the willingness to become entitled to the application of paragraph (1) 1 or documents evidencing such willingness may be submitted during the period set in either of the following: <Newly Inserted on Jan. 28, 2015>

1. The period during which amendment is permitted under Article 47 (1);
2. A period of not more than three months from the date when the certified copy of a written decision to grant a patent under Article 66 or the certified copy of a trial decision to revoke the decision to reject a patent application under Article 176 (1) (limited to a trial decision made to register a patent but including a trial decision on retrial) is served: Provided, That the period shall end on the day when it is intended to have the grant of a patent registered under Article 79, if the period up to such day is less than three months.

**Article 31 Deleted.** <Mar. 3, 2006>

**Article 32 (Unpatentable Inventions)**

Notwithstanding Article 29 (1), no invention that violates public order or sound morals or is likely to harm public health is patentable.

**Article 33 (Persons Entitled to Patent)**

- (1) A person who makes an invention or his or her successor shall be entitled to a patent under this Act: Provided, That no employee of the Korean Intellectual Property Office or the Korean Intellectual Property Trial and Appeal Board is entitled to a patent while in service, except by inheritance or bequest.
- (2) If at least two persons jointly make an invention, they are jointly entitled to a patent thereon.

**Article 34 (Patent Applications Filed by Unentitled Persons and Protection of Legitimate Right-Holders)**

If a patent application filed by a person who is neither an inventor nor a successor to an entitlement to a patent (hereinafter referred to as "unentitled person") falls under subparagraph 2 of Article 62 on the ground that the person has no entitlement to a patent under the main clause of Article 33 (1) and no patent is granted to such person, the patent application filed by a legitimate right-holder subsequent to the patent application filed by the unentitled person shall be deemed filed on the date of filing of the patent application by the unentitled person: Provided, That the foregoing shall not apply where the legitimate right-holder files a patent application 30 days after the date when the patent application filed by the unentitled person is rejected.

**Article 35 (Patents Granted to Unentitled Persons and Protection of Legitimate Right-Holders)**

If a trial ruling invalidating a patent becomes final and conclusive on the ground of the lack of the entitlement to the patent under the main clause of Article 33 (1) as provided for in Article 133 (1) 2, the patent application filed by the legitimate right-holder subsequent to the patent application filed by the unentitled person shall be deemed filed at the time the application for the invalidated patent is filed: Provided, That the foregoing shall not apply where the legitimate right-holder files a patent application 30

days after the date the trial ruling becomes final and conclusive. <Amended on Feb. 29, 2016>

### **Article 36 (First-to-File Rule)**

(1) Where at least two patent applications are filed for an identical invention on different dates, only the applicant who filed first is entitled to a patent on the invention.

(2) Where at least two patent applications for an identical invention are filed on the same date, only the person agreed upon by all patent applicants may obtain a patent on the invention: Provided, That if patent applicants fail to, or are unable to, reach agreement, none of the patent applicants is entitled to a patent on the invention.

(3) Where an invention for which a patent application is filed, and a design for which an application for registration of a utility model is filed are identical, paragraph (1) shall apply mutatis mutandis if the applications are filed on different dates, but paragraph (2) shall apply mutatis mutandis if they are filed on the same date.

(4) In either of the following cases, a patent application or application for registration of a utility model shall be deemed never filed for the purposes of paragraphs (1) through (3): Provided, That the foregoing shall not apply where a decision or trial ruling to reject the patent application or application for registration of a utility model as the proviso of paragraph (2) applies (including cases to which the aforesaid proviso shall apply mutatis mutandis pursuant to paragraph (3)) becomes final and conclusive:

1. Where the earlier application has been abandoned, invalidated, or withdrawn;
2. If a decision or trial ruling to reject the patent application or application for registration of a utility model becomes final and conclusive.

(5) For the purposes of paragraphs (1) through (3), a patent application or application for registration of a utility model filed by a person who is neither an inventor, designer, nor the successor to an entitlement to the patent or the registration of the utility model shall be deemed to have never been filed.

(6) In cases falling under paragraph (2), the Commissioner of the Korean Intellectual Property Office shall order the applicants to report the results of the agreement within a specified period, and the applicants shall be deemed to fail to reach agreement under paragraph (2), if no report is submitted within the period.

### **Article 37 (Transfer of Entitlement to Patent)**

(1) An entitlement to a patent may be transferable.

(2) An entitlement to a patent shall not be pledged.

(3) If an entitlement to a patent is jointly held by at least two persons, a joint patent holder may assign his or her share with the consent of each of joint patent holder.

### **Article 38 (Succession to Entitlement to Patent)**

(1) The successor to an entitlement to a patent for which no patent application has been filed shall have no valid claim or defense against a third party, unless the successor files a patent application.



(2) If at least two persons succeed to an entitlement to an identical patent from the same person, and if at least two applications for the patent are filed on the same date, the succession to the entitlement to the patent shall be effective only for the person agreed upon by each patent applicant.

(3) If at least two persons succeed to an entitlement to a patent or the registration of a utility model on an identical invention or design from the same person, and if at least two applications for the patent or for registration of the utility model are filed on the same date, the succession shall be effective only for the person agreed upon by each applicant for the patent or for registration of the utility model.

(4) No succession to an entitlement to a patent for which a patent application has been filed shall be effective, unless a report on amendment of the patent applicant is filed, except for succession by inheritance or other universal succession.

(5) The successor to an entitlement to a patent by inheritance or other universal succession shall notify the Commissioner of the Korean Intellectual Property Office of the succession without delay.

(6) If at least two persons succeed to an entitlement to an identical patent from the same person, and if at least two reports on amendment of the patent applicant are filed on the same date regarding such entitlement, the report shall be effective only for the person agreed upon by each person who has filed the reports.

(7) Article 36 (6) shall apply *mutatis mutandis* to cases falling under paragraphs (2), (3), and (6).

**Article 39 Deleted.** <Mar. 3, 2006>

**Article 40 Deleted.** <Mar. 3, 2006>

#### **Article 41 (Inventions Necessary for National Defense)**

(1) The Government may prohibit filing a patent application with a foreign patent office or may order an inventor, applicant, or agent to keep confidential an invention for which a patent application has been filed, if necessary for national defense: Provided, That a patent application may be filed in a foreign country with prior permission from the Government therefor.

(2) The Government may refuse to grant a patent, if an invention for which a patent application has been filed is necessary for national defense and may expropriate the entitlement to a patent for national defense during a war, an incident, or any similar emergency.

(3) The Government shall pay reasonable compensation for losses incurred due to prohibition against filing a patent application in a foreign country, or classification of a patent application as confidential under paragraph (1).

(4) The Government shall pay reasonable compensation if it refuses to grant a patent or expropriates the entitlement to a patent under paragraph (2).

(5) If a person violates an order prohibiting filing a patent application in a foreign country or keeping a patent application confidential under paragraph (1), the person shall be deemed to relinquish his or her

entitlement to a patent on the relevant invention.

(6) If a person violates an order prohibiting filing a patent application in a foreign country or keeping a patent application as confidential under paragraph (1), the person shall be deemed to relinquish his or her entitlement to claim for compensation for losses incurred due to prohibition against filing the patent application in a foreign country, or classification of the patent application as confidential.

(7) Procedures for prohibiting filing a patent application in a foreign country, or for classifying a patent application as confidential under paragraph (1), procedures for expropriation and the payment of compensation therefor under paragraphs (2) through (4), and other necessary matters shall be prescribed by Presidential Decree.

#### **Article 42 (Patent Applications)**

(1) A person who intends to obtain a patent shall file a patent application stating the following information, with the Commissioner of the Korean Intellectual Property Office: *<Amended on Jun. 11, 2014>*

1. The name and domicile of the patent applicant (if the applicant is a corporation, its name and place of business);
2. The name and the domicile or place of business of an agent, if the patent applicant is represented by an agent (if the agent is a patent firm or limited-liability patent firm, its name and place of business, and the name of the patent attorney designated for the case);
3. The title of the invention;
4. The name and domicile of the inventor;

(2) A patent application filed under paragraph (1) shall be accompanied by a specification containing the description of the invention and the claims, necessary drawings, and an abstract. *<Amended on Jun. 11, 2014>*

(3) A description of an invention under paragraph (2) shall satisfy all of the following requirements: *<Amended on Jun. 11, 2014>*

1. To clearly detail the invention in such manner that any person with ordinary knowledge in the technical field of the relevant invention can easily practice the invention;
2. To state the technology used for the invention.

(4) Claims referred to in paragraph (2) shall state at least a claim to be protected (hereinafter referred to as "claim"), and each claim shall satisfy all of the following requirements: *<Amended on, Jun. 11, 2014>*

1. The invention shall be supported by the description;
2. The invention shall be clearly and concisely described.

(5) Deleted. *<Jun. 11, 2014>*

(6) Claims referred to in paragraph (2) shall state the structures, methods, functions, and materials, or combinations thereof deemed necessary for identifying the invention in order to clarify the claims to be protected. *<Amended on Jun. 11, 2014>*

(7) Deleted. <Jun. 11, 2014>

(8) Matters necessary for the methods of stating the claims under paragraph (2) shall be prescribed by Presidential Decree. <Amended on Jun. 11, 2014>

(9) Matters necessary for the methods of making the description, drawings, and an abstract of an invention under paragraph (2) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy. <Amended on Jun. 11, 2014>

#### **Article 42-2 (Filing Date of Patent Application)**

(1) The date when a patent application, accompanied by a specification and necessary drawings, is submitted to the Commissioner of the Korean Intellectual Property Office shall be deemed the filing date of the patent application. In such cases, the claims may be omitted in the specification, but the description of the invention must be stated in the specification.

(2) If a patent applicant fails to state the claims in the specification initially accompanying a patent application under the latter part of paragraph (1), he or she shall make an amendment to state the claims in the specification by not later than one year and two months from the date specified in any subparagraph of Article 64 (1), whichever is relevant: Provided, That upon receipt of a request for examination of the application under Article 60 (3), the applicant shall make an amendment by not later than three months from the date when notice is served, or one year and two months from the date specified in any subparagraph of Article 64 (1), whichever comes earlier.

(3) If a patent applicant fails to make an amendment under paragraph (2), the applicant shall be deemed to voluntarily withdraw the patent application on the date immediately following the expiration of the period specified in paragraph (2).

#### **Article 42-3 (Patent Applications in Foreign Language)**

(1) If a patent applicant states his or her intention, in the patent application, to describe the specification and drawings (limited to captions in drawings; the same shall apply hereafter in paragraphs (2) and (5)) in a language specified by Ordinance of the Ministry of Trade, Industry and Energy, other than Korean language, he or she may use the language.

(2) If the specification and drawings initially accompanying a patent application are written and prepared in a language provided for in paragraph (1) (hereinafter referred to as "patent application in a foreign language"), the patent applicant shall submit a Korean translation of the specification and drawings in the manner specified by Ordinance of the Ministry of Trade, Industry and Energy by not later than one year and two months from the date specified in any subparagraph of Article 64 (1), whichever is relevant: Provided, That upon receipt of a request for examination of the application under Article 60 (3), the applicant shall submit a Korean translation by not later than three months from the date when notice is served, or one year and two months from the date specified in any subparagraph of Article 64 (1), whichever comes earlier.

(3) A patent applicant who has submitted a Korean translation under paragraph (2) may submit another Korean translation in replacement of the former Korean translation by not later than the expiration of the period specified in paragraph (2): Provided, That the foregoing shall not apply in the following cases:

1. Where the patent applicant has amended the specification or a drawing (excluding an amendment deemed made under paragraph (5));
2. Where the patent applicant has filed a request for examination of the application.

(4) If a patent applicant fails to submit a Korean translation of the specification under paragraph (2), the applicant shall be deemed to voluntarily withdraw the patent application on the date following the expiration of the period specified in paragraph (2).

(5) If a patent applicant submits a Korean translation under paragraph (2) or another Korean translation under the main clause of paragraph (3), the specification and drawings accompanying the initial patent application in a foreign language shall be deemed amended according to the Korean translation: Provided, That if another Korean translation is submitted under the main clause of paragraph (3), all amendments that shall otherwise be deemed amended according to Korean translations submitted prior to the latest Korean translation (hereafter referred to as "final Korean translation" in this Article and the latter part of Article 47 (2)) shall be deemed never made.

(6) A patent applicant may correct any error in the final Korean translation in the manner prescribed by Ordinance of the Ministry of Trade, Industry and Energy during the period set for amendments under Article 47 (1). In such cases, paragraph (5) shall not apply to the corrected Korean translation.

(7) If a correction is made during the period specified in Article 47(1) 1 or 2 pursuant to the former part of paragraph (6), all corrections made prior to the last correction shall be deemed to have never existed.

<Newly Inserted on Feb. 29, 2016>

#### **Article 43 (Abstract)**

An abstract referred to in Article 42 (2) shall be used only for technical information, and shall not define the scope of the invention for which protection is sought.

#### **Article 44 (Joint Applications)**

Where the entitlement to a patent is jointly held by at least two persons, all entitled persons shall jointly file a patent application.

#### **Article 45 (Scope of Single Patent Application)**

(1) A patent application shall be filed for each invention: Provided, That a patent application may be filed for a group of inventions linked so as to form a single general inventive concept.

(2) The requirements for filing a patent application for a group of inventions under the proviso of paragraph (1) shall be prescribed by Presidential Decree.

#### **Article 46 (Procedural Amendments)**

The Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board shall order a relevant person to amend a patent-related procedure within a specified period if any of the following applies. Upon receipt of such order, the person may submit a written statement on the order to the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board during the period:

1. Where the person violates Article 3 (1) or 6;
2. Where the person violates any formality specified in this Act or any order issued thereunder;
3. Where the person fails to pay any fee required under Article 82.

#### **Article 47 (Amendments to Patent Applications)**

(1) A patent applicant may amend the specification or any drawing accompanying his or her patent application before a certified copy of a decision to grant a patent under Article 66 is served: Provided, That the patent applicant may make an amendment only during the following applicable period (referring to the time in cases falling under subparagraph 3), if he or she has already received notice of the ground for rejection under Article 63 (1) (hereinafter referred to as "notice of the ground for rejection"): *<Amended on Feb. 29, 2016>*

1. Where he or she has first received notice of the ground for rejection (excluding notice of the ground for rejection regarding the ground for rejection which has arisen in connection with the amendment made following any earlier notice of the ground for rejection) or notice of the ground for rejection that does not constitute notice of the ground for rejection under subparagraph 2: The period set for submitting a written statement in the notice of the ground for rejection;
2. Where he or she has received notice of the ground for rejection regarding the ground for rejection which has arisen in connection with the amendment in relation to any earlier notice of the ground for rejection (excluding the notice of the ground for rejection given prior to the notice under Article 66-3 (2)): The period set for submitting a written statement in the notice of the ground for rejection;
3. Where he or she files a request for re-examination under Article 67-2: The time the request is filed.

(2) An amendment to the specification or drawings under paragraph (1) shall be made within the scope of the features described in the specification or drawings accompanying the initial patent application. An amendment to a patent application in a foreign language shall be made also within the scope of the features described in the final Korean translation (referring to the corrected Korean translation, if a correction is made under the former part of Article 42-3 (6)) or in the drawings (excluding captions in the drawings) accompanying the initial patent application.

(3) An amendment to the claims, among amendments made under paragraph (1) 2 and 3, may be made only in the following cases:

1. Where the claims are reduced by limiting, deleting, or adding claims;
  2. Where he or she intends to rectify a clerical error;
  3. Where he or she intends to clarify an ambiguous description.
  4. Where an amendment is made regarding an earlier amendment that is beyond the scope of the claims under paragraph (2) to reinstate the claims prior to the amendment, or to reinstate the claims prior to the amendment and to simultaneously amend the claims under subparagraphs 1 through 3.
- (4) Where a patent application is amended during the period specified in paragraph (1) 1 or 2, all amendments made at each stage of amendment prior to the final amendment shall be deemed voluntarily withdrawn.
- (5) Notwithstanding the main clause of paragraph (1), the specification or drawings of a patent application in a foreign language may be amended only where a Korean translation has been submitted under Article 42-3 (2).

**Article 48 Deleted.** <Feb. 3, 2001>

**Article 49 Deleted.** <Mar. 3, 2006>

**Article 50 Deleted.** <Apr. 10, 1997>

**Article 51 (Rejection of Amendments)**

(1) If an examiner finds that an amendment made under Article 47 (1) 2 or 3 violates paragraph (2) or (3) of the same Article, or that another ground for rejection arises due to such amendment (excluding an amendment to delete a claim among amendments made under paragraph (3) 1 or 4 of the same Article), he or she shall determine to reject the amendment: Provided, That the foregoing shall not apply to any of the following amendments: <Amended on Feb. 29, 2016>

1. Where an ex officio amendment is made under Article 66-2: The amendment made prior to the ex officio amendment;
  2. Where an ex officio re-examination is conducted under Article 66-3: The amendment made prior to the revoked decision to grant a patent;
  3. Where a request for re-examination is filed pursuant to Article 67-2: The amendment made before the request is filed.
- (2) A decision to reject an amendment under paragraph (1) shall be made in writing, stating the grounds therefor.
- (3) No appeal shall be permitted against a decision to reject an amendment under paragraph (1): Provided, That the foregoing shall not apply where a decision to reject an amendment (excluding a decision to reject an amendment prior to the revoked decision to grant a patent, where an ex officio re-examination is conducted under Article 66-3, and a decision to reject an amendment before a request for re-examination

under Article 67-2 is filed, where such request is filed) is contested in a trial on the ruling to reject the claim of a patent under Article 132-17. <Amended on Feb. 29, 2016>

## **Article 52 (Divisional Patent Applications)**

(1) An applicant who has filed a single patent application for two or more inventions may divide the application into two or more applications within the scope of the features described in the specification or drawings accompanying the initial patent application, within either of the following periods: Provided, That if such patent application has been filed in a foreign language, it may be divided only where the patent application has been accompanied by the Korean translation required under Article 42-3 (2): <Amended on Jan. 28, 2015; Feb. 29, 2016; Oct. 19, 2021>

1. A period during which amendments can be made under Article 47 (1);
  2. A period not exceeding three months from the date a certified copy of the ruling to reject the claim of a patent is served (referring to an extension, if the period specified in Article 132-17 has been extended under Article 15 (1));
  3. A period of not more than three months from the date when the certified copy of a decision to grant a patent under Article 66 or the certified copy of a trial decision to revoke the decision to reject a patent application under Article 176 (1) (limited to a trial decision made to register a patent but including a trial decision on retrial) is served: Provided, That the period shall end on the day when it is intended to have the grant of a patent registered under Article 79, if the period up to such day is less than three months.
- (2) A patent application divided under paragraph (1) (hereinafter referred to as "divisional application") shall be deemed filed at the time the initial patent application was filed: Provided, That a divisional application shall be deemed filed at the time the divisional application is filed in any of the following cases:

1. Where the divisional application constitutes a separate patent application referred to in Article 29 (3) of this Act or a patent application referred to in Article 4 (4) of the Utility Model Act, and Article 29 (3) of this Act or Article 4 (4) of the Utility Model Act shall apply to the divisional application;
  2. Where Article 30 (2) applies to the converted application;
  3. Where Article 54 (3) applies to the converted application.
  4. Where Article 55 (2) applies to the converted application.
- (3) A person who intends to file a divisional application under paragraph (1) shall state his or her intention and indicate the patent application to be divided in the divisional patent applications.
- (4) If a patent application to be divided is a patent application claiming priority under Article 54 or 55, the priority shall be also claimed with regard to the divisional application at the time the divisional application is filed under paragraph (1); and if any document or written statement submitted under Article 54 (4) with respect to the patent application to be divided exists, the relevant document or written statement shall be deemed to have been submitted. <Newly Inserted on Oct. 19, 2021>

(5) As for a divisional application deemed to claim priority under paragraph (4), all or part of the priority claim may be withdrawn within 30 days from the filing date of the divisional application, even after expiration of the period specified in Article 54 (7) or 55 (7). <Newly Inserted on Oct. 19, 2021>

(6) A person who claims priority under Article 54 for a divisional application may submit the documents specified in paragraph (4) of the same Article to the Commissioner of the Korean Intellectual Property Office within three months from the filing date of the divisional application, even after expiration of the period specified in paragraph (5) of the same Article. <Amended on Oct. 19, 2021>

(7) If a divisional application is filed in a foreign language, the patent applicant can submit the application translated in Korean under Article 42-3 (2) or another Korean translation under the main clause of Article 42-3 (3) not later than 30 days from the filing date of the divisional application, even after expiration of the period specified in paragraph (2) of the same Article: Provided, That another Korean translation is not allowed in cases falling under any subparagraph of Article 42-3 (3). <Amended on Oct. 19, 2021>

(8) With respect to divisional applications filed without stating the claims in the specification accompanying the initial patent application, the patent applicant may make an amendment stating the claims in the specification not later than 30 days from the filing date of the divisional application, even after expiration of the period specified in Article 42-2 (2). <Amended on Oct. 19, 2021>

#### **Article 52-2 (Splitting-Off)**

(1) A person who has received a decision to reject a patent application may split off part of the application into a new patent application within the scope of the features described in the specification or drawings accompanying the initial patent application within 30 days (referring to the period prescribed by the presiding judge, if the period is specified in Article 186 (5)) from the date a certified copy of the trial ruling is received, if his or her filing of a petition for trial under Article 132-17 is dismissed. In such cases, any of the following claims a new patent application may contain any of the following claims:

1. A claim that has not been rejected in the decision to reject the patent application, which is the subject matter of the petition for trial;
  2. A claim that deletes the extra descriptions in the rejected claims based on which the decision to reject the patent application has been made;
  3. A description of the claims under subparagraph 1 or 2 as ones falling under any subparagraph of Article 47 (3) (excluding subparagraph 4 of the same paragraph);
  4. A claim that deletes the part of the descriptions entered in the specification or drawings initially accompanying the patent application from any claim falling under any of subparagraphs 1 through 3.
- (2) Article 52 (2) through (5) shall apply mutatis mutandis to patent applications split off under paragraph (1) (hereinafter referred to as "splitting-off"). In such cases, "division" shall be construed as "splitting-off", and "divisional application" shall be construed as "splitting-off."
- (3) Notwithstanding the latter part of Article 42-2 (1) or Article 42-3 (1), in cases of a splitting-off, the claims shall be contained in the specification accompanying the initial patent application or the



specification and drawings (limited to the captions in drawings) shall be in Korean.

(4) A splitting-off shall not form the basis of a new splitting-off, a divisional application, or a converted application under Article 10 of the Utility Model Act.

### **Article 53 (Converted Applications)**

(1) An applicant for registration of a utility model may convert the application for registration of the utility model into a patent application within the scope of the features described in the specification or drawings accompanying the initial application for registration of the utility model: Provided, That the foregoing shall not apply in the following cases: *<Amended on Jun. 11, 2014; Feb. 29, 2016; Oct. 19, 2021>*

1. Where three months (referring to an extension, if the period specified in Article 132-17 has been extended under Article 15 (1), which shall apply mutatis mutandis pursuant to Article 3 of the Utility Model Act) have passed since the date when a certified copy of the initial ruling to reject the application to register the utility model was served;
2. Where the application for registration of the utility model has been filed in a foreign language under Article 8-3 (2) of the Utility Model Act, and its Korean translation required under the same paragraph has not been submitted along with the application filed for conversion.

(2) An application converted into a patent application under paragraph (1) (hereinafter referred to as "converted application") shall be deemed filed at the time the application for registration of the utility model was filed: Provided, That the foregoing shall not apply in the following cases: *<Amended on Jun. 11, 2014>*

1. Where Article 29 (3) of this Act or Article 4 (4) of the Utility Model Act applies to the converted application as it constitutes a separate patent application referred to in Article 29 (3) of this Act, or a patent application under Article 4 (4) of the Utility Model Act;
2. Where Article 30 (2) applies to the converted application;
3. Where Article 54 (3) applies to the converted application.
4. Where Article 55 (2) applies to the converted application.

(3) A person who intends to file a converted application under paragraph (1) shall state his or her intention and indicate the application for registration of the utility model to be converted in the patent application. *<Amended on Jun. 11, 2014>*

(4) When a converted application is filed, the application for registration of the utility model shall be deemed withdrawn. *<Amended on Jun. 11, 2014>*

(5) Deleted. *<Jun. 11, 2014>*

(6) A person who claims priority under Article 54 for a converted application may submit the documents specified in paragraph (4) of the same Article to the Commissioner of the Korean Intellectual Property Office within three months from the filing date of the converted application, even after the expiration of the period specified in paragraph (5) of the same Article. *<Amended on Mar. 22, 2013>*

(7) If a converted application is filed in a foreign language, the patent applicant can submit its Korean translation under Article 42-3 (2) or another Korean translation referred in the main clause of Article 42-3 (3) by not later than 30 days from the filing date of the converted application, even after the expiration of the period specified in paragraph (2) of the same Article: Provided, That another Korean translation is not allowed in cases specified in any subparagraph of Article 42-3 (3). <Newly Inserted on Jun. 11, 2014>

(8) If a converted application has been filed regarding a patent application filed without stating the claims in the specification accompanying the initial converted application, the patent applicant may make an amendment to state the claims in the specification by not later than 30 days from the filing date of the converted application, even after the expiration of the period specified in Article 42-2 (2). <Newly Inserted on Jun. 11, 2014>

#### **Article 54 (Priority Claims under Treaty)**

(1) Where any of the following applies under a treaty, the filing date of a patent application in the relevant foreign country shall be deemed the filing date of the patent application in the Republic of Korea for purposes of Article 29 or 36:

1. Where a citizen of a foreign country that recognizes the priority of citizens of the Republic of Korea for a patent application files a patent application for an invention after filing a patent application in the foreign country or in another foreign country for the same invention and claims priority;

2. Where a citizen of the Republic of Korea files a patent application in the Republic of Korea after filing a patent application for the same invention in a foreign country that recognizes the priority of citizens of the Republic of Korea for a patent application and claims priority.

(2) No person who intends to claim priority under paragraph (1) shall claim priority, unless he or she files a patent application within one year from the filing date of the initial application on which the priority claim is based.

(3) A person who intends to claim priority under paragraph (1) shall state his or her intention, the name of the country in which the application was initially filed, and the filing date of the application in the patent application that he or she files in the Republic of Korea.

(4) A person who claims priority under paragraph (3) shall submit the documents specified in subparagraph 1 or the written statement specified in subparagraph 2 to the Commissioner of the Korean Intellectual Property Office: Provided, That the written statement specified in subparagraph 2 may be submitted only if the relevant foreign country is one of the countries specified by Ordinance of the Ministry of Trade, Industry and Energy:

1. A written statement with the filing date of the patent application initially filed with the government of the foreign country, certified copies of the specification and drawings of the relevant invention, which have been certified by the government of the foreign country;

2. A written statement with the file number of the patent application initially filed in the foreign country, the information with which the filed application can be verified, and other matters specified by

Ordinance of the Ministry of Trade, Industry and Energy.

(5) Documents or written statements referred to in paragraph (4) shall be submitted within one year and four months from the earliest among the following dates:

1. The initial filing date of the application in a country that is a party to a treaty;
2. The filing date of the application on which the priority claim is based, where a patent application contains a priority claim under Article 55 (1);
3. The filing date of the application on which the priority claim is based, where a patent application contains a priority claim under paragraph (3).

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

(7) A person who claims priority under paragraph (1) and meets the requirements under paragraph (2) may amend or add a priority claim within one year and four months from the earliest date specified in paragraph (5).

#### **Article 55 (Priority Claims Based on Patent Applications)**

(1) A person who intends to obtain a patent may claim priority on the invention described in the specification or drawings initially accompanying a separate application filed earlier (hereinafter referred to as "earlier application") for a patent or for registration of a utility model, on which he or she is entitled to the patent or registration of a utility model: Provided, That the foregoing shall not apply in the following cases: *<Amended on Oct. 19, 2021>*

1. Where the relevant patent application is filed one year after the filing date of the earlier application;
2. Where the earlier application is a divisional application under Article 52 (2) (including cases applied mutatis mutandis pursuant to Article 11 of the Utility Model Act) or splitting-off under Article 52-2 (2) (including cases applied mutatis mutandis pursuant to Article 11 of the Utility Model Act), or a converted application under Article 53 (2), or Article 10 (2) of the Utility Model Act;
3. Where the earlier application has been abandoned, invalidated, or withdrawn at the time the relevant patent application is filed;
4. Where the grant of the earlier application has been registered or where a decision or trial ruling to reject the patent application or to refuse to register a utility model becomes final and conclusive at the time the relevant patent application is filed.

(2) A person who intends to claim priority under paragraph (1) shall state his or her intention and indicate the earlier application in the patent application subsequently filed.

(3) In applying Article 29 (1) and (2), the main clauses of Article 29 (3) and (4), Articles 30 (1), 36 (1) through (3), 96 (1) 3, 98, 103, 105 (1) and (2), 129, and 136 (5) of this Act (including cases to which the aforesaid provisions shall apply mutatis mutandis pursuant to Article 132-3 (3) or 133-2 (4)), Articles 7 (3) and (4) and 25 of the Utility Model Act, and Articles 95 and 103 (3) of the Design Protection Act to the same invention as described in the specification or drawings initially accompanying the earlier application

claiming the relevant priority, among inventions described in a patent application claiming priority under paragraph (1), the patent application filed subsequently shall be deemed to have been filed at the time the earlier application was filed. *<Amended on Feb. 29, 2016>*

(4) The main clause of Article 29 (3) or (4) of this Act or the main clause of Article 4 (3) or (4) of the Utility Model Act shall apply to an invention identical to the invention described in the specification or drawings initially accompanying the earlier application claiming the relevant priority, among inventions described in the specification or drawings accompanying the initial patent application claiming priority under paragraph (1), deeming that the earlier application claiming the priority is laid open at the time the relevant patent application is laid open or the patent is registered and published.

(5) In either of the following cases, paragraphs (3) and (4) shall not apply to an invention described in the specification or drawings initially accompanying the earlier application claiming priority, among inventions described in the specification or drawings initially accompanying the earlier application:

1. Where the earlier application contains a priority claim under paragraph (1);
2. Where the earlier application contains a priority claim under Article 4-D (1) of the Paris Convention for the Protection of Industrial Property.

(6) For the purposes of paragraph (4), Article 29 (7) shall not apply even where the earlier application falls under either of the following:

1. Where the earlier application is an international patent application deemed voluntarily withdrawn under Article 201 (4);
2. Where the earlier application is an international application for registration of a utility model deemed voluntarily withdrawn under Article 35 (4) of the Utility Model Act.

(7) A person who meets the requirements under paragraph (1) and claims priority may amend or add the priority claim within one year and four months from the filing date of the earlier application (referring to the earliest filing date, if at least two earlier applications have been filed).

(8) No earlier application on which the priority claim is based under paragraph (1) shall not obtain grant of a patent registered under Article 79: Provided, That this shall not apply where the priority claim based on the earlier application has been withdrawn. *<Newly Inserted on Oct. 19, 2021>*

#### **Article 56 (Withdrawal of Earlier Applications)**

(1) The earlier application claiming priority under Article 55 (1) shall be deemed withdrawn at the time one year and three months elapse from the filing date of the earlier application: Provided, That the foregoing shall not apply in any of the following cases: *<Amended on Oct. 19, 2021>*

1. Where the earlier application has been abandoned, invalidated, or withdrawn;
2. Where the grant of the earlier application has been registered or where a decision or trial ruling to reject the patent application or to refuse to register a utility model becomes final and conclusive;
3. Where the priority claim based on the earlier application has been withdrawn.

(2) No applicant for a patent application claiming priority under Article 55 (1) shall withdraw the priority claim upon expiration of the period of one year and three months from the filing date of the earlier application.

(3) If a patent application claiming priority under Article 55 (1) is withdrawn within one year and three months from the filing date of the earlier application, the priority claim shall be deemed withdrawn simultaneously.

## CHAPTER III EXAMINATIONS

### **Article 57 (Examinations by Examiners)**

(1) The Commissioner of the Korean Intellectual Property Office shall authorize examiners to examine patent applications.

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

### **Article 58 (Registration of Specialized Agencies)**

(1) Where the Commissioner of the Korean Intellectual Property Office deems it necessary for a patent applicant's filing a patent application or for examining patent applications (including international searches and international preliminary examinations with regard to international applications), he or she may request a specialized agency to conduct patent-related affairs specified by Presidential Decree, including storage and distribution of microorganisms, search for prior art, and the assignment of patent classification codes. *<Amended on Dec. 2, 2016>*

(2) A person who intends to conduct searches and preliminary examinations as requested by the Commissioner of the Korean Intellectual Property Office under paragraph (1), shall register itself as a specialized agency with the Commissioner of the Korean Intellectual Property Office. *<Newly Inserted on Dec. 2, 2016>*

(3) Where the Commissioner of the Korean Intellectual Property Office deems it necessary for the effective performance of the affairs prescribed in paragraph (1), he or she may have a dedicated agency prescribed by Presidential Decree perform the affairs concerning the management and evaluation of the affairs of a specialized agency on his or her behalf. *<Newly Inserted on Apr. 17, 2018>*

(4) Where deemed necessary for examining a patent application, the Commissioner of the Korea Intellectual Property Office may request cooperation or seek advice from a related administrative agency, organization specializing in the relevant technical field, or expert having abundant knowledge and experience in patents. In such cases, the Commissioner of the Korean Intellectual Property Office may pay them allowances or expenses within budgetary limits. *<Amended on Dec. 2, 2016; Apr. 17, 2018>*

(5) Criteria for registration of specialized agencies and matters necessary for requesting search for prior art or assigning patent classification codes under paragraph (2) shall be prescribed by Presidential Decree. *<Amended on Dec. 2, 2016; Apr. 17, 2018>*

### **Article 58-2 (Revocation of Registration of Specialized Agencies)**

(1) Where a specialized agency under Article 58 (2) falls under subparagraph 1, the Commissioner of the Korean Intellectual Property Office shall revoke the registration of the specialized agency, while he or she may revoke the registration of the specialized agency or may order it to completely or partially suspend its business operations for a specified period not exceeding six months, if it falls under subparagraph 2 or 3: *<Amended on Feb. 29, 2016; Dec. 2, 2016; Apr. 17, 2018>*

1. Where he or she registers business by fraud or other improper means;
2. Where the specialized agency fails to meet the criteria to be registered under Article 58 (5);
3. Where any executive officer or employee of the specialized agency divulges or misappropriates confidential information he or she obtained in the course of his or her duties with regard to an invention claimed in a pending patent application (including an invention claimed in a pending international patent application).

(2) The Commissioner of the Korean Intellectual Property Office shall hold a hearing before revoking the registration of a specialized agency or ordering the suspension of business operations under paragraph (1). *<Amended on Dec. 2, 2016>*

(3) Detailed guidelines and procedures for the dispositions referred to in paragraph (1), and other necessary matters shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

### **Article 59 (Requests for Examinations of Patent Applications)**

(1) A patent application shall be examined only upon a request for examination.

(2) Any person may file a request for examination of a patent application with the Commissioner of the Korean Intellectual Property Office within three years from the filing of the patent application: Provided, That no patent applicant shall file a request for examination of the patent application in either of the following cases: *<Amended on Feb. 29, 2016>*

1. If the applicant fails to declare the scope of claims in the specification;
2. If the applicant fails to submit a Korean translation under Article 42-3 (2) (limited to patent applications in a foreign language).

(3) A legitimate right-holder who has filed a patent application, divisional application, splitting-off, or converted application under Article 34 or 35 may file a request for examination of the application within 30 days from the filing of the patent application, divisional application, splitting-off, or converted application, even after expiration of the period specified in paragraph (2). *<Amended on Oct. 19, 2021>*

(4) No request for examination of an application shall be withdrawn.

(5) If no request for examination of an application is filed during the period set for filing a request for examination of the application under paragraph (2) or (3), the patent application shall be deemed withdrawn.

### **Article 60 (Procedure for Requesting Examinations)**

(1) A person who intends to request examination of an application shall submit a written request for examination of the application to the Commissioner of the Korean Intellectual Property Office, declaring the following:

1. The name and domicile of the petitioner (if the petitioner is a corporation, its name and place of business);
2. A description of the patent application for which the request for examination is filed.

(2) If a request for examination of an application is filed before the application is laid open, the Commissioner of the Korean Intellectual Property Office shall publish relevant facts in the Patent Gazette when the application is laid open, whereas he or she shall publish relevant facts in the Patent Gazette without delay, if such request is filed after the application is laid open.

(3) Upon receipt of an application for examination of an application from any person other than the relevant patent applicant, the Commissioner of the Korean Intellectual Property Office shall notify the patent applicant of such facts.

### **Article 61 (Accelerated Examinations)**

In either of the following cases, the Commissioner of the Korean Intellectual Property Office may instruct an examiner to examine a patent application in preference to other patent applications: <Amended on Dec. 22, 2020>

1. Where it is found that any person, other than the patent applicant, is practicing for business purposes the invention claimed in the patent application after it is laid open under Article 64;
2. Where it is deemed necessary to urgently process a patent application prescribed by Presidential Decree;
3. Where a patent application prescribed by Presidential Decree is deemed necessary for disaster prevention, response, recovery, etc.

### **Article 62 (Determinations to Reject Patent Applications)**

An examiner shall determine to reject a patent application if the patent application falls under any of the following grounds for rejection (hereinafter referred to as "grounds for rejection"): <Amended on Oct. 19, 2021>

1. If an invention is unpatentable under any provision of Articles 25, 29, 32, 36 (1) through (3), and 44;
2. If the applicant is unentitled to a patent under the main clause of Article 33 (1) or is unentitled to a patent under the proviso of the same paragraph;
3. If the patent application violates a treaty;
4. If the patent application fails to meet any of the requirements prescribed by Article 42 (3), (4), or (8) or Article 45;

5. If an amendment to the patent application is beyond the scope described in Article 47 (2);
6. If the patent application is a divisional application that is beyond the scope under Article 52 (1) and splitting-off that is beyond the scope under Article 52-2 (1);
7. If the patent application is a converted application that is beyond the scope described in Article 53 (1).

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

(1) In either of the following cases, an examiner shall notify the patent applicant of the ground for rejection and give the applicant an opportunity to submit a written argument within a specified period: Provided, That the foregoing shall not apply where the examiner intends to make a decision to reject an amendment under Article 51 (1): *<Amended on Feb. 29, 2016>*

1. Where an examiner intends to determine to reject a patent application under Article 62;
2. Where an examiner intends to determine to reject a patent application on the ground for rejection notice of which was given before a decision to grant a patent had been revoked as a result of the ex officio re-examination under Article 66-3 (1).

(2) When an examiner notifies an applicant of the ground for rejection of a patent application containing at least two claims in the claims prescribed under the main clause of paragraph (1), he or she shall clearly state the rejected claims in the notice, and specify the grounds for rejection of such claims.

#### **Article 63-2 (Provision of Information about Patent Applications)**

Any person may provide the Commissioner of the Korean Intellectual Property Office with information that a patent application is ineligible for a patent as it falls under a ground for rejection, along with evidentiary documents: Provided, That the foregoing shall not apply where the patent application fails to meet any of the requirements prescribed under Articles 42 (3) 2 and (8) and Article 45.

#### **Article 63-3 (Order to Submit Results of Examination in Foreign Countries)**

An examiner may order a patent applicant to submit the results of an examination conducted in the country where an earlier parent application was filed with which the application on which the priority claim is based was filed (referring to a written argument stating the summary of such materials, if no result of the examination is available) in the manner prescribed by Ordinance of the Ministry of Trade, Industry and Energy, within the specified period, if such materials are necessary for examining a patent application of which priority is claimed based on an earlier application accompanied by the priority claim under Article 54.

#### **Article 64 (Laying-Open of Applications)**

(1) The Commissioner of the Korean Intellectual Property Office shall publish a patent application in the Patent Gazette to lay it open, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy,



after the lapse of one year and six months from the date specified in any of the following, or upon receipt of a request from the patent applicant even before the lapse of such period:

1. A patent application claiming the priority of an earlier application under Article 54 (1): The filing date of the earlier application related to priority;
  2. A patent application claiming the priority of an earlier application under Article 55 (1): The filing date of the earlier application;
  3. A patent application containing at least two priority claims under Article 54 (1) or 55 (1): The earliest date among the filing dates of the applications on which the priority claims are based;
  4. A patent application that does not fall under any of subparagraphs 1 through 3: The filing date of the patent application.
- (2) Notwithstanding paragraph (1), no patent application shall be laid open in any of the following cases:
1. If the applicant fails to declare the scope of claims in the specification;
  2. If the applicant fails to submit a Korean translation under Article 42-3 (2) (limited to patent applications in a foreign language);
  3. If the patent has been registered and published under Article 87 (3).
- (3) If the invention claimed in a patent application shall be kept confidential under Article 41 (1), the patent application shall not be laid open until the invention is released from confidentiality, but shall be laid open under paragraph (1) without delay when the invention is released from confidentiality: Provided, That no patent application shall be laid open, if the grant of the patent claimed in the patent application has been registered.
- (4) Matters that shall be published in the Patent Gazette regarding the laying-open of applications under paragraph (1), including the name and domicile of an applicant and the application number, shall be prescribed by Presidential Decree.

#### **Article 65 (Effects of Laying-Open of Applications)**

- (1) After a patent application is laid open, the applicant may give a person who has for business purposes practiced the invention claimed in the application, a written warning stating that a patent application has been filed for the invention.
- (2) A patent applicant may claim compensation equivalent to an amount to which he or she is reasonably entitled for practicing the patented invention, from a person who has practiced for business purposes the invention claimed in the patent application, after receipt of a written warning given under paragraph (1), or knowing that the patent application for the invention has been laid open under Article 64, for the period from the time of the written warning, or the time he or she becomes aware thereof until the time the grant of the patent is registered. <Amended on Jan. 8, 2019>
- (3) The right to claim compensation under paragraph (2) may be exercised only after the grant of the patent on the invention claimed in the patent application is registered.

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

(5) Articles 127, 129, and 132 of this Act and Articles 760 and 766 of the Civil Act shall apply mutatis mutandis to the exercise of the right to claim compensation under paragraph (2). In such cases, "date when the injured party or his or her legal representative becomes aware of damage and of the identity of the person who has inflicted the damage" in Article 766 (1) of the Civil Act shall be construed as "date when the grant of the patent right is registered".

(6) If any of the following applies to a patent application after it has been laid open under Article 64, the right to claim compensation under paragraph (2) shall be deemed never to have occurred: <Amended on Feb. 29, 2016>

1. If the patent application is abandoned, invalidated, or withdrawn;
2. If a decision to reject the patent application under Article 62 becomes final and conclusive;
3. If a decision to revoke a patent under Article 132-13 (1) becomes final and conclusive;
4. If a trial ruling invalidating the relevant patent under Article 133 (excluding cases specified in Article 133 (1) 4) becomes final and conclusive.

#### **Article 66 (Decision to Grant Patent)**

If an examiner finds no ground to reject a patent application, he or she shall decide to grant a patent.

#### **Article 66-2 (Ex Officio Amendments)**

(1) If an examiner finds an obvious clerical error in the specification, drawings, or abstract accompanying a patent application, he or she may amend such clerical error ex officio (hereinafter referred to as "ex officio amendment") when he or she decides to grant a patent thereon under Article 66. In such cases, the ex officio amendment shall be made within the scope prescribed in Article 47 (2) <Amended on Feb. 29, 2016; Aug. 17, 2021>

(2) When an examiner makes an ex officio amendment under paragraph (1), he or she shall notify the patent applicant of the ex officio amendment when serving a certified copy of the decision to grant the patent on the patent applicant under Article 67 (2).

(3) If a patent applicant will not accept all or some of an ex officio amendment, he or she shall submit a written argument thereon to the Commissioner of the Korean Intellectual Property Office before paying patent fees under Article 79 (1).

(4) If a patent applicant submits a written argument under paragraph (3), all or some of the ex officio amendment shall be deemed to have never existed. In such cases, the decision to grant a patent shall be deemed to be revoked: Provided, That the foregoing shall not apply where it is deemed that the ex officio amendment to the abstract attached to a patent application has never existed. <Amended on Feb. 29, 2016>

(5) Deleted. <Feb. 29, 2016>

(6) Where an ex officio amendment exceeds the scope under Article 47 (2) or any matter which is not evidently wrong is amended ex officio, such ex officio amendment shall be deemed never to have existed.  
<Newly Inserted on Aug. 17, 2021>

#### **Article 66-3 (Ex Officio Re-Examination Subsequent to Decision to Grant Patent)**

(1) When an examiner finds an obvious ground for rejection with respect to a patent application according to which a decision to grant a patent has been made, he or she may revoke the decision to grant the patent and may examine the patent application again (hereinafter referred to as "ex officio re-examination"): Provided, That the foregoing shall not apply to the following cases:

1. If the ground for rejection is related to the requirement under Article 42 (3) 2 or (8) or Article 45;
2. If patent rights are established through registration in accordance with the decision to grant the patent;
3. If the patent application has been voluntarily withdrawn or abandoned.

(2) When an examiner intends to conduct an ex officio re-examination under paragraph (1), he or she shall notify the patent applicant that he or she revokes the decision to grant the patent.

(3) If a patent application falls under paragraph (1) 2 or 3 before the patent applicant receives the notice under paragraph (2), it shall be deemed that the decision to grant the patent has never been revoked.

#### **Article 67 (Formalities for Decision on Patentability)**

(1) A decision to either grant or reject a patent application (hereinafter referred to as "decision on patentability") shall be made in writing stating the grounds therefor.

(2) When a decision on patentability is made, the Commissioner of the Korean Intellectual Property Office shall serve a certified copy of the decision on the patent applicant.

#### **Article 67-2 (Requests for Re-Examinations)**

(1) A patent applicant may file a request to re-examine his or her patent application (hereinafter referred to as "re-examination") after amending the specification or drawings of the patent application within three months (referring to the extended period, if the period specified in Article 132-17 is extended pursuant to Article 15 (1)) from the date of receipt of a certified copy of a decision to grant a patent until the date of registration of the grant under Article 79 or from the date of receipt of a certified copy of a decision to reject a patent application: Provided, That this shall not apply in any of the following cases: <Amended on Feb. 29, 2016; Oct. 19, 2021>

1. Where a decision on patentability has already been made at the time the request for re-examination is made;
2. Where a petition for trial under Article 132-17 is made (excluding where a decision to reject a patent application is revoked under Article 176 (1));

3. Where the patent application is a splitting-off.
- (2) A patent applicant may submit a written argument when filing a request for re-examination under paragraph (1).
- (3) If a request for re-examination is filed under paragraph (1), the previous decision to grant the patent or to reject the patent application shall be deemed revoked: Provided, That this shall not apply where the procedure for filing the request for re-examination becomes invalid under Article 16 (1). <Amended on Oct. 19, 2021>
- (4) No request for re-examination under paragraph (1) shall be withdrawn.

#### **Article 67-3 (Restoration of Patent Application)**

(1) If it is recognized that a patent application has been withdrawn or a decision to refuse a patent has become final and conclusive because of the patent applicant's failure to comply with any of the following time limits due to good cause, the patent applicant may request the examination or re-examination of the patent application within two months from the date when such cause ceases to exist: Provided, That this shall not apply where one year has elapsed since such period expired: <Amended on Oct. 19, 2021>

1. The period during which a request for the examination of a patent application may be filed pursuant to Article 59 (2) or (3);
  2. The period during which a request for the re-examination may be filed pursuant to Article 67-2 (1).
- (2) Notwithstanding Article 59 (5), if a request for the examination or re-examination of a patent application is filed pursuant to paragraph (1), the patent application shall be deemed not to have been withdrawn or the decision to refuse a patent not to have become final and conclusive.

#### **Article 68 (Application Mutatis Mutandis of Trial-Related Provisions to Examination)**

Subparagraphs 1 through 5 and 7 of Article 148 shall apply mutatis mutandis to examination of patent applications.

**Article 69 Deleted.** <Mar. 3, 2006>

**Article 70 Deleted.** <Mar. 3, 2006>

**Article 71 Deleted.** <Mar. 3, 2006>

**Article 72 Deleted.** <Mar. 3, 2006>

**Article 73 Deleted.** <Mar. 3, 2006>

**Article 74 Deleted.** <Mar. 3, 2006>

**Article 75 Deleted.** <Mar. 3, 2006>

**Article 76 Deleted.** <Mar. 3, 2006>

**Article 77 Deleted.** <Mar. 3, 2006>

**Article 78 (Suspension of Examination or Litigation Procedures)**

- (1) The examination procedure may be suspended until a decision on an application for revoking a patent or a trial ruling becomes final and conclusive or until the relevant legal proceedings are completed, if suspension is necessary for examining a patent application. <Amended on Feb. 29, 2016>
- (2) If necessary, a court may suspend the legal proceedings until a decision on patentability of a patent application becomes final and conclusive.
- (3) No appeal may be filed against suspension under paragraph (1) or (2).

**Article 78-2 Deleted.** <Mar. 3, 2006>

## CHAPTER IV PATENT FEES AND PATENT REGISTRATION

**Article 79 (Patent Fees)**

- (1) A person who intends to obtain grant of a patent registered under Article 87 (1) shall pay patent fees for three years from the date when he or she intends to obtain grant of the patent registered (hereinafter referred to as "registration date of grant"), and a patentee shall pay patent maintenance fees each year for subsequent years, based on the anniversary of the registration date of grant of the relevant right.
- (2) Notwithstanding paragraph (1), a patentee may pay patent fees for several or all years in the order of consecutive payment years in lump sum.
- (3) Patent fees payable under paragraphs (1) and (2), the methods of, and deadline for the payment thereof, and other necessary matters shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

**Article 80 (Payment of Patent Fees by Interested Party)**

- (1) Any interested party may pay patent fees, regardless of the wishes of a person liable to pay the patent fees.
- (2) An interested party who has paid patent fees under paragraph (1) may claim the reimbursement of the expenses against the person liable to pay the patent fees up to the extent that the person liable to pay the patent fees currently gain benefits through the patent.

### **Article 81 (Late Payment of Patent Fees)**

(1) A person who intends to obtain grant of a patent registered or a patentee may make late payment of a patent fee within six months upon expiration of the period for payment specified in Article 79 (3) (hereinafter referred to as "period for late payment").

(2) In cases of late payment of a patent fee under paragraph (1), an amount specified by Ordinance of the Ministry of Trade, Industry and Energy shall be paid, which shall not exceed double the amount of the patent fee originally due.

(3) If a person who intends to obtain grant of a patent registered fails to pay a patent fee (referring to where a person fails to pay an under-paid patent fee during the period for payment, if the period for late payment has expired, but the period for payment of an under-paid patent fee under Article 81-2 (2) has not expired), the person shall be deemed to abandon the patent application, and the patent granted to the patentee shall be deemed to have expired retroactively on the day immediately following the expiration of the period for which patent fees were paid under Article 79 (1) or (2).

### **Article 81-2 (Payment of Under-Paid Patent Fees)**

(1) If a person who intends to obtain grant of a patent registered or a patentee fails to fully pay a patent fee within the period specified in Article 79 (3) or 81 (1), the Commissioner of the Korean Intellectual Property Office shall order the person or patentee to pay the under-paid patent fee.

(2) Upon receipt of an order issued under paragraph (1), a person may pay an under-paid patent fee within one month after receipt of such order (hereinafter referred to as "period for payment of under-paid patent fees").

(3) A person who shall pay an under-paid patent fee under paragraph (2) shall pay an amount specified by Ordinance of the Ministry of Trade, Industry and Energy, which shall not exceed double the amount of the unpaid patent fee.

### **Article 81-3 (Reinstatement of Patent Applications or Patents by Making Late Payment of Patent Fees or Payment of Under-Paid Patent Fees)**

(1) If a person who intends to obtain grant of a patent registered or a patentee fails to pay a patent fee during the period for late payment or fails to pay an under-paid patent fee during the period for payment of the under-paid patent fee, due to good cause, the person may pay the patent fee or under-paid patent fee within two months from the date when the cause ceases to exist: Provided, That the foregoing shall not apply if one year has elapsed since the expiration of the period for late payment or for payment of the under-paid patent fee, whichever occurs later. <Amended on Oct. 19, 2021>

(2) Notwithstanding Article 81 (3), a person who has paid a patent fee or under-paid patent fee pursuant to paragraph (1) shall be deemed not to have abandoned the patent application, and the patent shall be deemed to survive.

(3) If the patent on an invention has expired due to a patentee's failure to pay a patent fee during the period for late payment or an under-paid patent fee during the period for payment of the under-paid patent fee, the patentee may pay double the patent fee payable under Article 79 within three months from the expiration of the period for late payment or the period for payment of the under-paid patent fee, and files an application for reinstating the expired right. In such cases, the patent shall be deemed to survive.

(4) No patent application or patent referred to in paragraph (2) or (3) shall affect any third person's practice of the invention claimed in the patent application or the patented invention during the period following the expiration of the period for late payment or the period for payment of a deficiency until the date the overdue patent fee or deficiency is paid (hereafter referred to as "period of limited effect" in this Article).

(5) A person who for business purposes practices, or prepares to practice, an invention claimed in a patent application or a patented invention under paragraph (2) or (3) in good faith in the Republic of Korea during a period of limited effect shall have a non-exclusive license over the invention claimed in the patent application within the scope of objectives of the patented invention that the person practices or prepares to practice or objectives of the business.

(6) A non-exclusive license holder prescribed under paragraph (5) shall pay equitable remuneration to the patentee or exclusive licensee.

(7) Matters necessary for making late payment or payment of an under-paid patent fee under the main clause of paragraph (1) or for filing applications under the former part of paragraph (3) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 82 (Official Fees)**

(1) Each person who initiates a patent-related procedure shall pay official fees.

(2) If the number of claims is increased by amending the specification accompanying a patent application after a person, other than the applicant, files a request for examination of the application, the applicant shall pay the fees payable for the request for examination of the increased claims.

(3) Official fees referred to in paragraph (1), the methods of, and deadline for the payment thereof, and other necessary matters shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 83 (Exemption from or Reduction of Patent Fees or Official Fees)**

(1) Notwithstanding Articles 79 and 82, the Commissioner of the Korean Intellectual Property Office shall exempt the payment of following patent fees or official fees:

1. Official fees or patent fees for a patent application or patent that belongs to the State;

2. Official fees for a petition for an administrative trial on an examiner's invalidation under Article 133 (1), 134 (1) or (2), or 137 (1).

(2) Notwithstanding Articles 79 and 82, the Commissioner of the Korean Intellectual Property Office may reduce or exempt the patent fees and official fees prescribed by Ordinance of the Ministry of Trade,

Industry and Energy imposed on any of the following persons for patent applications or patents granted on patent applications, filed by such persons: <Amended on Mar. 29, 2016; Aug. 17, 2021>

1. Recipients of medical benefits under the National Basic Living Security Act;
  2. A person who meets the requirements prescribed by Ordinance of the Ministry of Trade, Industry and Energy, among those who reside in or have a main office in a region for which the state of disaster is declared under Article 36 of the Framework Act on the Management of Disasters and Safety or for which a special disaster area is declared under Article 60 of the same Act;
  3. Other persons prescribed by Ordinance of the Ministry of Trade, Industry and Energy.
- (3) A person who seeks the benefit of reduction or exemption of patent fees or 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.
- (4) The Commissioner of the Korean Intellectual Property Office may collect double the amount of a patent fee or official fee reduced or exempted under paragraph (2) from a person who obtains the reduction or exemption of a patent fee or official fee by fraud or other improper means, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy. In such cases, paragraph (2) shall not apply to a patent application filed by an applicant or a patentee or to a patent the applicant has obtained after filing the patent application during the period prescribed by Ordinance of the Ministry of Trade, Industry and Energy. <Newly Inserted on Aug. 17, 2021>

#### **Article 84 (Refunds of Patent Fees)**

(1) Patent fees or official fees already paid shall be refunded only in any of the following cases at the payer's request: <Amended on May 18, 2015; Feb. 29, 2016; Mar. 29, 2016; Aug. 17, 2021; Oct. 19, 2021>

1. Patent fees or official fees paid erroneously;
2. Portions of patent fees for the years subsequent to the year in which a decision to revoke a patent under Article 132-13 (1) or a trial ruling invalidating a patent becomes final and conclusive;
3. Portions of patent fees for the years subsequent to the year in which a trial ruling invalidating registration of patent term extension becomes final and conclusive;
4. Official fees for filing a patent application or for filing a priority claim for a patent application, out of the official fees already paid where the patent application is voluntarily withdrawn or abandoned within one month after filing the patent application (excluding a divisional application, splitting-off, converted application, or patent application for which a request for expedited examination has been filed under Article 61);
5. Official fees already paid for a request for the examination of a patent application, where the patent application is voluntarily withdrawn (including cases where a patent application is deemed to be voluntarily withdrawn under Article 53 (4) or under the main clause of Article 56 (1); hereafter in this Article the same shall apply) or abandoned after a request for the examination of the patent application is filed but before any of the following dispositions is made:



- (a) The order to report the results of agreement under Article 36 (6) (limited to patent applications filed by one and the same person);
- (b) Deleted; <Aug. 17, 2021>
- (c) The notice of grounds for rejection under Article 63;
- (d) Service of the certified copy of a decision to grant a patent under Article 67 (2);

5-2. Where a patent application is withdrawn or abandoned within any of the following periods after a request for examination of the application is filed, an amount equivalent to 1/3 of the official fees already paid for a request for the examination of the patent application:

- (a) From issuance of an order to report under subparagraph 5 (a) until not later than expiration of the reporting period;
- (b) From issuance of the notice of grounds for rejection under subparagraph 5 (c) (limited to cases falling under Article 47 (1) 1) until not later than expiration of the period of submission of a written statement;

6. Portions of patent fees for the years subsequent to the year in which the patent was abandoned;

7. Official fees for a petition for a trial (referring to official fees for a petition for a retrial in cases of a retrial; hereafter the same shall apply in this Article), among the official fees already paid, where the ruling rejecting the patent application or the ruling refusing to register the extended term of the patent is revoked pursuant to Article 176 (1) (including the cases where it applies mutatis mutandis to the procedure for retrials pursuant to Article 184, but excluding the cases where there is an amendment under Article 47 (1) 1 or 2, which shall apply mutatis mutandis pursuant to Article 170 (1), in trials or retrials);

8. Half the amount of the already paid official fees for a petition for a trial where the petition for a trial is dismissed by decision pursuant to Article 141 (2) and such decision becomes final (including the cases where it applies mutatis mutandis to the procedure for retrials pursuant to Article 184);

9. Half the amount of the official fees for a petition for an intervention, among the official fees already paid, where a petition for an intervention pursuant to Article 155 (1) is withdrawn before the closing of the trial review is notified (including the cases where it applies mutatis mutandis to the procedure for retrials pursuant to Article 184);

10. Half the amount of the official fees for a petition for an intervention, among the official fees already paid, where a petition for an intervention pursuant to Article 155 (1) is rejected by decision (including the cases where it applies mutatis mutandis to the procedure for retrials pursuant to Article 184);

11. Half the amount of the official fees for a petition for a trial, among the official fees already paid, where a petition for a trial is withdrawn before the closing of the trial review is notified (including the cases where it applies mutatis mutandis to the procedure for retrials pursuant to Article 184).

(2) If any subparagraph of paragraph (1) applies to a patent fee or official fee paid, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Trial and Appeal Board shall give notice thereof to the relevant payer. <Amended on Mar. 29, 2016>

(3) No claim for refund of a patent fee or official fee referred to in paragraph (1) may be filed after five years from the date when a person receives notice under paragraph (2). <Amended on Oct. 18, 2022>

#### **Article 85 (Patent Register)**

(1) The Commissioner of the Korean Intellectual Property Office shall keep the Patent Register at the Korean Intellectual Property Office and shall enter the following matters therein:

1. The grant, transfer, expiration, and reinstatement of patents, restrictions on the disposal of patents, and the extension of patent terms;
  2. The grant, preservation, transfer, amendment, and expiration of exclusive or non-exclusive licenses and restrictions on the disposal of exclusive or non-exclusive licenses;
  3. The establishment, transfer, amendment, and expiration of pledge rights on a patent or on an exclusive or non-exclusive license and restrictions on the disposal of such pledge rights.
- (2) The Patent Register prescribed in paragraph (1) may be fully or partially stored on electronic recording medium, etc.
- (3) Except as otherwise provided in paragraphs (1) and (2), matters necessary for the facts to be registered, procedures for registration, etc. shall be prescribed by Presidential Decree.
- (4) Specifications and drawings of patented inventions, and other documents specified by Presidential Decree shall be deemed part of the Patent Register.

#### **Article 86 (Issuance of Patent Registration Certificates)**

- (1) When the grant of a patent is registered, the Commissioner of the Korean Intellectual Property Office shall issue a patent registration certificate to the patentee.
- (2) If any discrepancy exists between a patent registration certificate and the Patent Register or any other document, the Commissioner of the Korean Intellectual Property Office shall recover the certificate, upon request or ex officio, and shall rectify it or re-issue the patent registration certificate.
- (3) In either of the following cases, the Commissioner of the Korean Intellectual Property Office shall issue a new patent registration certificate according to a decision, trial ruling, or the registration of a transfer: <Amended on Feb. 29, 2016>
1. Where a decision or trial ruling that approves a correction to the specification or drawing of a patented invention becomes final and conclusive;
  2. Where a transfer of a patent is registered in accordance with Article 99-2 (2).

## **CHAPTER V PATENT RIGHTS**

#### **Article 87 (Registration of Grant of Patents and Publication of Registration)**

- (1) A patent shall take effect when the grant of the patent is registered.

(2) The Commissioner of the Korean Intellectual Property Office shall register the grant of a patent in any of the following cases:

1. Where patent fees are paid under Article 79 (1);
2. Where the late payment of patent fees is made under Article 81 (1);
3. Where an under-paid patent fee is paid under Article 81-2 (2);
4. Where a patent fee or an under-paid patent fee is paid under Article 81-3 (1);
5. Where the payment of patent fees is exempted under Article 83 (1) 1 or 83 (2).

(3) When a patent is registered under paragraph (2), the Commissioner of the Korean Intellectual Property Office shall give public notice of registration of the patent by publishing the following matters in the Patent Gazette: <Amended on Feb. 29, 2016>

1. The name and address of the patentee (referring to the name and the place of business, if the patentee is a corporation);
2. The patent application number and the date of patent application;
3. The name and address of the inventor;
4. The abstract attached to the patent application;
5. The patent number and the date of registration of patent rights;
6. Date of public notice of registration;
7. Information about prior art, if the ground for rejection the notice of which has been given under the main clause, with the exception of the subparagraphs, of Article 63 (1) includes information about prior art (referring to the name of the publication in which the prior art is described and other sources of information about the prior art);
8. Other matters specified by Presidential Decree.

(4) The publication of registration of a patented invention to be kept confidential shall be reserved until it is declassified, and upon declassification, the registration shall be published without delay in accordance with paragraph (3).

(5) Deleted. <Feb. 29, 2016>

#### **Article 88 (Term of Patents)**

(1) The term of a patent shall begin on the registration date of the grant of the patent right under Article 87 (1) and last for 20 years from the filing date of the patent application.

(2) Where a patent is granted for a patent application filed by the legitimate right-holder under Article 34 or 35, the term of the patent under paragraph (1) shall begin on the day immediately following the filing date of the patent application filed by the unentitled person.

#### **Article 89 (Extension of Patent Terms by Permission)**

(1) Notwithstanding Article 88 (1), the term of a patent on an invention may be extended only once by up to five years to compensate for the period during which the invention cannot be practiced, if the invention

is specified by Presidential Decree and requires permission, registration, etc. under any other statute (hereinafter referred to as "permission, etc.") to practice patented invention but it takes a long time to undergo necessary tests for validity, safety, etc. for such permission, registration, etc.

(2) For the purposes of paragraph (1), the period required due to a cause attributable to the person who has obtained permission, etc. shall not be included in "period during which the invention cannot be practiced" in paragraph (1).

#### **Article 90 (Applications for Registration of Extended Patent Terms by Permission)**

(1) A person who intends to obtain an extension of the term of a patent registered under Article 89 (1) (hereafter referred to as "applicant for registration of an extension" in this Article and Article 91) shall file an application for registration of an extension of a patent with the Commissioner of the Korean Intellectual Property Office, declaring the following therein:

1. The name and domicile of an applicant for registration of extension (if the applicant is a corporation, its name and the location of its business office);
2. The name and domicile, or place of business of an agent, if the applicant for registration of an extension is represented by an agent (if the agent is a patent firm or a limited-liability patent firm, its name and place of business, and the name of the designated patent attorney);
3. The patent number of the patent, the term of which is to be extended, and descriptions of the claims for which the term is to be extended;
4. The period of application for extension;
5. Details of permission, etc. under Article 89 (1).
6. The ground for extension, specified by Ordinance of the Ministry of Trade, Industry and Energy (accompanied by materials substantiating the ground).

(2) An application for registration of an extension of a patent under paragraph (1) shall be filed within three months from the date when permission, etc. is granted under Article 89 (1): Provided, That no application for registration of an extension of a patent may be filed six months prior to the expiration of the term of the patent under Article 88.

(3) If a patent is jointly held, an application for registration of the extended term of the patent shall be jointly filed by all entitled persons.

(4) When an application for registration of an extension of a patent is filed under paragraph (1), the term shall be deemed extended: Provided, That the foregoing shall not apply where a decision to reject an application for registration of an extension under Article 91 becomes final and conclusive.

(5) Upon receipt of an application for registration of an extension of a patent under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall publish information specified in paragraph (1) in the Patent Gazette.

(6) An applicant for registration of an extension may amend any matter specified in paragraph (1) 3 through 6, which are declared in the application for registration of an extension (excluding the patent

number allocated to the patent, the term of which is to be extended under subparagraph 3), before the Commissioner of the Korean Intellectual Property Office serves a certified copy of a decision on registration of rejection of the extension on the applicant: Provided, That he or she may make an amendment only during the period set for submission of written arguments on the notice of the ground for rejection, if the notice of the ground for rejection, to which relevant provisions shall apply mutatis mutandis pursuant to Article 93, has been already served.

#### **Article 91 (Determination to Reject Applications for Registration of Extended Patent Terms by Permission)**

In any of the following cases, an examiner shall determine to reject an application for registration of an extended patent term under Article 90:

1. Where it is found unnecessary to obtain permission, etc. under Article 89 (1) for practicing the relevant patented invention;
2. Where a patentee or an exclusive license holder or a registered non-exclusive license holder on the relevant patent fails to obtain permission, etc. under Article 89 (1);
3. Where the length of extension requested exceeds the period during which the relevant patent invention could not be practiced under Article 89;
4. Where the applicant for registration of an extension is not the patentee;
5. Where the application for registration of an extension is filed in violation of Article 90 (3).

#### **Article 92 (Determination to Register Extended Patent Terms by Permission)**

(1) If an examiner finds that a ground set forth in any subparagraph of Article 91 does not apply to an application for registration of an extended patent term under Article 90, he or she shall determine to register the extended term.

(2) When the Commissioner of the Korean Intellectual Property Office has decided to register an extended patent term under paragraph (1), he or she shall register the extended term in the Patent Register.

(3) When the Commissioner of the Korean Intellectual Property Office completes the registration under paragraph (2), he or she shall publish the following information in the Patent Gazette:

1. The name and domicile of a patentee (if a patentee is a corporation, its name and place of business);
2. The patent number;
3. The date when the extension is registered;
4. The extended patent term;
5. Details of permission, etc. under Article 89 (1).

#### **Article 92-2 (Extension of Term of Patent Rights Following Delayed Registration)**

(1) When the registration of establishment of a patent right is delayed than the date when four years lapse after the date of a patent application or the date when three years lapse after a request for the examination

of an application is made, whichever is later, the term of the relevant patent right may be extended as much as the delayed period, notwithstanding Article 88 (1).

(2) In applying the provisions of paragraph (1), the period delayed due to an applicant shall be excluded from the extension of the term of a patent right under paragraph (1): Provided, That when the period delayed due to an applicant overlaps with the abovementioned delayed period, the period excluded from the extension of the term of a patent right shall not exceed the actual period delayed due to an applicant.

(3) Matters concerning "period delayed due to an applicant" under paragraph (2) shall be prescribed by Presidential Decree.

(4) When four years are reckoned from the date of a patent application pursuant to paragraph (1), any of the following dates shall be deemed the date of a patent application, notwithstanding Articles 34, 35, 52 (2), 52-2 (2), 53 (2), 199 (1), and 214 (4): *<Amended on Oct. 19, 2021>*

1. The date when a legitimate right-holder applies for a patent, in cases of a patent application by the legitimate right-holder pursuant to Article 34 or 35;
2. The date when a divisional application is filed, in cases of a divisional application under Article 52; 2-2. The date a splitting-off is filed, in cases of a splitting-off under Article 52-2;
3. The date when a converted application is filed, in cases of a converted application under Article 53;
4. The date when a document containing the matters referred to in the subparagraphs of Article 203 (1) is submitted, in cases of an international application construed as a patent application pursuant to Article 199 (1);
5. The date when an applicant who filed an international application requests the Commissioner of the Korean Intellectual Property Office to make a decision pursuant to Article 214 (1), in cases of an international application construed as a patent application pursuant to Article 214;
6. The date when a patent application is filed, in cases of a patent application which does not fall under any of the subparagraphs 1 through 5.

### **Article 92-3 (Application to Register Extension of Term of Patent Rights Following Delayed Registration)**

(1) Any person who intends to apply to register extension of the term of a patent right under Article 92-2 (hereafter referred to as "applicant for registration of extension" in this Article and Article 92-4) shall submit an application for registration of extension of the term of a patent right declaring the following matters to the Commissioner of the Korean Intellectual Property Office: *<Amended on Mar. 23, 2013; Jul. 30, 2013>*

1. The name and domicile of an applicant for registration of extension (if the applicant is a corporation, its name and the location of its business office);
2. The name and domicile of an agent, if any, or the location of his or her business office (if the agent is a patent firm or a limited-liability patent firm, its name, the location of its business office and the designated patent attorney's name);

3. The number of a patent whose term is subject to extension;
  4. The period of application for extension;
  5. Grounds for extension prescribed by Ordinance of the Ministry of Trade, Industry and Energy (materials substantiating such grounds shall be attached thereto).
- (2) An application to register extension of the term of a patent right pursuant to paragraph (1) shall be filed within three months from the date of registration of a patent right.
- (3) Where a patent right is owned by joint owners, an application to register extension of the term of a patent right shall be filed by all joint owners.
- (4) Any applicant for registration of extension may amend matters falling under paragraph (1) 4 and 5, among matters declared in a written application for registration of extension, before an examiner decides whether extension of the term of a patent right shall be registered: Provided, That after he or she receives a notice of grounds for rejection, which are applied mutatis mutandis under Article 93, he or she may amend such matters only during a period for submission of opinions following the relevant notice of grounds for rejection.

#### **Article 92-4 (Decision to Reject Application for Registration of Extension of Term of Patent Rights Following Delayed Registration)**

When an application for registration of extension of the term of a patent right pursuant to Article 92-3 falls under any of the following, an examiner shall decide to reject the application:

1. When the length of extension requested exceeds a period of extension recognized pursuant to Article 92-2;
2. When an applicant for registration of extension is not the relevant patentee;
3. When the application for registration of extension is filed, in violation of Article 92-3 (3).

#### **Article 92-5 (Decision to Register Extension of Term of Patent Rights Following Delayed Registration)**

(1) When an examiner cannot find a ground falling under any of the subparagraphs of Article 92-4, with regard to any application for registration of extension of the term of a patent right pursuant to Article 92-3, he or she shall decide to register such extended term.

(2) When a decision is made to register extension of the term of a patent right pursuant to paragraph (1), the Commissioner of the Korean Intellectual Property Office shall register such extension with the patent original register.

(3) When any registration is made pursuant to paragraph (2), the following matters shall be published in the Patent Gazette:

1. The name and domicile of a patentee (if a patentee is a corporation, its name and place of business);
2. The patent number;
3. The date when the extension of term of a patent right is registered;

4. The period of extension.

#### **Article 93 (Provisions Applicable Mutatis Mutandis)**

@Articles 57 (1), 63, 67, and subparagraphs 1 through 5 and 7 of Article 148 shall apply mutatis mutandis to examination of an application for registration of an extended term of a patent.

#### **Article 94 (Effects of Patents)**

(1) A patentee shall have the exclusive right to practice his or her patented invention for business purposes: Provided, That the foregoing shall not apply where an exclusive license of the patent has been granted so that the exclusive licensee can have the exclusive right to practice the patented invention under Article 100 (2). <Amended on Dec. 10, 2019>

(2) Where practicing a patented invention means subscribing to the use of the process referred to in subparagraph 3 (b) of Article 2, the patent shall have effects only on subscribing to the use thereof with the knowledge that such use infringes upon the patent or exclusive license. <Newly Inserted on Dec. 10, 2019>

#### **Article 95 (Effects of Patents with Extended Term by Permission)**

The effects of a patent, the term of which has been extended under Article 90 (4), shall extend only to practicing the patented invention on the things on which permission, etc. for registration of the extension is based (things used for specified purposes, if the purposes of such things are specified in the permission, etc.).

#### **Article 96 (Limitations on Effects of Patents)**

(1) The effects of a patent shall not extend to the following:

1. Practice of a patented invention for the purpose of research or testing (including research and testing for obtaining permission for items of medicines or reporting items of medicines under the Pharmaceutical Affairs Act or for registering pesticides under the Pesticide Control Act);
2. Ships, aircraft, vehicles merely passing through the Republic of Korea, or machines, instruments, equipment, or other articles used therein;
3. Articles existing in the Republic of Korea as at the time the relevant patent application was filed.

(2) The effects of a patent on the invention of a medicine manufactured by mixing at least two medicines (referring to products used for the diagnosis, relief, treatment, therapy, or prevention of human diseases; hereinafter the same shall apply) or on the invention of a process for manufacturing medicines by mixing at least two medicines shall not extend to the preparation of prescriptions and medicines prepared according to such prescriptions under the Pharmaceutical Affairs Act.



### **Article 97 (Scope of Protection of Patented Inventions)**

The scope of protection of a patented invention shall be determined by the descriptions of the claims.

### **Article 98 (Relationships to Others' Patented Inventions)**

Neither patentee, exclusive licensee, nor non-exclusive licensee shall practice for business purposes any patented invention on which he or she has the right to practice, without permission from the patent holder, the holder of a registered utility model, design, or trademark, if the patented invention uses another person's patented invention or registered utility model or design claimed in an application filed prior to the filing date of the patent application for the patented application, or any similar design or infringes another person's registered design or trademark claimed in an application filed prior to the filing date of the patent application for the patented application.

### **Article 99 (Transfer and Joint Ownership of Patents)**

- (1) A patent is transferable.
- (2) If a patent is jointly owned, no joint owner of the patent may assign his or her share or establish any pledge right over his or her share, without the consent of all other joint owners.
- (3) Except as otherwise agreed in writing, each joint owner of a patent may independently practice the patented invention without the consent of all other joint owners.
- (4) If a patent is jointly owned, no joint owner of the patent may grant an exclusive or non-exclusive license of the patent, without the consent of all other joint owners.

### **Article 99-2 (Claim for Transfer of Patents)**

- (1) If a patent falls under the main clause of Article 133 (1) 2, the person who holds the right to acquire the patent may file a claim for the transfer of the patent (referring to the transfer of his or her share in a patent, if the right to acquire the patent is jointly owned) with the court.
- (2) If a transfer of a patent is registered according to the claim under paragraph (1), it shall be deemed that the following rights shall belong to the registered transferee from the date when the grant of the patent is registered:
  1. The relevant patent;
  2. The right to claim the payment of compensation under Article 65 (2);
  3. The right to claim the payment of compensation under Article 207 (4).
- (3) Notwithstanding Article 99 (2), where a share in a jointly owned patent is transferred according to the claim under paragraph (1), the share may be transferred without the other co-owner's consent.

### **Article 100 (Exclusive Licenses)**

- (1) A patentee may grant an exclusive license for the patent to other persons.

- (2) An exclusive licensee with the exclusive license shall have the sole right to practice for business purposes the patented invention to the extent prescribed at the grant of the license.
- (3) Except in the following cases, no exclusive licensee may transfer the exclusive license, without the consent of the patentee:
1. Where the exclusive license is transferred with the underlying business;
  2. Where the exclusive license is transferred by inheritance or other universal succession.
- (4) No exclusive licensee may establish a pledge right over the exclusive license or grant a non-exclusive license, without the consent of the patentee.
- (5) Article 99 (2) through (4) shall apply mutatis mutandis to exclusive licenses.

#### **Article 101 (Effects of Registration of Patents and Exclusive Licenses)**

- (1) The following dispositions shall take effect upon registration:
1. The transfer (excluding transfer by inheritance or other universal succession) of a patent, the expiration of a patent by relinquishment, or restrictions on the disposal of a patent;
  2. The grant, transfer (excluding transfer by inheritance or other universal succession), amendment, or expiration (excluding expiration by confusion) of an exclusive license or restrictions on the disposal of an exclusive license;
  3. The establishment, transfer (excluding transfer by inheritance or other universal succession), amendment, or expiration (excluding expiration by error) of a pledge right over a patent or an exclusive license or restrictions on the disposal of such pledge right.
- (2) When a patent, exclusive license, or pledge right is transferred by inheritance or other universal succession as referred to in paragraph (1), a report thereon shall be filed without delay with the Commissioner of the Korean Intellectual Property Office.

#### **Article 102 (Non-Exclusive Licenses)**

- (1) A patentee may grant a non-exclusive license of the patent to others.
- (2) A non-exclusive licensee shall have the right to practice the patented invention for business purposes to the extent provided for in this Act or prescribed at the grant of the license.
- (3) A non-exclusive license granted under Article 107 may be transferred, only if it is transferred with the underlying business.
- (4) A non-exclusive license granted under Article 138 of this Act, Article 32 of the Utility Model Act, or Article 123 of the Design Protection Act shall be transferred with the relevant patent, utility model right, or design right of the non-exclusive licensee, and shall expire simultaneously with the expiration of the relevant patent, utility model right, or design right.
- (5) No non-exclusive license, other than non-exclusive licenses referred to in paragraphs (3) and (4), shall be transferred without the consent of the patentee (or the consent of the patentee and the exclusive licensee, if the non-exclusive license is based on an exclusive license), unless it is transferred with the

underlying business or by inheritance or other universal succession.

(6) No pledge right may be established over a non-exclusive license, other than non-exclusive licenses referred to in paragraphs (3) and (4), without the consent of the patentee (or the consent of the patentee and the exclusive licensee, if the non-exclusive license is based on an exclusive license).

(7) Article 99 (2) and (3) shall apply mutatis mutandis to non-exclusive licenses.

#### **Article 103 (Non-Exclusive Licenses Based on Prior Use)**

A person who has created the same invention as a patent claimed in an application filed for registration of the patent without prior knowledge of the invention claimed in the patent application, or who has become aware of such patent from the person who had created it before the patent application was filed, and practices or prepares to practice the patent for business purposes within the Republic of Korea shall be granted a non-exclusive license of the patent on the invention claimed in the patent application within the scope of objectives of the invention that the person practices or prepares to practice and of the business.

#### **Article 103-2 (Non-Exclusive Licenses Arising from Use Prior to Registration of Transfer upon Claim for Transfer of Patents)**

(1) If a person referred to in either of the following engages, or prepares to engage, in a business of practicing an invention before a transfer of the relevant patent is registered under Article 99-2 (2), without knowing that the relevant patent falls under the main clause of Article 133 (1) 2, the person shall have a non-exclusive license for the patent within the scope of the invention that the person practices or prepares to practice and the extent of the objectives of the business in which the person engages or prepares to engage:

1. The original patent holder of the patent the transfer of which has been registered;
2. A person who has already acquired an exclusive or non-exclusive license for the patent the transfer of which was registered or a non-exclusive license for such exclusive license before the time of registration of the transfer and has the license registered: Provided, That a person who acquires a non-exclusive license under Article 118 (2) needs not register the license.

(2) A person who holds a non-exclusive license under paragraph (1) shall pay a reasonable price to the holder of the patent the transfer of which has been registered.

#### **Article 104 (Non-Exclusive Licenses Based on Practicing Prior to Registration of Petitions for Trial on Invalidity)**

(1) If any of the following persons has practiced, or has prepared to practice, his or her patented invention or registered utility model for business purposes within the Republic of Korea, without knowing that the patented invention or registered utility model is invalid, before a petition seeking a trial to invalidate the patent or the registration of the utility model is filed, the person shall be granted a non-exclusive license of the patent or the exclusive license of the patent existing as at the time the patent or the registration of the

utility model was invalidated, within the scope of objectives of the invention or design that the person has practiced or has prepared to practice and of the business: <Amended on Feb. 29, 2016>

1. The original patentee of the invalidated patent, where one of at least two patents on the identical invention is invalidated;
  2. The original owner of a registered but invalidated utility model, where the registered utility model is invalidated because it is identical to a patented invention;
  3. The original patentee of an invalidated patent, where the patent is invalidated, and another patent is granted to the legitimate right-holder of the identical invention;
  4. The original owner of an invalidated utility model, where the registration of his or her utility model is invalidated and a patent is granted to the legitimate right-holder on the invention identical to the design;
  5. A person who has already acquired and registered an exclusive license, a non-exclusive license, or a non-exclusive license of the exclusive license before a petition seeking a trial to invalidate the patent or utility model, which is invalidated under any provision of subparagraphs 1 through 4, is filed: Provided, That the person who has acquired a non-exclusive license under Article 118 (2) shall need not be registered.
- (2) A person granted a non-exclusive license under paragraph (1) shall pay equitable remuneration to the patentee or exclusive licensee of the relevant patent.

#### **Article 105 (Non-Exclusive Licenses after Expiration of Design Rights)**

- (1) If a design right claimed in an application filed on or before the filing date of a patent application and registered accordingly conflicts with the patent, the holder of the design right at the expiration of the term of the design right shall have a non-exclusive license of the patent within the scope of the design right or a non-exclusive license of the exclusive license that exists on the patent at the expiration of the term of the design right, within the scope of the design right.
- (2) If a design right claimed in an application filed on or before the filing date of a patent application and registered accordingly conflicts with the patent, the holder of either of the following rights at the expiration of the design right shall have a non-exclusive license of the patent within the scope of the design right or a non-exclusive license of the exclusive license that exists on the patent at the expiration of the design right, within the scope of the original right:
1. An exclusive license of the design right that exists at the expiration of the term of the design right;
  2. A non-exclusive license in effect over the design right or an exclusive license of the design right under Article 104 (1) of the Design Protection Act.
- (3) A non-exclusive license holder under paragraph (2) shall pay equitable remuneration to the patentee or exclusive licensee.

#### **Article 106 (Expropriation of Patents)**

- (1) The Government may expropriate patents if deemed necessary for national defense at the time of a war, incident, or similar emergency.
- (2) If a patent is expropriated, all rights to the invention, except the patent, shall be extinguished.
- (3) When the Government expropriates a patent under paragraph (1), it shall pay reasonable compensation to the patentee, exclusive licensee, or non-exclusive licensee.
- (4) Matters necessary for expropriating patents and paying compensation therefor shall be prescribed by Presidential Decree.

#### **Article 106-2 (Practice of Patented Inventions by the Government)**

- (1) If the Government deems it necessary to non-commercially practice a patented invention due to a national or dire emergency, or for the public interests, it may directly practice the patented invention or authorize any person other than the Government to practice it on its behalf.
- (2) When the Government or any person other than the Government referred to in paragraph (1) knew or becomes aware that any other person's patent exists, the Government or the person other than the Government shall immediately notify the patentee, exclusive licensee, or non-exclusive licensee of the practice under paragraph (1).
- (3) When the Government or any person other than the Government referred to in paragraph (1) practices a patented invention under paragraph (1), the Government or the person other than the Government shall pay reasonable compensation to the patentee, exclusive licensee, or non-exclusive licensee.
- (4) Matters necessary for practicing a patented invention and paying compensation therefor shall be prescribed by Presidential Decree.

#### **Article 107 (Adjudication on Grant of Non-Exclusive Licenses)**

- (1) If a patented invention falls under any of the following, and a person who intends to practice the patented invention fails, or is unable, to reach agreement with the patentee or exclusive licensee of the patented invention on the grant of a non-exclusive license (hereafter referred to as "agreement" in this Article) under reasonable terms and conditions, although the person has negotiated the agreement, the person may file a petition for adjudication on the grant of the non-exclusive license (hereinafter referred to as "adjudication") with the Commissioner of the Korean Intellectual Property Office: Provided, That such a person may file a non-negotiated petition for adjudication, if he or she intends to non-commercially practice a patented invention for the public interests or in cases falling under subparagraph 4:
  1. If the patented invention has not been practiced in the Republic of Korea for at least three consecutive years, except in cases of a natural disaster, force majeure event, or due to other just grounds specified by Presidential Decree;
  2. If the patented invention has not been practiced for business purposes in the Republic of Korea on a substantial scale for at least three consecutive years without any just grounds, or fails to meet the demand in the Republic of Korea to an appropriate extent under reasonable terms and conditions;

3. If it is particularly necessary to practice the patented invention for the public interests;
  4. If it is necessary to practice the patented invention to rectify unfair trade practices found through judicial or administrative proceedings;
  5. If it is necessary to practice the patented invention to export medicines to a country that intends to import (hereafter referred to as "importing country" in this Article) the medicines (including effective ingredients necessary for manufacturing the medicines and diagnostic kits necessary for using such medicines) to treat diseases that threaten the health of the majority of its citizens.
- (2) Paragraph (1) 1 and 2 shall not apply to a patented invention, unless four years have passed since the filing date of the patent application for the patented invention.
- (3) When the Commissioner of the Korean Intellectual Property Office adjudicates on petitions, he or she shall examine the necessity to grant a non-exclusive license for each petition.
- (4) When the Commissioner of the Korean Intellectual Property Office adjudicates on a petition under any of the provisions of paragraph (1) 1 through 3 and 5, he or she shall impose the following conditions upon the petitioner:
1. In cases of adjudication under any of the provisions of paragraph (1) 1 through 3, the non-exclusive license shall be practiced primarily for the purpose of supply to meet domestic demand;
  2. In cases of adjudication under paragraph (1) 5, the assigned medicines shall be exported entirely to the importing county.
- (5) When the Commissioner of the Korean Intellectual Property Office adjudicates on a petition, he or she shall ensure that a reasonable price is paid therefor. In such cases, he or she may consider the following factors in determining the price when he or she is petitioned to adjudicate under paragraph (1) 4 or 5:
1. In cases of adjudication under paragraph (1) 4, the purpose to rectify unfair trade practices;
  2. In cases of adjudication under paragraph (1) 5, the economic value created in the importing country by practicing the patented invention.
- (6) A petition for adjudication regarding semi-conductor technology may be filed only in cases falling under paragraph (1) 3 (limited to where a patented invention shall be non-commercially practiced for the public interests) or 4.
- (7) The importing countries shall be limited to the World Trade Organization member countries that have notified the World Trade Organization of the following matters, or non-WTO member countries that have notified the Government of the Republic of Korea of the following matters, among the countries specified by Presidential Decree:
1. The names and quantities of medicines required by each importing country;
  2. Each importing country's confirmation that it is incapable of producing the relevant medicines or lacks the ability if the relevant country is not among the least developed countries listed in a resolution by the General Assembly of the United Nations;
  3. Each importing country's confirmation that it has granted, or is willing to grant, a compulsory license, if the relevant medicines are patented in the importing country.

(8) Medicines referred to in paragraph (1) 5 shall be as follows:

1. Patented medicines;
2. Medicines manufactured by patented manufacturing methods;
3. Patented effective ingredients necessary for producing medicines;
4. Patented diagnostic kits necessary for using medicines.

(9) Documents to be submitted by petitioners for adjudication and other matters necessary for adjudication shall be prescribed by Presidential Decree.

#### **Article 108 (Submission of Responses)**

Upon receipt of a petition for adjudication, the Commissioner of the Korean Intellectual Property Office shall serve a duplicate of the written petition on the patentee, exclusive licensee, and other persons who have any registered right or interest in the patent, and shall provide them with an opportunity to submit a response within a specified period.

#### **Article 109 (Seeking Opinions from the Committee for Mediation of Disputes over Industrial Property Rights and from Heads of Related Ministries and Administrative Agencies)**

The Commissioner of the Korean Intellectual Property Office may seek opinions from the Committee for Mediation of Disputes over Industrial Property Rights under Article 41 of the Invention Promotion Act (hereinafter referred to as "mediation committee"), and from the heads of related Ministries, and may request cooperation from related administrative agencies or relevant persons, if deemed necessary for adjudication. <Amended on Aug. 17, 2021>

#### **Article 110 (Formalities of Adjudication)**

(1) Adjudication shall be made in writing and shall detail the grounds therefor.

(2) Adjudication made under paragraph (1) shall detail the following:

1. The scope and term of the non-exclusive license;
2. The consideration for the license and, method of and deadline for payment of the consideration;
3. In cases of adjudication under Article 107 (1) 5, packaging and labels with which the products can be externally distinguished from the medicines supplied by the patentee, exclusive licensee, or non-exclusive licensee (excluding the holder of a non-exclusive license granted through adjudication) of the relevant patented invention, and the address of the web-site on which the matters settled in adjudication are to be disclosed;
4. Other matters to be observed by the person for whom adjudication is made to implement the provisions of the relevant statutes or a relevant treaty in practicing the patented invention.

(3) The Commissioner of the Korean Intellectual Property Office shall make adjudication within six months from the filing date of a petition for adjudication, unless just grounds exist.

(4) If Article 107 (7) or (8) is applicable to a petition filed for adjudication under Article 107 (1) 5, and all documents specified in Article 107 (9) have been submitted, the Commissioner of the Korean Intellectual Property Office shall make adjudication to grant a non-exclusive license, unless just grounds exist.

#### **Article 111 (Service of Certified Copies of Adjudications)**

(1) Where the Commissioner of the Korean Intellectual Property Office makes adjudication, he or she shall serve a certified copy of the adjudication on each party to the dispute and other persons who have a registered right or interest in the patent.

(2) When a certified copy of adjudication is served on the parties under paragraph (1), agreement shall be deemed reached between the parties under the terms and conditions stated in the adjudication.

#### **Article 111-2 (Amendment of Written Adjudication)**

(1) If a person for whom adjudication has been made needs to amend the adjudication regarding the matter specified in Article 110 (2) 3, he or she may file a request for amendment with the Commissioner of the Korean Intellectual Property Office, with documents evidencing the ground for such amendment.

(2) If the Commissioner of the Korean Intellectual Property Office finds that a request filed under paragraph (1) has merit, he or she may amend the relevant matter in the adjudication. In such cases, the Commissioner of the Korean Intellectual Property Office shall hear opinions of interested parties thereon.

(3) Article 111 shall apply mutatis mutandis to cases falling under paragraph (2).

#### **Article 112 (Deposit of Consideration)**

A party obliged to pay consideration under Article 110 (2) 2 shall pay it into the competent court in any of the following cases:

1. Where the party entitled to the consideration refuses, or is unable, to receive it;
2. Where legal proceedings have been filed with respect to the consideration under Article 190 (1);
3. Where the relevant patent or exclusive license is the subject-matter of a pledge right: Provided, That the foregoing shall not apply where the pledgee consents to payment.

#### **Article 113 (Annulment of Adjudication)**

If a person for whom adjudication has been made fails to pay the consideration (the initial installment, if the consideration is to be paid periodically or in installments) or fails to pay it into the competent court by the deadline for payment under Article 110 (2) 2, the adjudication shall become null and void.

#### **Article 114 (Revocation of Adjudication)**

(1) In any of the following cases, the Commissioner of the Korean Intellectual Property Office may revoke adjudication upon request from an interested party or ex officio: Provided, That subparagraph 2 shall only apply where the rightful interests of the non-exclusive licensee, for whom the adjudication has been made,



can be protected:

1. Where the non-exclusive licensee fails to practice the patented invention within the scope of the adjudication;
  2. Where the ground for adjudication granting the non-exclusive license disappears and it is deemed that such ground will not reoccur;
  3. Where the non-exclusive licensee breaches any term or condition prescribed under Article 110 (2) 3 or 4 in the written adjudication without just grounds.
- (2) Articles 108, 109, 110 (1), and 111 (1) shall apply mutatis mutandis to cases falling under paragraph (1).
- (3) A non-exclusive license shall be extinguished upon the revocation of the relevant adjudication under paragraph (1).

#### **Article 115 (Restrictions on Grounds for Objection to Adjudication)**

Where an appeal for a trial is filed against adjudication in accordance with the Administrative Appeals Act or legal proceedings seeking the revocation of adjudication are filed in accordance with the Administrative Litigation Act, the consideration determined by the adjudication shall not be a ground for the appeal.

**Article 116 Deleted.** <Dec. 2, 2011>

**Article 117 Deleted.** <Feb. 3, 2001>

#### **Article 118 (Effects of Registration of Non-Exclusive Licenses)**

- (1) Where a non-exclusive license has been registered, it shall also be effective against any person who subsequently obtains the patent or an exclusive license.
- (2) A non-exclusive license granted under any of the provisions of Articles 81-3 (5), 103 through 105, 122, 182, and 183 of this Act and Article 10 (1) of the Invention Promotion Act shall have the same effect as prescribed under paragraph (1), even where it is unregistered.
- (3) No person may have a valid claim or defense against a third party on the ground of the transfer, amendment, or extinguishment of a non-exclusive license, restriction on the disposal of a non-exclusive license, the establishment, transfer, amendment, or extinguishment of a pledge right over a non-exclusive license, or restriction on the disposal of a pledge right over a nonexclusive license, unless it is registered.

#### **Article 119 (Restrictions on Abandonment of Patents)**

- (1) No patentee may abandon his or her patent without the consent of all the following persons:
  1. The exclusive licensee, if any;
  2. The pledgee, if any;

3. Non-exclusive licensees referred to in Article 100 (4), if any;
  4. Non-exclusive licensees referred to in Article 102 (1), if any;
  5. Non-exclusive licensees referred to in Article 10 (1) of the Invention Promotion Act, if any.
- (2) No exclusive licensee may abandon his or her exclusive license without the consent of the pledgee or non-exclusive licensees referred to in Article 100 (4).
- (3) No non-exclusive licensee may abandon his or her non-exclusive license without the consent of the pledgee.

#### **Article 120 (Effects of Abandonment)**

A patent or exclusive or non-exclusive license shall be extinguished at the time the patent or the exclusive or non-exclusive license is abandoned.

#### **Article 121 (Pledge Rights)**

Where a patent or exclusive or non-exclusive license is pledged, the pledgee shall not practice the patented invention, unless otherwise expressly agreed in writing.

#### **Article 122 (Non-Exclusive Licenses Subsequent to Transfer of Patents by Exercise of Pledge Rights)**

Where a patentee (referring to all the rest of the joint owners of the patent except those who have requested division of the patent, if division of the patent that is jointly owned is requested) has practiced a patented invention before a pledge right is established on the patent or before a request for division of the patent is made, he or she shall be entitled to a non-exclusive license of the patented invention even if the patent is transferred by auction or any similar means. In such cases, the patentee shall pay reasonable consideration to the person to whom the patent is transferred by means of auction, etc. *<Amended on Oct. 19, 2021>*

#### **Article 123 (Subrogation of Pledge Rights)**

A pledge right may be exercised against compensation under this Act or against consideration or goods receivable in return for practicing the patented invention: Provided, That such consideration or goods shall be attached before paid or delivered.

#### **Article 124 (Extinguishment of Patents in Absence of Heirs)**

- (1) A patent shall be extinguished if no heir exists when the relevant inheritance proceeding commences. *<Amended on Feb. 29, 2016>*
- (2) If the transfer of a patent owned by a corporation in the process of liquidation is not registered by not later than the date when the completion of the liquidation process of the corporation is registered (or the earlier of the date when administrative affairs for liquidation are actually completed and the date immediately after the lapse of six months from the date when the completion of the liquidation process

was registered, if the completion of the liquidation process was registered but administrative affairs for liquidation have not been actually completed; hereafter the same shall apply in this paragraph), the patent shall be extinguished on the day immediately after the date when the completion of the liquidation process is registered. <Newly Inserted on Feb. 29, 2016>

#### **Article 125 (Reporting on Practice of Patents)**

The Commissioner of the Korean Intellectual Property Office may require a patentee or an exclusive or non-exclusive licensee to report whether he or she has practiced the patented invention, the extent to which he or she has practiced it, etc.

#### **Article 125-2 (Title of Practice on Compensation and Consideration)**

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

## CHAPTER VI PROTECTION OF PATENTEES

#### **Article 126 (Rights to Seek Injunction against Infringement)**

(1) A patentee or an exclusive licensee may file a complaint to seek injunction against, or prevention of, infringement against a person who infringes, or is likely to infringe, his or her rights.

(2) When a patentee or an exclusive licensee files a complaint under paragraph (1), he or she may demand the destruction of the means by which the infringement has been committed (including the products obtained by infringement if the relevant invention is a process for manufacturing the products), the removal of the facilities used for infringement, and other measures necessary to prevent infringement.

#### **Article 126-2 (Obligation to Present Specific Type of Behavior)**

(1) A party to a lawsuit filed against infringement of a patent or an exclusive license, who denies a specific type of behavior of an infringement, as claimed by the patentee or exclusive licensee, shall present his or her own specific type of behavior.

(2) Where the party argues that he or she has good reasons for being unable to present his or her own specific type of behavior, notwithstanding paragraph (1), the court may order the party to submit materials that can substantiate such argument: Provided, That this shall not apply where a person in possession of such materials has good reasons for refusing to submit the same.

(3) Article 132 (2) and (3) shall apply mutatis mutandis to an order for submission of materials under paragraph (2). In such cases, “it is necessary to prove the infringement or calculate the amount of losses” in Article 132 (3) shall be deemed “it is necessary to judge whether a person has good reasons for being

unable to present a specific type of behavior can be justified”.

(4) Where a party fails to present a specific type of behavior without any good reason, the court may deem the specific type of behavior claimed by the patentee or exclusive licensee to be true.

#### **Article 127 (Acts Deemed Infringement)**

Conducting either of the following acts for business purposes shall be deemed infringement of a patent or an exclusive license:

1. If the patent is for the invention of a product: Manufacturing, assigning, leasing, or importing the product used exclusively for manufacturing such product or offering to assign or lease such product;
2. If the patent is for the invention of a process: Manufacturing, assigning, leasing, or importing a product used exclusively for practicing the process or offering to assign or lease the product.

#### **Article 128 (Claim for Compensation for Loss)**

(1) A patentee or exclusive licensee may claim compensation for a loss inflicted by a person who has intentionally or negligently infringed the patent or exclusive license. *<Newly Inserted on Mar. 29, 2016>*

(2) Where a compensation for a loss is claimed pursuant to paragraph (1), but the infringer has assigned the infringing products to third parties, the sum of the following amounts may be the amount of loss that the patentee or exclusive licensee has sustained: *<Amended on Jun. 9, 2020>*

1. The amount calculated by multiplying the quantity not exceeding the quantity of products that the patentee or exclusive licensee could have manufactured, less the quantity of products actually sold among the quantity of the products assigned (the quantity calculated by subtracting the quantity of products that the patentee or exclusive licensee could not sell due to any cause other than the infringement, where such cause other than the infringement prevented him or her from selling the products) by the profit per unit of the products that the patentee or exclusive licensee could have sold if not for such infringement;

2. The amount that the patentee or exclusive licensee would reasonably receive for practicing a patented invention, where there is any quantity exceeding the quantity of products that the patentee or exclusive licensee could have manufactured, less the quantity of products actually sold among the quantity of the products sold, or any quantity of products that the patentee or exclusive licensee could not sell due to any cause other than the infringement (the quantity calculated by subtracting the relevant quantity, where it is not deemed that the patentee or exclusive licensee was able to grant an exclusive or non-exclusive license for the patent of such patentee or to grant a non-exclusive license for the exclusive license of such exclusive licensee).

(3) Deleted. *<Jun. 9, 2020>*

(4) Where a compensation for a loss is claimed pursuant to paragraph (1), the profits that a person who has intentionally or negligently infringed the patent or exclusive license has gained due to the infringement, if any, shall be deemed the loss that the patentee or exclusive licensee has sustained. *<Amended on Mar. 29,*

2016>

(5) Where a compensation for a loss is claimed pursuant to paragraph (1), the patentee or exclusive licensee may claim the amount that he or she would reasonably be entitled to receive for practicing the patented invention as the loss that he or she has sustained. <Amended on Mar. 29, 2016; Jan. 8, 2019>

(6) Notwithstanding paragraph (5), the amount of loss exceeding the amount specified in the same paragraph may also be claimed as damages. In such cases, the court may consider the fact that there was no intentional conduct or gross negligence on the part of the person who infringed the patent or exclusive license in determining the damages. <Amended on Mar. 29, 2016>

(7) If the court finds, in legal proceedings on infringement of a patent or exclusive license, that a loss has been incurred due to the infringement but it is extremely impracticable to verify the facts necessary for evidencing the loss in light of the nature of relevant facts, it may award reasonable damages based on the gist of entire arguments and the results of examination of evidence, notwithstanding paragraphs (2) through (6). <Amended on Mar. 29, 2016>

(8) Where an infringement of the patent or exclusive license of another person is deemed to be intentional, the court may determine damages not exceeding the triple of the amount recognized as loss under the provisions of paragraphs (2) through (7), notwithstanding paragraph (1). <Newly Inserted on Jan. 8, 2019>

(9) In determining damages under paragraph (8), the following factors shall be taken into consideration: <Newly Inserted on Jan. 8, 2019>

1. Whether the infringer maintains a superior position;
2. The degree of awareness of concerns over intent or possible loss;
3. The severity of the damage to the patentee or exclusive licensee caused by such infringement;
4. The economic benefits the infringer has obtained from such infringement;
5. The duration, frequency, etc. of such infringement;
6. Fines for such infringement;
7. Property of the infringer;
8. The degree of efforts made by the infringer for remedies.

#### **Article 128-2 (Duty of Explaining Matters for Appraisal)**

Where the court orders an appraisal in legal proceedings on infringement of a patent or exclusive license for the calculation of the amount of losses caused by the infringement, a party shall explain the matters necessary for the appraisal to an appraiser.

#### **Article 129 (Presumption of Manufacturing Process)**

Where a patent has been granted for inventing a manufacturing process of a product, any product identical to the product shall be deemed manufactured by the patented process: Provided, That the foregoing shall not apply to any of the following:

1. A product that has been publicly known or practiced in the Republic of Korea prior to the filing of the patent application;
2. A product that has been published in a publication distributed in the Republic of Korea or in any foreign country or has been disclosed to the public domain through telecommunication lines prior to the filing of the patent application.

#### **Article 130 (Presumption of Negligence)**

A person who infringes a patent or exclusive license of any third person shall be presumed negligent regarding such infringement.

#### **Article 131 (Reinstatement of Reputation of Patentee)**

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

#### **Article 132 (Submission of Materials)**

(1) Upon receipt of a request from either party to legal proceedings on infringement of a patent or exclusive license, the court may order the other party to submit materials necessary for proving the relevant infringement or calculating the amount of losses caused by the relevant infringement: Provided, That the foregoing shall not apply where the person possessing the materials has a reasonable ground to refuse to submit them. <Amended on Mar. 29, 2016>

(2) Where a person possessing the materials argues that he or she has a reasonable ground to refuse to submit them pursuant to paragraph (1), the court may order the submission of the materials to determine whether the argument is right or wrong. In such cases, the court shall not allow other persons to inspect such materials. <Newly Inserted on Mar. 29, 2016>

(3) Where the materials that shall be submitted pursuant to paragraph (1) fall under the trade secret (referring to the trade secret defined under subparagraph 2 of Article 2 of the Unfair Competition Prevention and Trade Secret Protection Act; hereinafter the same shall apply) but it is necessary to prove the infringement or calculate the amount of losses, it shall not be considered a reasonable ground pursuant to the proviso of paragraph (1). In such cases, the court shall designate a scope in which an inspection is allowed or a person for whom an inspection is allowed within the purpose of the submission order. <Newly Inserted on Mar. 29, 2016>

(4) Where a party fails to follow the order to submit materials without any reasonable grounds, the court may deem that the claim of the other party on the record of materials is true. <Newly Inserted on Mar. 29, 2016>

(5) In cases of falling under paragraph (4), when a party who filed a petition for the submission of materials is in a situation where it is extremely impracticable to make a detailed assertion on the records of materials and it is also difficult to expect that the fact to be proved by the materials may be proved by any other evidence, the court may deem that the assertion of the party on the fact which he or she intends to prove by the records of the materials is true. <Newly Inserted on Mar. 29, 2016>

## CHAPTER VI-2 PETITION FOR REVOKING PATENTS

### **Article 132-2 (Petitions for Revoking Patents)**

(1) In either of the following cases, any person may petition for revoking a patent to the Korean Intellectual Property Trial and Appeal Board by not later than six months after the date of public notice of registration of the patent from the date of registration of the grant of the patent. If the scope of claims contains two or more claims in such cases, a petition for patent revocation may be filed for each claim:

1. Where the patent violates Article 29 (excluding the cases that fall under Article 29 (1) 1 and the cases where it is easy to make another invention with an invention that falls under Article 29 (1) 1);
2. Where the patent violates any provision of Article 36 (1) through (3).

(2) Notwithstanding paragraph (1), no petition for patent revocation may be filed on a ground based on a prior art published in the Patent Gazette under Article 87 (3) 7.

[Previous Article 132-2 moved to Article 132-16 <Feb. 29, 2016>]

### **Article 132-3 (Correction of Patents in Process of Petitioning for Revoking Patents)**

(1) Only in any of the cases specified in Article 136 (1), the patentee who has the patent against which a petition is filed for revocation is pending may file a request for correcting the specification or drawings of the patented invention during the period designated under Article 132-13 (2).

(2) Where a request for correction has been filed pursuant to paragraph (1), the request filed for correction prior to the request filed for correction in the process of petitioning for revoking the relevant patent shall be deemed to have been withdrawn.

(3) Article 136 (3) through (6), (8), and (10) through (13), Article 139 (3), and Article 140 (1), (2), and (5) shall apply mutatis mutandis to the request for correction under paragraph (1). In such cases, "before the notice of closing of the trial review is given under Article 162 (3) (before the notice of closing of the trial review under Article 162 (3) is given again subsequently, if a case is reopened for review under Article 162 (4))" shall be construed as "within the period designated in Article 132-13 (2) or 136 (6)".

(4) A request filed for correction pursuant to paragraph (1) may be withdrawn only during any of the following periods:

1. The period designated for filing a request for correction under paragraph (1) and the period not exceeding one month from the end of the designated period;

2. The period designated under Article 136 (6), which shall apply mutatis mutandis pursuant to paragraph (3).

(5) In applying paragraph (3), Article 136 (5) shall not apply mutatis mutandis where a claim against which a petition has been filed for patent revocation is corrected under Article 132-2.

[Previous Article 132-3 moved to Article 132-17 <Feb. 29, 2016>]

#### **Article 132-4 (Methods for Filing Petitions for Patent Revocation)**

(1) A person who intends to petition for patent revocation shall file such petition with the President of the Korean Intellectual Property Trial and Appeal Board, declaring the following matters therein:

1. Name and address of the petitioner (the name and place of business, if the applicant is a corporation);
2. The name and domicile or place of business of an agent, if the petitioner is represented by an agent (if the agent is a patent firm or a limited-liability patent firm, its name and place of business or limited-liability patent firm, and the name of the designated patent attorney);
3. Indication of a patent against which a petition is filed for patent revocation;
4. Indication of the grounds and evidence concerning the revocation.

(2) No amendment to a petition filed for patent revocation pursuant to paragraph (1) shall be made to the intent of the petition: Provided, That the foregoing shall not apply where the matter specified in paragraph (1) 4 is amended during the period specified in Article 132-2 (1) (limited to the time when the notice under Article 132-13 (2) is given, if such notice is given during the period).

(3) Upon receipt of a petition for patent revocation, the presiding judge shall serve the patentee with a duplicate of the petition.

(4) Upon receipt of a petition for patent revocation, the presiding judge shall notify the exclusive licensee for the relevant patent and any other person who has registered a patent right of the receipt of the petition.

#### **Article 132-5 (Amendment or Dismissal of Petitions for Patent Revocation)**

(1) In any of the following cases, the presiding judge shall issue an order to make an amendment within a specified period:

1. If a petition for patent revocation violates Article 132-4 (1) (excluding subparagraph 4 of the same paragraph);
2. If the process taken to file a petition for patent revocation falls under any of the following cases:
  - (a) Where the trial proceeding violates Article 3 (1) or 6;
  - (b) If the process violates the method specified by this Act or an order issued under this Act;
  - (c) If the applicant has not paid the fees that he or she shall pay under Article 82.

(2) If a person ordered to make an amendment under paragraph (1) fails to make the amendment within the specified period or the amendment violates Article 132-4 (2), the presiding judge shall render a decision to dismiss either the petition for revoking a patent or a request, a petition, or such related to the relevant process.



(3) A decision of dismissal under paragraph (2) shall be made in writing and shall contain reasons therefor.

#### **Article 132-6 (Decision to Dismiss Unamendable Petitions for Patent Revocation)**

(1) If the collegiate tribunal under Article 132-7 (1) finds that it is impossible to amend a defect in an improper petition for patent revocation, it may decide to dismiss the petition for patent revocation without serving the patentee with a duplicate of the petition for patent revocation, notwithstanding Article 132-4 (3).

(2) No appeal shall be made against the decision of dismissal under paragraph (1).

#### **Article 132-7 (Collegiate Tribunal for Petitions for Patent Revocation)**

(1) Hearings and proceedings for making a decision on a petition for patent revocation shall be conducted by a collegiate tribunal comprised of three or five administrative patent judges.

(2) Articles 143 through 145, 146 (2) and (3), 148 through 153, and 153-2 shall apply to the collegiate tribunal under paragraph (1) and administrative patent judges who form the tribunal. In such cases, "trial ruling" in subparagraph 6 of Article 148 shall be construed as "decision to revoke a patent".

#### **Article 132-8 (Methods of Hearings)**

(1) Hearings on a petition for revoking a patent shall be conducted in writing.

(2) If a ground to discontinue or suspend proceedings for a petition for patent revocation is applicable to any of co-patentees of a jointly owned patent, the ground shall be enforceable to all the co-patentees.

#### **Article 132-9 (Intervention)**

(1) A person who has a right or an interest in a patent may intervene in hearings held with respect to a petition for patent revocation until a decision on such petition is rendered, in order to assist the patentee.

(2) Articles 155 (4) and (5) and 156 shall apply mutatis mutandis to the intervention under paragraph (1).

#### **Article 132-10 (Ex Officio Examination in Hearings on Petitions for Patent Revocation)**

(1) With respect to a petition for patent revocation, administrative patent judges may examine even the grounds for patent revocation not pleaded by the petitioner, the patentee, or intervenors.

(2) With respect to a petition for patent revocation, administrative patent judges shall not examine any claim not contested by the petitioner.

#### **Article 132-11 (Joinder or Separation of Petitions for Patent Revocation)**

(1) Two or more petitions filed with the collegiate tribunal of administrative patent judges to revoke the granted patent shall be joined for conducting hearings and rendering a decision, except in exceptional circumstances.

(2) If the collegiate tribunal of administrative patent judges finds it necessary to separate hearings on the joined petitions for revoking the granted patent under paragraph (1), it may separate the petitions for hearings.

#### **Article 132-12 (Withdrawal of Petitions for Patent Revocation)**

(1) A petition for revoking a patent may be withdrawn only until before the applicant is served with a certified copy of a decision under Article 132-14 (2): Provided, That a petition may not be withdrawn after the patentee and intervenors are notified of the ground for revoking the patent under Article 132-13 (2).

(2) If a petition for revoking a patent has been filed with respect to two or more claims, the petition may be withdrawn with respect to each of such claims separately.

(3) If a petition for revoking a patent completely or a petition for revoking a claim is withdrawn pursuant to paragraph (1) or (2), such petition shall be deemed to have never existed.

#### **Article 132-13 (Decision on Petitions for Patent Revocation)**

(1) If the collegiate tribunal of administrative patent judges finds that a petition for patent revocation has a ground, it shall render a decision to revoke the patent (hereinafter referred to as "decision to revoke the patent").

(2) When the presiding judge intends to render a decision to revoke a patent, it shall notify the patentee and intervenors of the ground for revoking the patent and shall give them an opportunity to submit written arguments within the period specified by it.

(3) When a decision to revoke a patent becomes final and conclusive, the patent shall be deemed to have never existed.

(4) If the collegiate tribunal of administrative patent judges finds that a petition for revoking a patent does not fall under any subparagraph of Article 132-2 (1) or violates Article 132-2 (2), it shall render a decision to dismiss the petition for revoking the patent.

(5) No appeal shall be made against the decision of dismissal under paragraph (4).

#### **Article 132-14 (Methods of Rendering Decision on Petitions for Patent Revocation)**

(1) A decision on a petition for patent revocation shall be rendered in a document, declaring the following matters, and the administrative patent judges who render the decision shall print their names and affix their seals on the document:

1. Case number of the petition for revoking the patent;
2. Names and addresses of the petitioner for revoking the patent, the patentee, and intervenors (the name and place of business of the corporation, if any of them is a corporation);
3. The name and the domicile or place of business of an agent, if a party or intervenor is represented by an agent (if the agent is a patent firm or a limited-liability patent firm, its name and place of business, and the name of the patent attorney designated for the case);

4. Descriptions of the patent related to the decision;
5. Conclusion of, and reasons for, the decision;
6. Date of the decision.

(2) When a decision is rendered with respect to a petition for patent revocation, the presiding judge shall serve a certified copy of the decision respectively to the petitioner for revoking the patent, the patentee, intervenors, and the persons who filed a petition for intervening in hearings on the petition for revoking the patent but had the petition rejected.

#### **Article 132-15 (Application Mutatis Mutandis of Trial-Related Provisions to Petitions for Patent Revocation)**

@Articles 147 (3), 157, 158, 164, 165 (3) through (6), and 166 shall apply mutatis mutandis to hearings on a petition for patent revocation and the procedure for rendering a decision thereon.

## CHAPTER VII TRIAL

#### **Article 132-16 (The Korean Intellectual Property Trial and Appeal Board)**

(1) The Korean Intellectual Property Trial and Appeal Board shall be established as an institution under the jurisdiction of the Commissioner of the Korean Intellectual Property Office to authorize it to conduct trials and retrials on petitions for patent revocation or a utility model, as well as on patents, utility models, designs, and trademarks and take charge of investigations and research thereon. <Amended on Feb. 29, 2016>

(2) The Korean Intellectual Property Trial and Appeal Board shall be comprised of the President and administrative patent judges.

(3) The Korean Intellectual Property Trial and Appeal Board may have personnel in charge of investigation and research under paragraph (1) and other affairs. <Newly Inserted on Aug. 17, 2021>

(4) Matters necessary for the organization, maximum number of regular staff, and operation of the Korean Intellectual Property Trial and Appeal Board shall be prescribed by Presidential Decree. <Amended on Aug. 17, 2021>

[Moved from Article 132-2 <Feb. 29, 2016>]

#### **Article 132-17 (Trial on Rulings Rejecting Patent Applications)**

If a person has an objection to a ruling rejecting a patent application or to a ruling rejecting an application to register the extended term of a patent, he or she may file a petition for trial within three months from the date he or she is served with a certified copy of the ruling. <Amended on Oct. 19, 2021>

[Moved from Article 132-3 <Feb. 29, 2016>]

### **Article 133 (Trial on Invalidity of Patents)**

(1) In any of the following cases, an interested party (limited to those who have the right to obtain a patent in cases of the main clause of subparagraph 2) or an examiner may file a petition for trial to seek invalidation of a patent. If the application contains two or more claims, a petition for trial for invalidation may be filed for each claim: <Amended on Feb. 29, 2016; Oct. 19, 2021>

1. If the patent violates any of the provisions of Articles 25, 29, 32, 36 (1) through (3), 42 (3) 1, or Article 42 (4);
2. If the patentee has no right to obtain the patent under the main clause of Article 33 (1) or violates Article 44: Provided, That the foregoing shall not apply where a transfer has been registered under Article 99-2 (2);
3. If the patentee is not eligible for the patent under the proviso of Article 33 (1);
4. If the patentee ceases to be entitled to the patent under Article 25 after the patent was granted or the patent violates a treaty;
5. If a person is unentitled to the patent because of his or her violation of a treaty;
6. If an amendment exceeds the scope specified in the former part of Article 47 (2);
7. Where the divisional application so filed exceeds the scope prescribed in Article 52 (1) or where the splitting-off so filed exceeding the scope specified in the former part, with the exception of the subparagraphs, of Article 52-2 (1);
8. If the relevant application is a converted application that exceeds the scope specified in Article 53 (1).

(2) A petition for trial referred to in paragraph (1) may be filed even after the relevant patent is extinguished.

(3) If a trial ruling invalidating a patent becomes final and conclusive, the patent shall be deemed never to have existed: Provided, That if a trial ruling invalidating a patent under paragraph (1) 4 becomes final and conclusive, the patent shall be deemed never to have existed since the patentee or the patent fell under the same subparagraph.

(4) Upon receipt of a petition for trial under paragraph (1), the presiding judge shall notify the exclusive licensee of the patent and other persons who hold a registered right or interest in the patent, as to the details of the petition.

### **Article 133-2 (Correction of Patents during Trial for Invalidation of Patents)**

(1) A defendant in trial under Article 133 (1) may request a correction of the specification or any drawing of the relevant patented invention within the period specified in Article 147 (1) or the latter part of Article 159 (1) only in cases specified in any subparagraph of Article 136 (1). In such cases, the presiding judge may permit the defendant to request a correction within a specified period even after the expiration of the period specified in Article 147 (1), if he or she deems it necessary to permit such request for correction because the petitioner has submitted any evidentiary document or asserts a new ground for invalidation.

<Amended on Feb. 29, 2016>

(2) When a request for correction is filed under paragraph (1), any request for correction made before the request for correction during the relevant trial for invalidation shall be deemed withdrawn.

(3) Upon receipt of a request for correction under paragraph (1), the presiding judge shall serve a duplicate of the request on the petitioner for the trial under Article 133 (1).

(4) Article 136 (3) through (6), (8), and (10) through (13), Article 139 (3), and Article 140 (1), (2), and (5) shall apply mutatis mutandis to requests for correction under paragraph (1). In such cases, "before notice of closing of hearings is given under Article 162 (3) (or before notice of closing of hearings is given under Article 162 (3), where hearings have been reopened under Article 162 (4))" in Article 136 (11) shall be construed as "within the specified period specified under Article 133-2 (1) or 136 (6)". *<Amended on Feb. 29, 2016>*

(5) A request for correction under paragraph (1) may be withdrawn only during any of the following periods: *<Newly Inserted on Feb. 29, 2016>*

1. The period designated for filing a request for correction under paragraph (1) and the period not exceeding one month from the end of the designated period;
2. The period designated under Article 136 (6), which shall apply mutatis mutandis to paragraph (4).

(6) In applying paragraph (4), Article 136 (5) shall not apply mutatis mutandis where a correction is made to a claim concerning which a petition for trial for invalidation of a patent is filed under Article 133 (1). *<Amended on Feb. 29, 2016>*

#### **Article 134 (Trial to Invalidate Registration for Extension of Patents)**

(1) In any of the following cases, an interested party or examiner may file a petition for trial to invalidate the registration of an extension of a patent under Article 92:

1. Where the extension has been registered with respect to an application that does not require permission, etc. under Article 89 to practice the relevant patented invention;
2. Where the extension has been registered with respect to an application for which the patentee, or exclusive licensee or a registered nonexclusive licensee on the patent has not obtained permission, etc. under Article 89;
3. Where the registered extension exceeds the period during which the patented invention was not practicable;
4. Where the extension has been registered for an application filed by any person, other than the patentee;
5. Where the extension has been registered for an application filed in violation of Article 90 (3).

(2) In any of the following cases, an interested party or examiner may file a petition for trial to invalidate the registration of the extension of a patent under Article 92-5:

1. Where the term extended following registration exceeds the length of extension permitted under Article 92-2;

2. Where the extension has been registered for an application filed by any person, other than the patentee;
  3. Where the extension has been registered for an application filed in violation of Article 92-3 (3).
- (3) Article 133 (2) and (4) shall apply mutatis mutandis to petitions for a trial under paragraphs (1) and (2).
- (4) If a trial ruling invalidating the registration of an extension becomes final and conclusive, the term extended following registration shall be deemed never to have existed: Provided, That only the relevant period shall be deemed never extended in either of the following cases:
1. Where the registration of an extension is invalidated under paragraph (1) 3: The period extended beyond the period during which the patented invention was not practicable;
  2. Where the registration of an extension is invalidated under paragraph (2) 1: The period extended beyond the length of extension permitted under Article 92-2.

#### **Article 135 (Trial to Confirm Scope of Rights)**

- (1) A patentee or an exclusive licensee may file a petition for trial to confirm the scope of rights in the patent to have the scope of protection of the patented invention confirmed. *<Amended on Feb. 29, 2016>*
- (2) Any interested party may file a petition for trial to confirm the scope of rights in the patent to have the scope of protection of any other person's patented invention confirmed. *<Newly Inserted on Feb. 29, 2016>*
- (3) If a petition is filed for trial to confirm the scope of at least two claims in a petition under paragraph (1) or (2), a petition may be filed for each claim separately. *<Amended on Feb. 29, 2016>*

#### **Article 136 (Trial for Corrections)**

- (1) In any of the following cases, a patentee may file a petition for trial to correct the specification or drawings of his or her patented invention: *<Amended on Feb. 29, 2016>*
1. Where he or she intends to reduce the number of claims;
  2. Where he or she intends to rectify a clerical error;
  3. Where he or she intends to clarify an ambiguous description.
- (2) Notwithstanding paragraph (1), no petition for trial on correction may be filed during either of the following periods: *<Newly Inserted on Feb. 29, 2016>*
1. The period from the time when an application for revoking a patent is pending before the Korean Intellectual Property Trial and Appeal Board until a decision thereon becomes final and conclusive: Provided, That a petition for trial on correction may be filed by not later than the day on which arguments in the patent court are closed (referring to the day on which a judgment is rendered, if the judgment is rendered without arguments), if a lawsuit seeking a trial ruling in a trial on invalidation of a trial ruling rendered or a correction made in a trial on invalidation of a patent;
  2. The period during which a trial on invalidation of a patent or a correction is pending before the Korean Intellectual Property Trial and Appeal Board.

(3) Correction of a specification or drawings under paragraph (1) shall be limited to the descriptions in the specification or drawings of a patented invention: Provided, That rectification of clerical errors under paragraph (1) 2 may be permitted only for the descriptions in the specification or drawings initially accompanying the application. <Amended on Feb. 29, 2016>

(4) No correction of a specification or drawing under paragraph (1) shall substantially extend or amend the claims. <Amended on Feb. 29, 2016>

(5) A correction made under paragraph (1) 1 or 2 shall be patentable at the time of filing the patent application regarding the matters described in the claims after the correction. <Amended on Feb. 29, 2016>

(6) If an administrative patent judge deems that a petition filed for a trial under paragraph (1) falls under any of the following, he or she shall notify the petitioner of the ground therefor and shall provide the petitioner with an opportunity to submit a written argument thereon within a specified period: <Amended on Feb. 29, 2016>

1. If the petition does not fall under any subparagraph of paragraph (1);
2. If the petition is beyond the scope prescribed in paragraph (3);
3. If the petition violates paragraph (4) or (5).

(7) A petition for correction under paragraph (1) may be filed even after the relevant patent is extinguished: Provided, That the foregoing shall not apply where a trial ruling affirming a decision to revoke a patent or a trial ruling invalidating a patent (excluding invalidation under Article 133 (1) 4) has become final and conclusive. <Amended on Feb. 29, 2016>

(8) No patentee may file trial for correction under paragraph (1) without the consent of the exclusive licensee, pledgee, and non-exclusive licensees under Articles 100 (4) and 102 (1) of this Act and Article 10 (1) of the Invention Promotion Act: Provided, That the foregoing shall not apply where a person from whom a patentee shall obtain consent in order to file a petition for trial seeking correction files a petition for trial seeking invalidation. <Amended on Feb. 29, 2016>

(9) Articles 147 (1) and (2), 155, and 156 shall not apply to trials on correction under paragraph (1). <Newly Inserted on Feb. 29, 2016>

(10) When a trial ruling to correct the specification or drawings of a patented invention becomes final and conclusive, it shall be deemed that filing and laying open the relevant patent application, a decision or trial ruling to grant a patent, and the registration of the grant of the patent have been made according to the corrected specification or drawings. <Amended on Feb. 29, 2016>

(11) A petitioner may amend the corrected specification or drawings appended to a petition filed for a trial under Article 140 (5) before notice of closing of hearings is given under Article 162 (3) (or before notice of closing of hearings is given under Article 162 (3), if hearings have been recommended under Article 162 (4)). <Amended on Feb. 29, 2016>

(12) When a trial ruling to correct the specification or drawings of a patented invention is rendered, the President of the Korean Intellectual Property Trial and Appeal Board shall notify the Commissioner of the Korean Intellectual Property Office of the details thereof. <Amended on Feb. 29, 2016>

(13) Upon receipt of notice under paragraph (12), the Commissioner of the Korean Intellectual Property Office shall publish it in the Patent Gazette. <Amended on Feb. 29, 2016>

#### **Article 137 (Trial to Invalidate Corrections)**

(1) If a correction of the specification or drawings of a patented invention under Article 132-3 (1), 133-2 (1), 136 (1), or paragraph (3) of this Article violates either of the following provisions, any interested party or the examiner may file a petition for trial to invalidate the correction: <Amended on Feb. 29, 2016>

1. Any provision of Article 136 (1);
2. Any provision of Article 136 (3) through (5) (including cases to which the aforesaid provisions shall apply mutatis mutandis pursuant to Article 132- 3 (3) or 133-2 (4)).

(2) Article 133 (2) and (4) shall apply mutatis mutandis to petitions for a trial under paragraph (1).

(3) A defendant in trial for invalidation under paragraph (1) may request correction of the specification or drawings of a patented invention within the period specified in Article 147 (1) or the latter part of Article 159 (1) only in cases falling under any subparagraph of Article 136 (1). If the presiding judge deems necessary to permit a request for correction because the petitioner has submitted an evidentiary document or asserts a new ground for invalidation in such cases, he or she may permit the defendant to file a request for correction within a specified period even after the end of the period designated under Article 147 (1). <Amended on Feb. 29, 2016>

(4) Article 133-2 (2) through (5) shall apply mutatis mutandis to requests for correction under paragraph (3). In such cases, "Article 133 (1)" in Article 133-2 (3) shall be construed as "Article 137 (1)", "Article 133-2 (1)" in the latter part of Article 133-2 (4) as "Article 137 (3)", and "paragraph (1)" in the main clause and subparagraph 1 of Article 133-2 (5) as "paragraph (3)", respectively. <Amended on Feb. 29, 2016>

(5) Where a trial ruling invalidating a correction under paragraph (1) becomes final and conclusive, the correction shall be deemed never made.

#### **Article 138 (Trial for Grant of Non-Exclusive Licenses)**

(1) If a patentee, or exclusive or non-exclusive licensee intends to obtain a license from another patentee or the holder of a registered utility model, design, trademark to practice the patented invention because the patented invention falls under Article 98, but the other patentee or the right-holder refuses to grant a license, or it is impossible to obtain a license from the other patentee or the right-holder, he or she may file a petition for trial to seek grant of a non-exclusive license within the extent necessary for practicing the patented invention.

(2) Where a petition is filed under paragraph (1), no non-exclusive license shall be granted, unless the relevant patented invention constitutes any important technical advance of substantial economical value in comparison with the patented invention or registered utility model claimed in the application filed by the other person prior to the filing date of the patent application for the relevant patented invention.



(3) If a person who has granted a non-exclusive license in trial under paragraph (1) needs to practice the patented invention of the non-exclusive licensee, but if the non-exclusive licensee refuses to grant a license or it is impossible to obtain a license, the person may file a petition for trial to seek grant of a non-exclusive license within the scope of the patented invention that the person intends to practice with the non-exclusive license.

(4) A non-exclusive licensee falling under paragraph (1) or (3) shall pay consideration to the relevant patentee or the utility model right-holder or design right-holder, or the exclusive licensee thereof: Provided, That if the non-exclusive licensee is unable to pay such consideration due to a cause not attributable to him or her, he or she shall deposit the consideration in the competent court.

(5) No non-exclusive licensee falling under paragraph (4) may practice the patented invention or registered utility model or design, or similar design, unless he or she has paid considerations or pay such considerations into the competent court.

#### **Article 139 (Joint Petitions for Trial)**

(1) If at least two persons intend to file a petition for trial to invalidate the same patent under Article 133 (1), 134 (1) or (2), or 137 (1), or to confirm the scope of rights in a patent under Article 135 (1) or (2), all such petitioners may jointly file a petition for trial. *<Amended on Feb. 29, 2016>*

(2) When a petition is filed for trial against patentees who jointly hold a patent, all such co-owners of a patent shall be made defendants.

(3) When co-owners of a patent or an entitlement to a patent file a petition for trial on the jointly-held right, all co-owners of a patent shall file the petition jointly.

(4) If any of the petitioners referred to in paragraph (1) or (3), or any of the defendants referred to in paragraph (2) has grounds to suspend or discontinue the trial, such suspension and discontinuation shall also be valid for all petitioners and defendants.

#### **Article 139-2 (Court-Appointed Agent)**

(1) The President of the Korean Intellectual Property Trial and Appeal Board may appoint an agent (hereinafter referred to as "court-appointed agent") at the request of a party to a trial who satisfies the requirements as prescribed by Ordinance of the Ministry of Trade, Industry and Energy: Provided, That this shall not apply where it is deemed that a petition for a trial is obviously without merit or amounts to the abuse of rights.

(2) Fees associated with trial proceedings may be reduced or exempt for the party represented by a court-appointed agent.

(3) Matters necessary for operating the court-appointed agent system, such as the procedures for filing an application for a court-appointed agent and fee reduction or exemption, shall be determined by Ordinance of the Ministry of Trade, Industry and Energy.

## Article 140 (Formalities of Petitions for Trial)

(1) A person who intends to file a petition for trial shall file the petition with the President of the Korean Intellectual Property Trial and Appeal Board, declaring the following matters:

1. The names and domiciles of the parties (if a party is a corporation, its name and place of business);
2. The name and domicile or place of business of an agent, if the petitioner is represented by an agent (if the agent is a patent firm or a limited-liability patent firm, its name and place of business or limited-liability patent firm, and the name of the designated patent attorney);
3. A description of the case on trial;
4. The purport of the petition and the grounds for filing the petition.

(2) No amendment to a petition for trial filed under paragraph (1) shall be made to the intent of the petition: Provided, That the foregoing shall not apply to the following: *<Amended on Feb. 29, 2016>*

1. Where an amendment (including the addition of patentees, but limited to where the added patentees consent to the addition, if the petitioner is also a patentee) is made to correct the description of a patentee, among the parties referred to in paragraph (1) 1;
2. Where an amendment is made to amend the grounds for the petition referred to in paragraph (1) 4;
3. Where a defendant in a trial on confirmation of the scope of rights under Article 135 (1) argues that the invention that the defendant actually practices is different from the invention regarding which confirmation is sought in the petition (referring to the invention that belongs to the defendant according to the petitioner's assertion) with reference to the specification or drawings of the invention and so the petitioner amends the specification or drawings of the invention regarding which confirmation is sought in the petition to make the specification or drawings conform to the invention that the defendant actually practices.

(3) A petition filed for a trial seeking confirmation of the scope of rights under Article 135 (1) or (2) shall be accompanied by the specification and necessary drawings with which the patented invention can be compared. *<Amended on Feb. 29, 2016>*

(4) A petition filed under Article 138 (1) for a trial seeking the grant of a non-exclusive license shall state the following, in addition to the matters specified in paragraph (1):

1. The number and title of the petitioner's patent that the petitioner intends to practice;
2. The number, title, and patent or registration date of the other person's patented invention or registered utility model or design that the petitioner needs to practice;
3. The scope and term of the non-exclusive license of the patented invention or registered utility model or design and the consideration therefor.

(5) A petition filed under Article 136 (1) for a trial for correction shall be accompanied by the corrected specification or drawings.

## **Article 140-2 (Formalities of Petitions for Trial on Rulings Rejecting Patent Applications)**

(1) Notwithstanding Article 140 (1), a person who intends to file a petition for trial on a ruling rejecting a patent application under Article 132-17 shall file a petition for the trial with the President of the Korean Intellectual Property Trial and Appeal Board, stating the following: *<Amended on Feb. 29, 2016>*

1. The name and domicile of the petitioner (if the petitioner is a corporation, its name and place of business);
2. The name and domicile or place of business of an agent, if the petitioner is represented by an agent (if the agent is a patent firm or a limited-liability patent firm, its name and place of business or limited-liability patent firm, and the name of the designated patent attorney);
3. The filing date and number of the patent application;
4. The title of the invention;
5. The date when a ruling rejecting the patent application was rendered;
6. A description of the case on trial;
7. The purport of the petition and the grounds for filing the petition.

(2) No amendment to a petition for trial filed under paragraph (1) shall be made as to the intent of the petition: Provided, That the foregoing shall not apply to the following:

1. Where an amendment (including the addition of petitioners, but limited to where the added petitioners consent to the addition) is made to correct the description of the petitioner referred to in paragraph (1) 1;
2. Where an amendment is made to amend any of the grounds for filing the petition under paragraph (1) 7.

## **Article 141 (Dismissal of Petitions for Trial)**

(1) In any of the following cases, the presiding judge shall issue an order to make an amendment within a specified period:

1. Where a petition filed for a trial violates any provision of Article 140 (1) and (3) through (5) and Article 140-2 (1);
2. Where any of the following events occurs in a trial proceeding:
  - (a) Where the trial proceeding violates Article 3 (1) or 6;
  - (b) Where official fees payable under Article 82 have not been paid;
  - (c) Where the trial proceeding does not conform to any of the formalities prescribed by this Act or by an order issued under this Act.

(2) If a person to whom an order to make an amendment has been issued under paragraph (1) fails to comply with the order within the specified period or if the amendment is in violation of Article 140 (2) or 140-2 (2), the presiding judge shall decide to dismiss the petition for trial or any request or application made in relation to the relevant proceedings. *<Amended on Feb. 29, 2016>*

(3) A ruling under paragraph (2) shall be made in writing, stating the grounds therefor.

#### **Article 142 (Trial Rulings Rejecting Petitions for Trial with Incurable Defects)**

If a petition for trial contains unlawful defects which cannot be corrected by amendment, such request may be rejected by a ruling without providing the defendant with an opportunity to submit a written response.

#### **Article 143 (Administrative Patent Judges)**

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

(2) The qualification for administrative patent judges shall be prescribed by Presidential Decree.

(3) Administrative patent judges shall maintain independence in performing their duties to examine a case on trial.

#### **Article 144 (Designation of Administrative Patent Judges)**

(1) The President of the Korean Intellectual Property Trial and Appeal Board shall designate administrative patent judges who shall form a board under Article 146 for each case on trial.

(2) If any of the administrative patent judges designated under paragraph (1) is unable to participate in a trial, the President of the Korean Intellectual Property Trial and Appeal Board may designate another administrative patent judge in his or her replace.

#### **Article 145 (Presiding Judges)**

(1) The President of the Korean Intellectual Property Trial and Appeal Board shall appoint one of the administrative patent judges designated under Article 144 (1) as the presiding judge.

(2) The presiding judge shall preside over all matters relating to the case on trial.

#### **Article 146 (Board for Trial)**

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

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

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

#### **Article 147 (Submission of Written Response)**

(1) Upon receipt of a petition for trial, the presiding judge shall serve the defendant with a duplicate of the petition, and shall provide the defendant with an opportunity to submit a written response within a specified period.

(2) Upon receipt of a written response, the presiding judge shall serve the petitioner with a duplicate of the written response.

(3) The presiding judge may directly examine the parties in a trial.

#### **Article 148 (Exclusion of Administrative Patent Judges)**

In any of the following cases, an administrative patent judge shall be excluded from participating in a trial:

*<Amended on Feb. 29, 2016>*

1. Where an administrative patent judge or the person who is or was his or her spouse is a party to the case on trial or an intervenor in such case or an applicant for revoking a patent;
2. Where an administrative patent judge is or was a relative of a party to the case on trial or an intervenor in such case or an applicant for revoking a patent;
3. Where an administrative patent judge is or was the legal representative of a party to the case on trial or an intervenor in such case or an applicant for revoking a patent;
4. Where an administrative patent judge is summoned as a witness or an expert witness, or was an expert witness to the case on trial;
5. Where an administrative patent judge is or was the agent of a party to the case on trial or an intervenor in such case or an applicant for revoking a patent;
6. Where an administrative patent judge was involved as an examiner or administrative patent judge in a decision or a trial ruling on whether to grant or refuse a patent in the case on trial;
7. Where an administrative patent judge has a direct interest in the case on trial.

#### **Article 149 (Motion for Exclusion)**

If a party or an intervenor finds that an administrative patent judge falls under any ground for exclusion provided for in Article 148, he or she may file a motion for exclusion of the administrative patent judge.

#### **Article 150 (Challenge against Administrative Patent Judges)**

(1) If any circumstance exists wherein the participation of an administrative patent judge would compromise the fairness of the proceedings in a trial, a party or an intervenor may submit challenge against the administrative patent judge.

(2) No party or intervenor shall submit challenge against an administrative patent judge after he or she has made a written or oral statement regarding the case on trial before the administrative patent judge: Provided, That the foregoing shall not apply where a party or an intervenor did not know that a ground for challenge existed, or where a ground to challenge arose subsequently.

#### **Article 151 (Vindication of Exclusion or Challenge)**

(1) A person who intends to request exclusion or challenge with regard to an administrative patent judge under Article 149 or 150 shall submit a written motion stating the ground therefor with the President of the Korean Intellectual Property Trial and Appeal Board: Provided, that such motion may be submitted orally in a trial.

(2) Vindication of exclusion or challenge shall be made within three days from the filing date of the motion.

#### **Article 152 (Rulings on Motion for Exclusion or Challenge)**

(1) A ruling on a motion for exclusion of or challenge against an administrative patent judge shall be made in a trial.

(2) An administrative patent judge against whom a motion for exclusion or challenge is pending shall not participate in the trial on the exclusion or challenge: Provided, That the administrative patent judge may make arguments thereon.

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

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

#### **Article 153 (Suspension of Trial Proceedings)**

If a motion for exclusion or challenge is filed, trial proceedings shall be suspended until a ruling on the motion is made: Provided, That the foregoing shall not apply in cases of urgency.

#### **Article 153-2 (Administrative Patent Judges' Refrainment)**

If an administrative patent judge falls under Article 148 or 150, he or she may refrain from the trial of the relevant case with permission from the President of the Korean Intellectual Property Trial and Appeal Board therefor.

#### **Article 154 (Hearings)**

(1) Trial proceedings shall be conducted by oral hearing or examination of documents: Provided, That where a party requests an oral hearing, trial proceedings shall be conducted by oral hearing except where it is deemed that a ruling can be made on the basis of examination of documents alone. <Amended on Jun. 11, 2014>

(2) Deleted. <Feb. 3, 2001>

(3) 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 compromised. <Amended on Jun. 11, 2014>

(4) When the presiding judge intends to hold an oral hearing under paragraph (1), he or she shall determine the date and venue for the hearing, and serve the parties and intervenors with a written notice thereof: Provided, That the foregoing shall not apply where such notice is given to the parties and intervenors present at an earlier hearing for the case. <Amended on Jun. 11, 2014>

(5) When the presiding judge presides over an oral hearing under paragraph (1), he or she shall require an official assigned by the President of the Korean Intellectual Property Trial and Appeal Board to prepare a report on the proceedings of the hearing and other necessary facts in each hearing. <Amended on Jun. 11, 2014>

(6) The presiding judge and the official who prepares a report on proceedings under paragraph (5) shall affix their signatures and seals thereon. <Amended on Jun. 11, 2014>

(7) Articles 153, 154, and 156 through 160 of the Civil Procedure Act shall apply mutatis mutandis to proceeding reports prepared under paragraph (5). <Amended on Jun. 11, 2014>

(8) Articles 143, 259, 299, and 367 of the Civil Procedure Act shall apply mutatis mutandis to administrative patent trials. <Amended on Jun. 11, 2014>

(9) The presiding judge shall maintain order in the trial tribunal during oral hearings. <Newly Inserted on Jun. 11, 2014>

#### **Article 154-2 (Professional Examiners)**

(1) The presiding judge may designate a professional examiner ex officio and have him or her participate in trial proceedings.

(2) Where the presiding judge has professional examiners participate in trial proceedings pursuant to paragraph (1), he or she shall designate at least one professional examiner for each case after hearing opinions of the parties.

(3) A professional examiner shall be entitled to allowances as prescribed by Ordinance of the Ministry of Trade, Industry and Energy, and other expenses, including travel expenses, daily allowances, and accommodation expenses, if necessary, may be paid to him or her.

(4) Other matters necessary for designating professional examiners shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(5) Articles 164-2 (2) through (4) and 164-3 of the Civil Procedure Act shall apply mutatis mutandis to professional examiners under paragraph (1). In such cases, "court" shall be construed as "presiding judge."

(6) Articles 148 through 152 shall apply mutatis mutandis to the exclusion of professional examiners and a challenge to such examiners under paragraph (1). In such cases, "presiding judge" shall be construed as "professional examiner."

#### **Article 155 (Intervention)**

(1) A person entitled to file a petition for trial under Article 139 (1) may intervene in the trial before the closing of hearings.

(2) An intervenor under paragraph (1) may continue trial proceedings even after the party in 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 result of a trial may intervene in the trial proceedings to assist either party before the closing of hearings.

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

(5) If an intervenor under paragraph (1) or (3) has a ground to suspend or discontinue trial proceedings, such suspension or discontinuance shall be effective also in relation to the party in whose favor the intervenor entered the proceedings.

### **Article 156 (Petitions for Intervention and Rulings Thereon)**

- (1) A person who intends to intervene in a trial shall file a petition for intervention with the presiding judge.
- (2) Upon receipt of a petition for intervention, the presiding judge shall serve each party and other intervenors with a duplicate of the petition for intervention, and shall provide them with an opportunity to submit a written argument thereon within a specified period.
- (3) Upon receipt of a petition for intervention, a ruling on whether to permit intervention shall be made in a trial.
- (4) A ruling under paragraph (3) shall be made in writing, stating the grounds therefor.
- (5) No appeal shall be permitted against a ruling made under paragraph (3).

### **Article 157 (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 of the Civil Procedure Act concerning the examination and preservation of evidence shall apply mutatis mutandis to the examination and preservation of evidence under paragraph (1): Provided, That an administrative patent judge shall not take any of the following acts:
  1. Making a decision to impose an administrative fine;
  2. Issuing an order to remand a person in custody;
  3. Requiring a person to make a deposit into the competent court.
- (3) A request to preserve evidence shall be filed with the President of the Korean Intellectual Property Trial and Appeal Board before filing a petition for trial, or with the presiding judge if the trial is pending.
- (4) Upon receipt of a request to preserve evidence under paragraph (1) before a petition for trial is filed, the President of the Korean Intellectual Property Trial and Appeal Board shall appoint an administrative patent judge to take charge of examining the request.
- (5) When the presiding judge ex officio examines or preserves evidence under paragraph (1), he or she shall notify the parties, intervenors, and interested parties of the results thereof, and shall provide them with an opportunity to submit their arguments thereon within a specified period.

### **Article 158 (Continuation of Trial Proceedings)**

The presiding judge may proceed with trial proceedings, even though a party or intervenor fails to take proceedings by the relevant statutory deadline or specified deadline, or fails to appear on the date of hearing set under Article 154 (4).

### **Article 158-2 (Principle of Timely Presentation)**



@Articles 146, 147, and 149 of the Civil Procedure Act shall apply mutatis mutandis to the submission of arguments or evidence in the trial proceedings.

#### **Article 159 (Ex Officio Examination)**

- (1) Grounds not pleaded by a party or intervenor may be examined in trial proceedings. In such cases, the parties and intervenors shall be provided with an opportunity to submit their arguments thereon within a specified period.
- (2) In a trial, no examination shall be made as to the intention of a claim not requested by the petitioner.

#### **Article 160 (Joinder or Separation of Hearings or Trial Rulings)**

Administrative patent judges may conduct hearings or render trial rulings jointly or separately for at least two trials in which both parties or either party is the same one.

#### **Article 161 (Withdrawal of Petitions for Trial)**

- (1) A petition for trial may be voluntarily withdrawn before a trial ruling becomes final and conclusive: Provided, That once the defendant has submitted a response, his or her consent shall be obtained to withdraw such petition.
- (2) If a petition has been filed for trial for invalidation under Article 133 (1) or on confirmation of the scope of rights under Article 135 regarding at least two claims, the petitioner may withdraw the petition for each claim separately.
- (3) If a petition for trial or each of the claims is withdrawn under paragraph (1) or (2), the petition shall be deemed never to have been filed.

#### **Article 162 (Trial Rulings)**

- (1) Except as otherwise provided for in any Act, a patent trial shall be closed by a trial ruling.
- (2) The trial ruling under paragraph (1) shall be made in writing, declaring the following, on which administrative patent judges participating who have rendered the decision shall affix their names and seals:
  1. The case number;
  2. The names and domiciles of the parties and intervenors (if a party or intervenor is a corporation, its name and place of business);
  3. The name and the domicile or place of business of an agent, if a party or intervenor is represented by an agent (if the agent is a patent firm or a limited-liability patent firm, its name and place of business, and the name of the patent attorney designated for the case);
  4. A description of the case on trial;
  5. The text of the trial ruling (including the scope and term of the relevant non-exclusive license and the consideration therefor, if the ruling is rendered in a trial under Article 138);

6. Grounds for the trial ruling (including the purport of the petition, and a summary of the grounds for the petition);
  7. The date of the trial ruling.
- (3) When a case has been thoroughly reviewed and is ready to be ruled, the presiding judge shall notify the parties and intervenors of the closing of the trial review.
  - (4) If deemed necessary, the presiding judge may reopen a case for review, upon request from a party or intervenor or ex officio, even after he or she has given notice of the closing of trial review under paragraph (3).
  - (5) The trial ruling shall be rendered within 20 days from the date notice of the closing of trial review is given under paragraph (3).
  - (6) When a trial ruling or ruling is rendered, the presiding judge shall serve the parties, intervenors, and the persons whose application for intervention in the trial was rejected with a certified copy of the trial ruling or ruling, respectively.

#### **Article 163 (Res Judicata)**

If a trial ruling rendered under this Act becomes final and conclusive, no person may demand re-trial, based on the same facts and evidence: Provided, That the foregoing shall not apply where the final and conclusive trial ruling is a rejection.

#### **Article 164 (Relationship to Litigation)**

- (1) If the presiding judge deems it necessary for a trial, he or she may, ex officio or at the request of a party, suspend a trial proceeding until a decision on an application for revoking the patent related to the case on trial or a trial ruling rendered in another trial related to the case on trial becomes final and conclusive or until the related legal proceedings are completed. *<Amended on Feb. 29, 2016>*
- (2) If a court finds it necessary to suspend legal proceedings, it may, ex officio or at the request of a party, suspend legal proceedings until a decision on a petition for patent revocation or a trial ruling on a patent becomes final and conclusive. *<Amended on Feb. 29, 2016>*
- (3) Where legal proceedings are filed regarding an infringement of a patent or an exclusive license, the court shall notify the President of the Korean Intellectual Property Trial and Appeal Board of the claims asserted in the legal proceedings. The same shall also apply when the legal proceedings are completed.
- (4) Where a petition is filed for trial seeking invalidation of a patent in response to legal proceedings filed regarding an infringement of a patent or an exclusive license under paragraph (3), the President of the Korean Intellectual Property Trial and Appeal Board shall notify the competent court referred to in paragraph (3) of the claims thereof. The same shall also apply when a decision or trial ruling dismissing the petition for trial is rendered or when the petition for trial is voluntarily withdrawn.

#### **Article 164-2 (Referral to Mediation Committee)**

- (1) Where deemed necessary for reasonable settlement of a case on trial, a presiding judge may suspend procedures for the relevant case on trial with the consent of the parties, and may determine to refer such case to the Mediation Committee.
- (2) When a presiding judge refers a case to the Mediation Committee pursuant to paragraph (1), he or she shall send the records of the relevant case on trial to the Mediation Committee.
- (3) Where a mediation procedure of the Mediation Committee is concluded without success, the presiding judge shall revoke the determination of suspension under paragraph (1), and shall resume the trial; where mediation succeeds, the relevant petition for trial shall be deemed withdrawn.

#### **Article 165 (Costs of Trial)**

- (1) The allocation of costs incurred in relation to a trial under Article 133 (1), 134 (1) or (2), 135, or 137 (1) shall be determined by a trial ruling if a trial ruling is rendered at the close of trial, or by decision, if the trial is not closed by a trial ruling.
- (2) Articles 98 through 103, 107 (1) and (2), 108, 111, 112, and 116 of the Civil Procedure Act shall apply mutatis mutandis to costs incurred in relation to a trial under paragraph (1).
- (3) Costs incurred in relation to a trial under Article 132-17, 136, or 138 shall be borne by the petitioner for the trial. *<Amended on Feb. 29, 2016>*
- (4) Article 102 of the Civil Procedure Act shall apply mutatis mutandis to costs to be borne by a petitioner under paragraph (3).
- (5) The amount of costs incurred in a trial shall be determined by the President of the Korean Intellectual Property Trial and Appeal Board, upon request from a party, after the relevant trial ruling or decision becomes final and conclusive.
- (6) Relevant provisions of the Costs of Civil Procedure Act shall apply to the scope, amount, and payment of costs incurred in a trial, and the payment of the cost required for engaging in procedural acts in a trial, unless such provisions violate the nature of the cost.
- (7) Fees a party has paid or is payable to a patent attorney who has represented the party in a trial shall be deemed costs incurred in the trial up to the amount specified by the President of the Korean Intellectual Property Trial and Appeal Board. Even where a party has been represented by several patent attorneys in a trial, the party shall be deemed to have been represented by one patent attorney for the purposes of this paragraph.

#### **Article 166 (Title of Enforcement of Trial Costs or Consideration)**

A final and conclusive ruling on costs incurred in a trial rendered by the President of the Korean Intellectual Property Trial and Appeal Board, or on consideration determined by administrative patent judges under this Act shall have the same effect as an enforceable title of practice. In such cases, the enforceable writ shall be issued by a public official of the Korean Intellectual Property Office.

**Article 167 Deleted.** <Jan. 5, 1995>

**Article 168 Deleted.** <Jan. 5, 1995>

**Article 169 Deleted.** <Jan. 5, 1995>

**Article 170 (Application Mutatis Mutandis of Examination-Related Provisions to Trial on Ruling Rejecting Patent Applications)**

(1) Article 47 (1) 1 and 2 and (4), Articles 51, 63, 63-2, and 66 shall apply mutatis mutandis to a trial on a ruling rejecting a patent application. In such cases, "amendment under Article 47 (1) 2 or 3" in the main clause of Article 51 (1) shall be construed as "amendment under Article 47 (1) 2 (excluding amendments made before a petition is filed for a trial on a ruling rejecting a patent application under Article 132-17)", and "Commissioner of the Korean Intellectual Property Office" in the main clause of Article 63-2 as "President of the Korean Intellectual Property Trial and Appeal Board", respectively. <Amended on Feb. 29, 2016>

(2) Article 63, applicable mutatis mutandis pursuant to paragraph (1), shall apply only where a ground for rejection is found differently from the ground for the ruling rejecting a patent application.

**Article 171 (Special Provisions of Trial against Rulings Rejecting Patent Applications)**

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

**Article 172 (Effects of Examinations)**

Patent-related procedures previously taken in the course of examination shall also remain effective in a trial on a ruling rejecting a patent application or on a ruling refusing to register the extended term of a patent.

**Article 173 Deleted.** <Jan. 30, 2009>

**Article 174 Deleted.** <Jan. 30, 2009>

**Article 175 Deleted.** <Jan. 30, 2009>

**Article 176 (Revocation of Ruling Rejecting Patent Applications)**

(1) When an administrative patent judge upholds claims asserted in a petition filed for a trial under Article 132-17, he or she shall render a trial ruling revoking the ruling rejecting the patent application or the ruling

refusing to register the extended term of the patent. *<Amended on Feb. 29, 2016>*

(2) When an administrative patent judge revokes a ruling rejecting a patent application or a ruling refusing to register the extended term of the patent in a trial under paragraph (1), he or she may render a trial ruling that the case shall be subject to examination.

(3) In ruling on a trial under paragraph (1) or (2), a ground based on which revocation is rendered shall be binding upon examiners with respect to the relevant case.

**Article 177 Deleted.** *<Jan. 5, 1995>*

## CHAPTER VIII RETRIAL

### **Article 178 (Petitions for Retrial)**

(1) Any party may file a petition for retrial against a final and conclusive decision to revoke a patent or a final and conclusive trial ruling. *<Amended on Feb. 29, 2016>*

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

### **Article 179 (Third Party's Petitions for Retrial)**

(1) If the parties to a trial acted in collusion for the purpose of causing a trial ruling to be rendered which infringes a third party's right or interest, the third party may file a petition for retrial on the final and conclusive trial ruling.

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

### **Article 180 (Period for Filing Petitions for Retrial)**

(1) A party shall file a petition for retrial within 30 days from the date when he or she becomes aware of the ground for retrial after a decision to revoke a patent or a trial ruling becomes final and conclusive. *<Amended on Feb. 29, 2016>*

(2) Where a petition for retrial is filed on the ground of a defect in power of attorney, the period under paragraph (1) shall be counted from the following day after the petitioner or his or her legal representative becomes aware that a decision to revoke a patent or a trial ruling was rendered when he or she receives a certified copy of the decision to revoke a patent or the trial ruling. *<Amended on Feb. 29, 2016>*

(3) No petition for retrial may be filed after the lapse of three years from the date when a decision to revoke a patent or a trial ruling becomes final and conclusive. *<Amended on Feb. 29, 2016>*

(4) If the ground for retrial arises after a decision to revoke a patent or a trial ruling becomes final and conclusive, the period under paragraph (3) shall be counted from the following day after such ground arises. *<Amended on Feb. 29, 2016>*

(5) Paragraphs (1) and (3) shall not apply where a petition for retrial is filed on the ground that the relevant trial ruling conflicts with another trial ruling that had become final and conclusive before the relevant trial ruling was rendered.

#### **Article 181 (Restrictions on Effects of Patents Reinstated by Retrial)**

(1) In any of the following cases, no effect of a patent shall extend to the goods imported or domestically manufactured or acquired in the Republic of Korea, in good faith, after a decision to revoke the patent or the relevant trial ruling becomes final and conclusive, but before a petition filed for retrial is registered:

*<Amended on Feb. 29, 2016>*

1. Where an invalidated patent (including a patent with extension of its term registered) is reinstated in the retrial;
2. Where a trial ruling that a product did not fall within the scope of rights in a patent became final and conclusive, but a subsequent ruling rendered in retrial to reverse the former ruling, becomes final and conclusive;
3. Where the grant of a patent or an extended term of a patent is registered as a result of retrial on a patent application or on an extension of the term of a patent, which was rejected by a trial ruling;
4. Where a revoked patent is restored by retrial.

(2) No effect of a patent in any case falling under paragraph (1) shall extend to any of the following:

*<Amended on Feb. 29, 2016>*

1. Practicing the relevant invention in good faith after the relevant decision to revoke a patent or the relevant trial ruling becomes final and conclusive, but before the petition filed for retrial is registered;
2. Manufacturing, assigning, leasing, or importing, in good faith, a product used only for manufacturing the product protected by the patent as an invention, or offering to assign or lease such product, in good faith, after the relevant decision to revoke a patent or the trial ruling becomes final and conclusive, but before the petition filed for retrial is registered, if the patent is for the invention of the product;
3. Manufacturing, assigning, leasing, or importing, in good faith, a product used only for practicing a process, or offering to assign or lease such product, in good faith, after the relevant decision to revoke a patent or the relevant trial ruling becomes final and conclusive, but before the petition filed for retrial is registered, if the patent is for the invention of the process.

#### **Article 182 (Non-Exclusive Licenses for Prior Users of Patent Reinstated through Retrial)**

In any of the cases under Article 181 (1), a person who practices, or prepares to practice, the relevant patent for business purposes, in good faith, in the Republic of Korea after the relevant decision to revoke a patent or the relevant trial ruling becomes final and conclusive, but before the petition filed for retrial is registered, shall be granted a non-exclusive license of the patent within the scope of the subject matter of the patented invention that the person practices or prepares to practice, or the objectives of the business.

*<Amended on Feb. 29, 2016>*

**Article 183 (Non-Exclusive Licenses for Former Right-Holders, Deprived of Non-Exclusive Licenses by Retrial)**

(1) If a trial ruling granting a non-exclusive license to a person under Article 138 (1) or (3) became final and conclusive, but a ruling reversing such trial ruling rendered in retrial, the person who practices, or prepares to practice, the relevant patent for business purposes, in good faith, in the Republic of Korea before the petition filed for retrial was registered shall be granted a non-exclusive license of the patent or exclusive license existing as at the time the trial ruling rendered in the retrial becomes final and conclusive, within the scope of the subject matter of the business relevant to the original non-exclusive license, or the objectives of the invention.

(2) A person granted a non-exclusive license under paragraph (1) shall pay equitable remuneration to the patentee or exclusive licensee of the relevant patent.

**Article 184 (Application Mutatis Mutandis of Trial-Related Provisions to Retrial)**

The provisions concerning the procedure for petitions for patent revocation or trials shall apply mutatis mutandis to the procedure for retrials on a decision to revoke a patent or a trial, except where incompatible. <Amended on Feb. 29, 2016>

**Article 185 (Application Mutatis Mutandis of the Civil Procedure Act)**

@Article 459 (1) of the Civil Procedure Act shall apply mutatis mutandis to petitions for retrial.

**CHAPTER IX LITIGATION**

**Article 186 (Legal Proceedings against Trial Rulings)**

(1) The Patent Court of Korea shall have exclusive jurisdiction over lawsuits filed against a decision to revoke a patent or a trial ruling and lawsuits filed against a decision to dismiss a petition for patent revocation, a petition for trial, or a petition for retrial. <Amended on Feb. 29, 2016>

(2) Any of the following persons shall have standing to file legal proceedings under paragraph (1): <Amended on Feb. 29, 2016>

1. A party;
2. An intervenor;
3. A person whose petition filed to intervene in hearings, a trial, or a retrial on the relevant petition for patent revocation has been rejected.

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

(4) The period referred to in paragraph (3) is invariable.

(5) With respect to the invariable period referred to in paragraph (4), the presiding judge may, ex officio, extend the period, for the benefit of a person living in a remote area or in an area with poor access to transport.

(6) No lawsuit may be filed with respect to any matter regarding which a petition for patent revocation or a petition for trial may be filed, unless the lawsuit is related to a decision to revoke the patent or a trial ruling. *<Amended on Feb. 29, 2016>*

(7) No legal proceedings referred to in paragraph (1) may be independently filed on a trial ruling on the consideration set under Article 162 (2) 5 or a trial ruling or decision on costs incurred in trial under Article 165 (1).

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

#### **Article 187 (Standing to Be Sued)**

In legal proceedings filed under Article 186 (1), the Commissioner of the Korean Intellectual Property Office shall be named as the defendant: Provided, That the petitioner or defendant shall be sued as the defendant in legal proceedings filed against a trial ruling rendered in a trial or retrial under Article 133 (1), 134 (1) or (2), 135 (1) or (2), 137 (1), or 138 (1) or (3). *<Amended on Feb. 29, 2016>*

#### **Article 188 (Notification of Legal Proceedings and Service of Certified Copy of Written Judgment)**

(1) Upon receipt of legal proceedings filed under Article 186 (1) or an appeal under Article 186 (8), the court shall notify the President of the Korean Intellectual Property Trial and Appeal Board of the details thereof without delay.

(2) When the legal proceedings filed under the proviso of Article 187 are completed, the court shall forward a certified copy of the written judgment rendered by the court at each instance in the case to the President of the Korean Intellectual Property Trial and Appeal Board without delay.

#### **Article 188-2 (Exclusion, Challenge, or Refrainment of Technical Examiners)**

(1) Article 148 of this Act and Articles 42 through 45, 47, and 48 of the Civil Procedure Act shall apply mutatis mutandis to exclusion of, or a challenge to, technical examiners under Article 54-2 of the Court Organization Act.

(2) A decision on exclusion of, or a challenge to, technical examiners under paragraph (1) shall be made in a trial by the court to which the technical examiner belongs.

(3) If a technical examiner has a ground for exclusion of, or challenge to, him or herself, he or she may voluntarily refrain from participation in the case on trial with permission from the Chief Judge of the Patent Court.



#### **Article 189 (Revocation of Trial Rulings or Decisions)**

- (1) If a court upholds claims asserted in legal proceedings filed under Article 186 (1), it shall revoke the relevant trial ruling or decision by ruling.
- (2) When a court ruling revoking a trial ruling or decision under paragraph (1) becomes final and conclusive, administrative patent judges shall review the case and render another trial ruling or decision.
- (3) In ruling on a trial under paragraph (1), the ground based on which revocation was rendered shall be binding upon the Korean Intellectual Property Trial and Appeal Board with respect to the relevant case.

#### **Article 190 (Legal Proceedings against Decisions on Compensation or Consideration)**

- (1) A person who has an objection to a trial ruling, decision, or adjudication rendered on compensation or consideration under Article 41 (3) or (4), 106 (3), 106-2 (3), 110 (2) 2, or 138 (4) may file legal proceedings with the competent court.
- (2) Legal proceedings referred to in paragraph (1) shall be filed within 30 days from the date when a certified copy of the relevant trial ruling, decision, or adjudication is served.
- (3) The period referred to in paragraph (2) is invariable.

#### **Article 191 (Defendants in Legal Proceedings on Compensation or Consideration)**

In legal proceedings filed under Article 190, any of the following persons shall be named as a defendant:

1. The head of the central administrative agency or applicant, who is liable to pay compensation, if such compensation is payable under Article 41 (3) or (4);
2. The head of a central administrative agency, patentee, or exclusive or non-exclusive licensee who is liable to pay compensation, if such compensation is payable under Article 106 (3) or 106-2 (3);
3. The non-exclusive or exclusive licensee, patentee, or owner of a registered utility model or design, if the legal proceedings are about the consideration under Articles 110 (2) 2 and 138 (4).

#### **Article 191-2 (Patent Attorney's Fees and Costs of Litigation)**

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

## **CHAPTER X INTERNATIONAL APPLICATIONS UNDER THE PATENT COOPERATION TREATY**

### **SECTION 1 International Application Procedures**

#### **Article 192 (Persons Eligible to File International Applications)**

Any of the following persons may file an international application with the Commissioner of the Korean Intellectual Property Office:

1. A national of the Republic of Korea;
2. A foreigner domiciled or having a place of business in the Republic of Korea;
3. A person not falling under subparagraph 1 or 2, who files an international application in the name of a representative falling under subparagraph 1 or 2;
4. A person who meets the requirements prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 193 (International Applications)**

(1) A person who intends to file an international application shall submit a patent application prepared in the language specified by Ordinance of the Ministry of Trade, Industry and Energy, accompanied by a description of the invention, the claims, drawings, and an abstract, to the Commissioner of the Korean Intellectual Property Office.

(2) Every application filed under paragraph (1) shall state the following:

1. An indication that the application is an international application filed under the Patent Cooperation Treaty;
2. The designation of the contracting states to the Patent Cooperation Treaty in which the protection of the invention claimed in the application is required;
3. The intention, if any, to obtain a regional patent defined under Article 2 (iv) of the Patent Cooperation Treaty in the contracting states designated under subparagraph 2 (hereinafter referred to as "designated states");
4. The name or title, the domicile or place of business, and the nationality, of the applicant;
5. The name and the domicile or place of business of an agent, if any;
6. The title of the invention;
7. The name and domicile of the inventor (only applicable where the national law of a designated state requires that these indications be furnished).

(3) A description of an invention under paragraph (1) shall clearly and concisely describe the invention in such manner that any person with ordinary knowledge in the technical field of the relevant invention can easily practice the invention.

(4) Claims referred to in paragraph (1) shall clearly and concisely state the matters for which protection is sought, and shall be fully supported by the description of the invention.

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

#### **Article 194 (Recognition of International Filing Date)**

(1) The Commissioner of the Korean Intellectual Property Office shall recognize the date when an international application reaches the Korean Intellectual Property Office as the international filing date defined under Article 11 of the Patent Cooperation Treaty (hereinafter referred to as "international filing

date"): Provided, That the foregoing shall not apply in the following cases:

1. Where the applicant fails to meet the requirements provided for in Article 192;
  2. Where the international application is not filed in the language specified in Article 193 (1);
  3. Where the international application is not accompanied by a description of the invention or the claims under Article 193 (1);
  4. Where any element listed in Article 193 (2) 1 or 2 or the name or title of the applicant is omitted.
- (2) If an international application falls under any subparagraph of paragraph (1), the Commissioner of the Korean Intellectual Property Office shall order the applicant to amend the defect, in writing, within a specified period.
- (3) If an international application refers to a drawing not included in that application, the Commissioner of the Korean Intellectual Property Office shall notify the applicant thereof.
- (4) If an applicant in receipt of an order to amend under paragraph (2) makes the amendment within a specified period, the Commissioner of the Korean Intellectual Property Office shall recognize the date when the documents regarding the amendment arrive, as the international filing date, while the Commissioner of the Korean Intellectual Property Office shall recognize the date when a drawing arrives, as the international filing date, if a person notified under paragraph (3) submits the drawing within the period specified by Ordinance of the Ministry of Trade, Industry and Energy: Provided, That if an applicant notified under paragraph (3) fails to submit a drawing within the period specified by Ordinance of the Ministry of Trade, Industry and Energy, the reference to the drawing shall be deemed nonexistent.

#### **Article 195 (Orders to Amend)**

In any of the following cases, the Commissioner of the Korean Intellectual Property Office shall order an applicant to amend his or her international application within a specified period:

1. If the title of the invention is omitted;
2. If an abstract is omitted;
3. If the international application violates Article 3 or 197 (3);
4. If the international application fails to comply with any of the requirements prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 196 (International Applications Deemed Withdrawn)**

(1) An international application shall be deemed withdrawn in any of the following cases:

1. Where the applicant ordered to amend the international application under Article 195 fails to do so within a specified period;
2. Where the applicant fails to pay an official fee for the international application within the period specified by Ordinance of the Ministry of Trade, Industry and Energy, and his or her international application becomes subject to Article 14 (3) (a) of the Patent Cooperation Treaty;

3. Where it is found that the international application accorded an international filing date under Article 194 becomes subject to any subparagraph of Article 194 (1) during the period specified by Ordinance of the Ministry of Trade, Industry and Energy.

(2) If an applicant underpays any fees payable for an international application within the period specified by Ordinance of the Ministry of Trade, Industry and Energy, and his or her international application becomes subject to Article 14 (3) (b) of the Patent Cooperation Treaty, the designation of the designated state for which the applicant fails to pay the fees shall be deemed withdrawn.

(3) If an international application or the designation of some of the designated states is deemed withdrawn under paragraph (1) or (2), the Commissioner of the Korean Intellectual Property Office shall notify the applicant thereof.

#### **Article 197 (Representative)**

(1) If at least two applicants jointly file an international application, the procedures prescribed under Articles 192 through 196 and 198 may be initiated by the representative of the applicants.

(2) If at least two applicants jointly file an international application without appointing a representative, the representative may be designated in the manner prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(3) If an applicant intends to authorize an agent to initiate the procedure referred to in paragraph (1), he or she shall appoint a patent attorney as his or her agent, except where the applicant is represented by a legal representative under Article 3.

#### **Article 198 (Official Fees)**

(1) A person who intends to file an international application shall pay official fees therefor.

(2) Official fees referred to in paragraph (1), the method and period for payment thereof, and other necessary matters shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

#### **Article 198-2 (International Searches and International Preliminary Examination)**

(1) The Korean Intellectual Property Office shall perform duties as an international search authority and international preliminary examination authority for international applications under the agreement entered into with the International Bureau (hereinafter referred to as the "International Bureau") defined under Article 2 (xix) of the Patent Cooperation Treaty.

(2) Matters necessary for performing duties referred to in paragraph (1) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

## **SECTION 2 Special Provisions concerning International Patent Applications**

### **Article 199 (Patent Applications Based on International Applications)**

(1) An international application allocated an international filing date under the Patent Cooperation Treaty that has designated the Republic of Korea as a designated state to obtain a patent in the Republic of Korea shall be deemed a patent application filed on the international filing date.

(2) Articles 42-2, 42-3, and 54 shall not apply to an international application deemed a patent application under paragraph (1) (hereinafter referred to as "international patent application").

### **Article 200 (Special Provisions concerning Inventions Not Deemed Publicly Known)**

Notwithstanding Article 30 (2), a person who seeks the benefit of Article 30 (1) 1 for an invention claimed in an international patent application may submit a written statement of such intention and documents evidencing relevant facts to the Commissioner of the Korean Intellectual Property Office within the period specified by Ordinance of the Ministry of Trade, Industry and Energy.

### **Article 200-2 (Applications Substituted by International Patent Applications)**

(1) An application filed by the international filing date of an international patent application shall be deemed a patent application filed under Article 42 (1).

(2) A description of an invention, claims, and drawings submitted by the international filing date of an international patent application shall be deemed the specification and drawings initially accompanying a patent application filed under Article 42 (2).

(3) In any of the following cases, the abstract or Korean translation of an international patent application shall be deemed an abstract under Article 42 (2):

1. If the abstract of an international patent application is written in Korean: The abstract of the international patent application;
2. If the abstract of an international patent application is written in a foreign language: The Korean translation of the abstract of the international patent application submitted under Article 201 (1) (referring to the last submitted Korean translation of the abstract of the international patent application, if a subsequent Korean translation has been submitted under the main clause of Article 201 (3)).

### **Article 201 (Korean Translations of International Patent Applications)**

(1) An applicant who has filed an international patent application in a foreign language shall submit, to the Commissioner of the Korean Intellectual Property Office, a Korean translation of the following documents within two years and seven months from the priority date (hereinafter referred as "priority date") defined under Article 2 (xi) of the Patent Cooperation Treaty (hereinafter referred to as "period for submitting domestic documents"): Provided, That if an applicant has submitted a document under Article 203 (1) to request the extension of the period for submitting the Korean translation, during the period commencing one month before the expiration of the period for submitting domestic documents until the expiration of the period (excluding where a Korean translation is submitted before submitting the document), the

Korean translation may be submitted by not later than one month from the expiration of the period for submitting domestic documents:

1. A Korean translation of a description of the invention, claims, and drawings (limited to the captions in the drawings) submitted by the international filing date;
2. A Korean translation of the abstract of the international patent application.

(2) Notwithstanding paragraph (1), if an applicant who filed an international patent application in a foreign language has amended any of the claims under Article 19 (1) of the Patent Cooperation Treaty, the applicant may submit a Korean translation of the amended claims in lieu of the Korean translation of the claims filed by the international filing date.

(3) An applicant who has submitted a Korean translation under paragraph (1) may submit a new translation replacing such Korean translation during the period for submitting domestic documents (referring to an extension for submitting domestic documents, if the applicant has submitted the statement of his or her intention under the proviso of paragraph (1); the same shall apply hereafter in this Article): Provided, That the foregoing shall not apply where the applicant has filed a request for examination of the application.

(4) If an applicant referred to in paragraph (1) fails to submit a Korean translation of a description of the invention and the claims under paragraph (1) within the period for submitting domestic documents, the applicant shall be deemed to have withdrawn his or her international patent application.

(5) If a patent applicant submits a Korean translation (referring to the last submitted Korean translation, if a subsequent Korean translation has been submitted under the main clause of paragraph (3); hereafter referred to as "final Korean translation" in this Article) of a description of the invention, claims, or drawings (limited to the captions in the drawings) under paragraph (1) by the last date of the period for submitting domestic documents (referring to the filing date of a petition, if the patent applicant files a request for examination of the application during the period for submitting domestic documents; hereinafter referred to as "reference date"), the patent applicant shall be deemed to amend the description of the invention, claims, or drawings on the international filing date under Article 47 (1) according to a final Korean translation.

(6) A patent applicant may correct any error in a final Korean translation in the manner prescribed by Ordinance of the Ministry of Trade, Industry and Energy during the period in which the patent applicant is permitted to make amendments under Article 47 (1) or 208 (1). In such cases, paragraph (5) shall not apply to a corrected Korean translation.

(7) If a correction is made during the period specified in Article 47(1) 1 or 2 pursuant to the former part of paragraph (6), all corrections made prior to the last correction shall be deemed to have never existed.

*<Newly Inserted on Feb. 29, 2016>*

(8) Article 204 (1) and (2) shall not apply where a Korean translation of the amended claims is submitted under paragraph (2). *<Amended on Feb. 29, 2016>*

## **Article 202 (Special Provisions concerning Priority Claims by Patent Applications)**

(1) Articles 55 (2) and 56 (2) shall not apply to international patent applications.

(2) If a patent application claiming priority is an international application, "specification or drawings accompanying the initial patent application" in Article 55 (4) shall be construed as "description of the invention, claims, or drawings submitted by the international filing date", and "laid open" shall be construed as "laid open or published internationally under Article 21 of the Patent Cooperation Treaty", respectively, for the purposes of the same paragraph: Provided, That Article 55 (4) shall not apply where such an international patent application is deemed withdrawn under Article 201 (4).

(3) For the purposes of Article 55 (1) and (3) through (5) and Article 56 (1), the following shall apply if an earlier application is an international patent application or an international application for registration of a utility model under Article 34 (2) of the Utility Model Act:

1. "Specification or drawings initially accompanying the application" in the main clause of Article 55 (1) with the exception of the subparagraphs, Article 55 (3), and the main clause of Article 55 (5) with the exception of its subparagraphs shall be construed as either of the following:

(a) If the earlier application is an international patent application: "Description of the invention claimed in the international application, the scope of claims, or drawings submitted by the international filing date";

(b) If the earlier application is an international application for registration of a utility model under Article 34 (2) of the Utility Model Act: "Description of the design claimed in the international application, the scope of claims, or drawings submitted by the international filing date";

2. "Specification or drawings initially accompanying the earlier application" in Article 55 (4) shall be construed as either of the following, and "laid open" shall be construed as "laid open or published internationally under Article 21 of the Patent Cooperation Treaty" with respect to the earlier application:

(a) If the earlier application is an international patent application: "Description of the invention claimed in the earlier application, the scope of claims, or drawings, filed by the international filing date as an international application";

(b) If the earlier application is an international application for registration of a utility model under Article 34 (2) of the Utility Model Act: "Description of the design claimed in the earlier application by the international filing date as an international application, the scope of claims, or drawings";

3. "At the time one year and three months elapse from the filing date of the earlier application" in the main clause of Article 56 (1), with the exception of the subparagraphs, shall be construed as "after the lapse of one year and three months from the international filing date or the reference date under 201 (5) of this Act or Article 35 (5) of the Utility Model Act, whichever comes later".

(4) For the purposes of Article 55 (1) and (3) through (5) and Article 56 (1), the following shall apply if the earlier application filed under Article 55 (1) is an international patent application deemed a patent application under Article 214 (4) of this Act or an application for registration of a utility model under

Article 40 (4) of the Utility Model Act:

1. "Specification or drawings initially accompanying the application" in the main clause of Article 55 (1) with the exception of the subparagraphs, Article 55 (3), and the main clause of Article 55 (5) with the exception of its subparagraphs shall be construed as either of the following:

(a) If the earlier application is an international patent application deemed a patent application under Article 214 (4): "Description of the invention claimed in the earlier application, the scope of claims, or drawings on the date that would have been recognized as the international filing date under Article 214 (4)";

(b) If the earlier application is an international application deemed an application for registration of a utility model under Article 40 (4) of the Utility Model Act: "Description of the design claimed in the international application, the scope of claims, or drawings on the date that would have been recognized as the international filing date under Article 40 (4) of the Utility Model Act";

2. "Specification or drawings initially accompanying the earlier application" in Article 55 (4) shall be construed as either of the following:

(a) If the earlier application is an international patent application deemed a patent application under Article 214 (4): "Description of the invention claimed in the earlier application filed as an international application, the scope of claims, or drawings on the date that would have been recognized as the international filing date under Article 214 (4)";

(b) If the earlier application is an international application deemed an application for registration of a utility model under Article 40 (4) of the Utility Model Act: "Description of the design claimed in the earlier application filed as an international application, the scope of claims, or drawings on the date that would have been recognized as the international filing date under Article 40 (4) of the Utility Model Act";

3. "At the time one year and three months lapse from the filing date" in the main clause of Article 56 (1), with the exception of the subparagraphs, shall be construed as "after the lapse of one year and three months from the date that would have been recognized as the international filing date under Article 214 (4) of this Act or Article 40 (4) of the Utility Model Act or the date when a decision is made under Article 214 (4) of this Act or Article 40 (4) of the Utility Model Act, whichever comes later".

### **Article 203 (Submission of Documents)**

(1) An international patent applicant shall submit to the Commissioner of the Korean Intellectual Property Office, the following matters in writing within the period for submitting domestic documents. In such cases, an applicant who has filed an international patent application in a foreign language shall also submit a Korean translation of the international patent application under Article 201 (1):

1. The name and domicile of the applicant (if the applicant is a corporation, its name and place of business);



2. The name and the domicile or place of business of an agent, if the applicant is represented by an agent (if the agent is a patent firm or a limited-liability patent firm, its name and place of business, and the name of the designated patent attorney);
  3. The title of the invention;
  4. The name and domicile of the inventor;
  5. The international filing date and the international application number.
- (2) If an applicant requests an extension of the period for submitting the Korean translation under the proviso of Article 201 (1) by the document submitted under the former part of paragraph, the applicant need not submit a Korean translation, notwithstanding the latter part of paragraph (1).
- (3) The Commissioner of the Korean Intellectual Property Office shall request an applicant to make an amendment within a specified period in either of the following circumstances:
1. Where an applicant fails to submit the document required under the former part of paragraph (1) during the period for submitting domestic documents;
  2. Where the document submitted under the former part of paragraph (1) does not comply with the formalities prescribed by this Act or by an order issued under this Act;
- (4) If a person requested to make an amendment under paragraph (3) fails to do so within a specified period, the Commissioner of the Korean Intellectual Property Office may invalidate the international patent application filed by the person.

#### **Article 204 (Amendments after Receipt of International Search Reports)**

- (1) If an international patent applicant amends any of the claims in his or her international patent application after having received the international search report under Article 19 (1) of the Patent Cooperation Treaty, he or she shall submit the following documents to the Commissioner of the Korean Intellectual Property Office by the reference date (referring to the date when a request for examination of the application is filed, if the reference date is the filing date of the request for the examination of the application; the same shall apply hereafter in this Article and Article 205):
1. If he or she has filed an international application in a foreign language: A Korean translation of the amendment;
  2. If he or she has filed an international application in Korean: A copy of the amendment.
- (2) When a Korean translation or a copy of an amendment is submitted under paragraph (1), the claims referred to in Article 47 (1) shall be deemed amended as stated in the Korean translation or said copy of the amendment: Provided, That the claims shall be deemed amended as stated in the amendment, if the amendment (limited to where an international patent application has been filed in Korean) reaches the Korean Intellectual Property Office by the reference date under Article 20 of the Patent Cooperation Treaty.
- (3) Where an international patent applicant has filed with the International Bureau, a brief statement under Article 19 (1) of the Patent Cooperation Treaty, he or she shall submit the following documents to the

Commissioner of the Korean Intellectual Property Office by the reference date:

1. If he or she has filed an international application in a foreign language: A Korean translation of the brief statement;
  2. If he or she has filed an international application filed in Korean: A copy of the brief statement.
- (4) If an international patent applicant fails to take the procedure under paragraph (1) or (3) by the reference date, the amendment or brief statement prescribed under Article 19 (1) of the Patent Cooperation Treaty shall be deemed never submitted: Provided, That the foregoing shall not apply where the amendment or brief statement of an international patent application filed in Korean reaches the Korean Intellectual Property Office by the reference date under Article 20 of the Patent Cooperation Treaty.

#### **Article 205 (Amendments before Preparation of International Preliminary Examination Reports)**

(1) Where an international patent applicant amends the description of the invention claimed in his or her international patent application, the claims, or drawings under Article 34 (2) (b) of the Patent Cooperation Treaty, he or she shall submit the following documents to the Commissioner of the Korean Intellectual Property Office by the reference date:

1. If the amendment is in a foreign language: A Korean translation of the amendment;
  2. If the amendment is in Korean: A copy of the amendment.
- (2) When a Korean translation or a copy of an amendment is submitted under paragraph (1), the specification or drawings referred to in Article 47 (1) shall be deemed amended as stated in the Korean translation or copy of the amendment: Provided, That if such amendment (limited to where the amendment is in Korean) is delivered to the Korean Intellectual Property Office by the reference date under Article 36 (3) (a) of the Patent Cooperation Treaty, the specification or drawings shall be deemed amended as stated in the amendment.
- (3) If an international patent applicant fails to take the procedure under paragraph (1) by the reference date, the amendment referred to in Article 34 (2) (b) of the Patent Cooperation Treaty shall be deemed never submitted: Provided, That the foregoing shall not apply where the amendment (limited to where the amendment is in Korean) is delivered to the Korean Intellectual Property Office by the reference date under Article 36 (3) (a) of the Patent Cooperation Treaty.

#### **Article 206 (Special Provisions concerning Patent Administrators for Overseas Residents)**

- (1) Notwithstanding Article 5 (1), an overseas resident who has filed an international patent may initiate a patent-related procedure by the reference date, unless represented by a patent administrator.
- (2) An overseas resident who has submitted a Korean translation under Article 201 (1) shall appoint a patent administrator and report the appointment to the Commissioner of the Korean Intellectual Property Office by the deadline specified by Ordinance of the Ministry of Trade, Industry and Energy.
- (3) An international application shall be deemed withdrawn if the appointment of a patent administrator is not reported under paragraph (2).

### **Article 207 (Special Provisions concerning Timing and Effects of Laying Open Applications)**

(1) Where Article 64 (1) applies to laying-open of an international patent application, "after the lapse of one year and six months from the date specified in any of the following" shall be construed as "after the end of the period for submitting domestic documents (referring to an extension for submitting a Korean translation, if a written request for an extension of such period has been submitted under the proviso of Article 201 (1), with the exception of its subparagraphs; the same shall apply hereafter in this paragraph) (or after the lapse of one year and six months from the priority date or the filing date of a request for examination of the application, whichever comes later, if an international patent application is published internationally under Article 21 of the Patent Cooperation Treaty after the international patent applicant files a request for examination of the application during the period for submitting domestic documents)".

(2) Notwithstanding paragraph (1), if an international patent application filed in Korean has been published internationally under Article 21 of the Patent Cooperation Treaty before the application is laid open under paragraph (1), the international patent application shall be deemed laid open at the time of international publication.

(3) After an international patent application is published (referring to international publication under Article 21 of the Patent Cooperation Treaty, if the international patent application is in Korean; hereafter the same shall apply in this Article), the international patent applicant may issue a person who has practiced the invention for business purposes a written warning that an application for the invention is filed under the Patent Cooperation Treaty.

(4) The applicant of an international patent application may claim compensation, equivalent to an amount to which he or she is reasonably entitled for practicing the patented invention, against a person who has practiced for business purposes the invention claimed in the international patent application even after a written warning is provided under paragraph (3) or knowing that the international patent application for the invention has been published, for a period from the time the person receives the written warning, or becomes aware thereof until the time the grant of the patent is registered: Provided, That the right to claim compensation may be exercised only after the grant of the patent on the invention is registered. *<Amended on Jan. 8, 2019>*

### **Article 208 (Special Provisions concerning Amendments)**

(1) Notwithstanding Article 47 (1), no international patent application may be amended (excluding amendments under Articles 204 (2) and 205 (2)), unless all of the following requirements are satisfied: *<Amended on Jun. 11, 2014>*

1. Official fees are to be fully paid under Article 82 (1);
2. A Korean translation is to be submitted under Article 201 (1): Provided, That the foregoing shall not apply to an international patent application filed in Korean;

3. The reference date shall have passed (referring to the filing date of a request for examination of the application, if the filing date of a request for examination of an application is the reference date).

(2) Deleted. <Feb. 3, 2001>

(3) When the former part of Article 47 (2) applies to the amendable scope of an international patent application filed in a foreign language, "specification or drawings initially accompanying the earlier application" shall be construed as "description of the invention, the scope of claims, or drawings submitted by the international filing date". <Amended on Jun. 11, 2014>

(4) Where the latter part of Article 47 (2) applies to the amendable scope of an international patent application filed in a foreign language, "patent application in a foreign language" shall be construed as "international patent application in a foreign language", and "final Korean translation (referring to the corrected Korean translation, if a correction is made under the former part of Article 42-3 (6)) or the drawings (excluding captions in the drawings) initially accompanying the earlier application" as "final Korean translation under Article 201 (5) (referring to the corrected Korean translation, if a correction is made under the former part of Article 201 (6)) or the drawings (excluding captions in the drawings) submitted by the international filing date", respectively. <Newly Inserted on Jun. 11, 2014>

(5) Deleted. <Feb. 3, 2001>

#### **Article 209 (Restrictions on Timing for Converted Applications)**

Notwithstanding Article 53 (1) of this Act, if an applicant intends to convert his or her international application deemed an application for registering a utility model filed on the international filing date under Article 34 (1) of the Utility Model Act into a patent application, he or she may do so only after he or she fully pays the official fees under Article 17 (1) of the Utility Model Act, and submits the Korean translation (not applicable to an international application for registering a utility model filed in Korean) under Article 35 (1) of the same Act (or after a decision is rendered under Article 40 (4) of the Utility Model Act, if the converted international application is deemed filed on the date that would have been recognized as the international filing date under the same paragraph of the same Act).

#### **Article 210 (Restrictions on Timing for Filing Requests for Examination of Applications)**

Notwithstanding Article 59 (2), a request for examination of an international patent application may be filed only at either of the following times:

1. After a Korean translation is submitted under Article 201 (1) (excluding an international patent application filed in Korean) and official fees under Article 82 (1) are fully paid, if the request is made by the international patent applicant;
2. After the lapse of the period for submitting domestic documents (referring to an extension for submitting Korean translations, if a written request has been filed for an extension of such period under the proviso of Article 201 (1), with the exception of its subparagraphs), if the request is made by a person other than an international patent applicant.

### **Article 211 (Orders to Submit References Cited in International Search Reports)**

The Commissioner of the Korean Intellectual Property Office may require an international patent applicant to submit copies of the references cited in the international search report under Article 18 of the Patent Cooperation Treaty, or the international preliminary examination report under Article 35 of the same Treaty by a specified deadline.

**Article 212 Deleted.** <Mar. 3, 2006>

**Article 213 Deleted.** <Jun. 11, 2014>

### **Article 214 (International Applications Decided as Patent Applications)**

(1) In any of the following cases, an international application (limited to a patent application) that includes the Republic of Korea as a designated state under Article 4 (1) (ii) of the Patent Cooperation Treaty, the applicant of the international application may request the Commissioner of the Korean Intellectual Property Office to decide as provided for in Article 25 (2) (a) of the same Treaty in the manner prescribed by Ordinance of the Ministry of Trade, Industry and Energy within the period specified by Ordinance of the Ministry of Trade, Industry and Energy:

1. Where the receiving Office defined under Article 2 (xv) of the Patent Cooperation Treaty has refused the international application under Article 25 (1) (a) of the same Treaty;
2. Where the receiving Office defined under Article 2 (xv) of the Patent Cooperation Treaty has declared regarding the international application under Article 25 (1) (a) or (b) of the same Treaty;
3. Where the International Bureau has recognized the international application under Article 25 (1) (a) of the same Treaty.

(2) A person who intends to make a request under paragraph (1) shall submit to the Commissioner of the Korean Intellectual Property Office a Korean translation of a description of the invention, scope of claims, or drawings (limited to the captions in the drawings), and other documents specified by Ordinance of the Ministry of Trade, Industry and Energy as relevant to the international application.

(3) Upon receipt of a request under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall decide whether the refusal, declaration, or recognition of the relevant application has been made appropriately in accordance with the Patent Cooperation Treaty and regulations thereunder.

(4) If the Commissioner of the Korean Intellectual Property Office has decided under paragraph (3) that the refusal, declaration, or recognition has not been made appropriately in accordance with the Patent Cooperation Treaty and regulations thereunder, the international application at issue shall be deemed a patent application filed on the date which would have been recognized as the international filing date, if no refusal, declaration, or recognition had been made with respect of the international application.

(5) When the Commissioner of the Korean Intellectual Property Office makes a decision on appropriateness under paragraph (3), he or she shall serve a certified copy of the decision on the relevant international patent applicant.

(6) Articles 199 (2), 200, 200-2, 201 (5) through (8), 202 (1) and (2), 208, and 210 shall apply mutatis mutandis to international applications deemed patent applications under paragraph (4). <Amended on Feb. 29, 2016>

(7) For the purposes of laying open an international application deemed a patent application under paragraph (4), "date specified in any of the following" in Article 64 (1) shall be construed as "priority date under Article 201 (1)".

## CHAPTER XI SUPPLEMENTARY PROVISIONS

### **Article 215 (Special Provisions concerning Patents or Patent Rights with at Least Two Claims)**

For the purposes of Article 65 (6), 84 (1) 2 or 6, 85 (1) 1 (limited to extinguishment), 101 (1) 1, 104 (1) 1, 3 or 5, 119 (1), 132-13 (3), 133 (2) or (3), 136 (7), 139 (1), 181, or 182 of this Act or Article 26 (1) 2, 4, or 5 of the Utility Model Act, a patent or a patent right with at least two claims shall be deemed granted for each claim. <Amended on Feb. 29, 2016; Mar. 29, 2016>

### **Article 215-2 (Special Provisions concerning Registration of Patent Applications with at Least Two Claims)**

(1) When a person who has received a decision on the grant of a patent for a patent application with at least two claims pays registration fees, he or she may relinquish any of the claims individually.

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

### **Article 216 (Inspection of Documents)**

(1) A person who intends to obtain a certificate or a certified copy or an abstract of a document concerning a patent application, a petition for patent revocation, or a trial or intends to inspect or photocopy the Patent Register or any document may file a request for inspection, etc. of such document with the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board. <Amended on Feb. 29, 2016>

(2) If the Commissioner of the Korean Intellectual Property Office or the President of the Korean Intellectual Property Trial and Appeal Board concludes that it is necessary to keep confidential any of the following documents, upon receipt of a request under paragraph (1), he or she may decide not to permit the applicant to inspect or photocopy the document: <Amended on Feb. 29, 2016>

1. A document concerning a patent application which has not been published or a patent application for which the grant of a patent has not been registered (excluding the earlier application, if the patent

application accompanied by priority claim under Article 55 (1) has been laid open or the grant of a patent according to such application has been registered);

2. A document concerning the trial on a decision to reject a patent application under Article 132-17 with respect to a patent application that has not been laid open or the grant of a patent that has not been registered;

3. A document that is liable to negatively affect public order, morality, or public health.

#### **Article 217 (Prohibition of Disclosure and Appraisal of Documents Relating to Patent Applications)**

(1) Documents concerning patent applications, examinations, petitions for patent revocation, trials, or retrials or the Patent Register may be removed from the office premise, only in any of the following cases:

*<Amended on Feb. 29, 2016; Dec. 2, 2016; Nov. 28, 2017; Apr. 17, 2018; Aug. 17, 2021>*

1. Where documents concerning patent applications or examinations are removed from the office premise for the purpose of searching prior art, etc. under Article 58 (1), (3), or (4);

1-2. Where documents concerning patent applications, examinations, petitions for revoking patents, trials, and retrials or the Patent Register are removed from the office premise for the purpose of mediation under Article 164-2 (2);

2. Where documents concerning patent applications, examinations, petitions for patent revocation, trials, and retrials or the Patent Register are removed from the office premise to entrust the work of digitization of patent documents under Article 217-2 (1);

3. Where documents concerning patent applications, examinations, petitions for patent revocation, trials, and retrials or the Patent Register are taken out of the office premise for teleworking at home under Article 32 (2) of the Electronic Government Act;

4. Where documents concerning patent applications or examinations are taken out of the office premise for implementing a business agreement with a foreign intellectual property office or an international organization.

(2) No expert opinion, testimony, or answer may be given in response to an inquiry about a case for which a patent application, examination, trial, or retrial is pending, or an inquiry about a decision or trial ruling on whether to grant or refuse a patent, or about the details of a decision. *<Amended on Feb. 29>*

(3) Matters necessary for determining requirements and procedures for taken out of the office premise, types of documents, etc. under paragraph (1) 4 shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy. *<Newly Inserted on Nov. 28, 2017>*

#### **Article 217-2 (Agency for Digitization of Patent Documents)**

(1) If deemed necessary for efficiently conducting patent-related procedures, the Commissioner of the Korean Intellectual Property Office may entrust the digitization of documents relating to patent applications, examinations, petitions for patent revocation, trials, and retrials or the Patent Register or any similar tasks (hereinafter referred to "digitization of patent documents") through an electronic information

processing system and technologies applied to the electronic information processing system to a corporation equipped with the facilities and human resources specified by Ordinance of the Ministry of Trade, Industry and Energy. *<Amended on Jun. 11, 2014; Feb. 29, 2016>*

(2) Deleted. *<Mar. 3, 2006>*

(3) No current or former executive or employee of the corporation entrusted with the digitization of patent documents under paragraph (1) (hereinafter referred to as "agency entrusted with the digitization of patent documents") shall divulge confidential information on any invention claimed in a patent application he or she has become aware of in the course of performing his or her duties, or pirate such confidential information. *<Amended on Jun. 11, 2014>*

(4) Pursuant to paragraph (1), the Commissioner of the Korean Intellectual Property Office may digitize patent applications not submitted in electronic document under Article 28-3 (1), or other documents specified by Ordinance of the Ministry of Trade, Industry and Energy and may store such documents as files in the electronic information processing system operated by the Korean Intellectual Property Office or the Korean Intellectual Property Trial and Appeal Board. *<Amended on Jun. 11, 2014>*

(5) The data stored as files referred to in paragraph (4) shall be deemed the same as that recorded in the relevant paper documents. *<Amended on Jun. 11, 2014>*

(6) The methods for digitization of patent documents and other matters necessary for the digitization of patent documents shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy. *<Amended on Jun. 11, 2014>*

(7) If the agency entrusted with the digitization of patent documents fails to meet any of criteria for facilities and personnel prescribed by Ordinance of the Ministry of Trade, Industry and Energy under paragraph (1) or if an executive officer or employee of the said agency divulges or pirates any confidential information on any invention claimed in a patent application he or she has become aware of in the course of performing his or her duties, the Commissioner of the Korean Intellectual Property Office may request the agency to take measures for rectification, or may revoke the entrustment of digitization of patent documents if such agency fails to take measures as requested. In such cases, the Commissioner of the Korean Intellectual Property Office shall provide the agency with an opportunity to explain before revocation. *<Amended on Jun. 11, 2014; Apr. 17, 2018>*

#### **Article 218 (Service of Documents)**

Matters necessary for the procedure for service of documents, etc. specified in this Act shall be prescribed by Presidential Decree.

#### **Article 219 (Public Notice in Lieu of Service)**

(1) If it is impossible to serve a document on a person because his or her address or place of business of the person is unknown, public notice shall be given in lieu of service.



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

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

#### **Article 220 (Service on Overseas Residents)**

(1) Documents to be served on an overseas resident shall be served on his or her patent administrator, if the overseas resident has appointed a patent administrator.

(2) Documents to be served on an overseas resident may be posted to the overseas resident by registered airmail, if the overseas resident has not appointed a patent administrator.

(3) Documents posted by registered airmail under paragraph (2) shall be deemed served on the mailing date of the documents.

#### **Article 221 (Patent Gazette)**

(1) The Commissioner of the Korean Intellectual Property Office shall publish the Patent Gazette, as prescribed by Presidential Decree.

(2) The Patent Gazette may be published by electronic media, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

(3) If the Patent Gazette is published by electronic media, the Commissioner of the Korean Intellectual Property Office shall give public notice of the issuance of the Patent Gazette, an executive summary thereof, and matters concerning service via information and communications networks.

#### **Article 222 (Submission of Documents)**

The Commissioner of the Korean Intellectual Property Office or an examiner may order a party to submit documents and articles necessary for any procedure, other than a procedure for a petition for patent revocation, a trial, or a retrial. *<Amended on Feb. 29, 2016>*

#### **Article 223 (Indication of Patent or Patent Pending)**

(1) A patentee and an exclusive or non-exclusive licensee may indicate his or her patented products by either of the following manners: *<Amended on Feb. 29, 2016; Mar. 21, 2017>*

1. If the patent is for the invention of a product: The word "patented" and the patent number shall be indicated on the product;
2. If the patent is for the invention of a process for manufacturing a product: The words "patented process" and the patent number shall be indicated on the product made by patented process;
3. Deleted. *<Mar. 21, 2017>*

(2) A patent applicant may indicate "patent pending" (hereinafter referred to as "indication of patent pending") on his or her products by either of the following manners: *<Amended on Mar. 21, 2017>*

1. If the patent application is for the invention of a product: The words "patent pending (under examination)" and the application number shall be indicated on the product;

2. If the patent application is for the invention of a process for manufacturing a product: The words "patent pending for process (under examination)" and the application number shall be indicated on the product made by patented process.

(3) If it is impossible to indicate as either patent or patent pending under paragraph (1) or (2) on a product, the product is indicated as "patent" or "patent pending" on the container or its package. *<Newly Inserted on Mar. 21, 2017>*

(4) Other matters necessary for the indication of patent or patent pending shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy. *<Newly Inserted on Mar. 21, 2017>*

#### **Article 224 (Prohibition of False Indication)**

No person shall commit any of the following acts:

1. Indicating "patented" or "patent pending" or any similar misleading word on any unpatented thing, anything for which no patent application has been filed, anything manufactured by any unpatented process or by any process for which no patent application has been filed, or any container or packaging of such thing;

2. Assigning, leasing, or displaying a thing bearing an indication referred to in subparagraph 1;

3. Indicating a thing referred to in subparagraph 1 with any such words meaning that the thing is patented, that a patent is pending for the thing, or that the thing has been manufactured by a patented process or by a process for which a patent is pending or with any similar misleading word, in an advertisement, sign, or name tag to manufacture, use, assign, or lease the thing;

4. Indicating any unpatented process or any process for which no patent application has been filed, as "patented" or "patent pending", or any similar misleading word, in an advertisement, sign, or name tag to use, assign, or lease the process.

#### **Article 224-2 (Unappealability)**

(1) No appeal may be filed under any other Act against a decision to dismiss an amendment without prejudice, a decision on patentability, a decision or a trial ruling to revoke a patent, a petition for patent revocation, or a decision to dismiss a petition for trial or retrial, without prejudice, on a petition for patent revocation or a petition for trial or retrial may be filed under any other Act, and no appeal may be filed under any other Act against any disposition against which no appeal is permitted under this Act. *<Amended on Feb. 29, 2016>*

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

### **Article 224-3 (Orders to Maintain Confidentiality)**

(1) If a party establishes a prima facie case of the party's trade secret on any of the following grounds in legal proceedings on infringement of a patent or exclusive license, the court may, upon the party's request, order the other party (if the party is a corporation, its representative), the person who represents the other party in the legal proceedings, or any other person who becomes aware of the trade secret in the course of the legal proceedings not to use the trade secret for any purpose other than continuance of the legal proceedings, and not to disclose the trade secret to any person other than the persons in receipt of the order under this paragraph in connection with the trade secret: Provided, That the foregoing shall not apply where the other party (if the party is a corporation, its representative), the person who represents the other party in the legal proceedings, or any other person who becomes aware of the trade secret in the course of the legal proceedings has already acquired the trade secret by any means other than inspection of trial briefs and examination of evidence referred to in subparagraph 1 before the request is filed: <Amended on Mar. 29, 2016>

1. The trade secret is included in a trial brief already submitted or to be submitted, in an evidentiary material already examined or to be examined, or materials submitted or to be submitted pursuant to Article 132 (3);
  2. The trade secret referred to in subparagraph 1 is likely to hinder the party's business operations, if used or disclosed for any purpose other than the continuance of the relevant legal proceedings, and thus the use or disclosure of such trade secret needs to be restricted to prevent such hindrance.
- (2) A request for an order under paragraph (1) (hereinafter referred to as "order to maintain confidentiality") shall be filed in writing, declaring the following matters:
1. The person to whom the order to maintain confidentiality shall be issued;
  2. Facts sufficient for specifying the trade secret to be protected by the order to maintain confidentiality;
  3. The facts relevant to the ground under any subparagraph of paragraph (1).
- (3) When a court decides to issue an order to maintain confidentiality, it shall serve a written decision on the persons to whom the order to maintain confidentiality is issued.
- (4) An order to maintain confidentiality shall take effect when the written decision under paragraph (3) is served on the persons to whom the order to maintain confidentiality is issued.
- (5) An immediate appeal may be filed against a decision to reject a request for an order to maintain confidentiality, with or without prejudice.

### **Article 224-4 (Revocation of Orders to Maintain Confidentiality)**

(1) If a person who has filed a request for an order to maintain confidentiality or a person to whom an order to maintain confidentiality was issued fails or ceases to meet any of the requirements prescribed under Article 224-3 (1), he or she may file a request to revoke the order to maintain confidentiality with the court that keeps the relevant litigation records (or the court that issued the order to maintain

confidentiality, if no court keeps the litigation records).

(2) When a court makes a decision on a request to revoke an order to maintain confidentiality, it shall serve a written decision on the applicant for request and adverse parties.

(3) An immediate appeal may be filed against a decision on revocation of an order to maintain confidentiality.

(4) A decision to revoke an order to maintain confidentiality shall take effect when it becomes final and conclusive.

(5) When a court decides to revoke an order to maintain confidentiality, it shall immediately notify the persons to whom the order to maintain confidentiality of the relevant trade secret was issued, of the fact that a decision is made to revoke the order to maintain confidentiality, in addition to the applicant for request to revoke the order to maintain confidentiality and adverse parties.

#### **Article 224-5 (Notice on Request for Inspection of Litigation Records)**

(1) If a decision under Article 163 (1) of the Civil Procedure Act is rendered with respect to litigation records concerning legal proceedings in which an order to maintain confidentiality had been issued (excluding legal proceedings in which an order to maintain confidentiality has been revoked), and an applicant for request to inspect confidential records, etc. defined under the same paragraph is not subject to the order to maintain confidentiality in the relevant legal proceedings, a Grade IV, V, VI, or VII court official (hereafter referred to as "court official" in this Article) shall notify the applicant for request under Article 163 (1) of the Civil Procedure Act (excluding the applicant for request for inspection, etc.; hereafter the same shall also apply in paragraph (3)) of the fact that the request for inspection, etc. was filed immediately after the request.

(2) In cases falling under paragraph (1), no court official shall permit inspection, etc. of confidential records under paragraph (1) by an applicant for request therefor before the lapse of two weeks from the filing date of the request under paragraph (1) (or before the date when the decision on the request to issue an order to maintain confidentiality to the applicant for request under paragraph (1) becomes final and conclusive, if the request for the order to maintain confidentiality was filed before the date).

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

## **CHAPTER XII PENALTY PROVISIONS**

#### **Article 225 (Infringement)**

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

(2) No person who commits a crime under paragraph (1) shall be prosecuted against the express will of the victim. <Amended on Oct. 20, 2020>

#### **Article 226 (Divulgence of Confidential Information)**

(1) Any current or former employee of the Korean Intellectual Property Office or the Korean Intellectual Property Trial and Appeal Board who divulges or pirates confidential information he or she has become aware of regarding an invention claimed in a pending patent (including an invention claimed in a pending international patent application) 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. <Amended on Apr. 20, 2021>

(2) Where any current or former professional examiner divulges confidential information about other persons, which he or she has learned in the course of performing his or her duties, he or she shall be punished by imprisonment with or without labor for up to two years, or by a fine not exceeding 10 million won. <Newly Inserted on Apr. 20, 2021>

#### **Article 226-2 (Executive Officers and Employees of Specialized Agencies Deemed Public Officials)**

(1) Any current or former executive officer or employee of a specialized agency designated under Article 58 (2), a dedicated agency under Article 58 (3), or an agency for digitization of patent documents shall be deemed a current or former employee of the Korean Intellectual Property Office or the Korean Intellectual Property Trial and Appeal Board for the purposes of Article 226 (1). <Amended on Dec. 2, 2016; Apr. 17, 2018; Apr. 20, 2021>

(2) Professional examiners shall be deemed public officials in applying Articles 129 through 132 of the Criminal Act. <Newly Inserted on Apr. 20, 2021>

#### **Article 227 (Perjury)**

(1) Any witness, expert witness, or interpreter who makes a false statement under oath taken under this Act in his or her testimony, expert opinion, or interpretation before the Korean 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 on Mar. 21, 2017>

(2) If a person who committed a crime specified in paragraph (1) confesses before the decision or trial ruling on a petition for revoking the patent at issue becomes final and conclusive, the sentence upon him or her may be mitigated or remitted. <Amended on Feb. 29, 2016>

#### **Article 228 (False Indication)**

Any person who violates Article 224 shall be punished by imprisonment with labor for not more than three years, or by a fine not exceeding 30 million won. <Amended on Mar. 21, 2017>

### **Article 229 (Fraud)**

Any person who obtains a patent, the registration of an extension of the valid term of a patent, or a decision on an application, or a trial ruling in his or her favor 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 on Feb. 29, 2016; Mar. 21, 2017>

### **Article 229-2 (Breaches of Orders to Maintain Confidentiality)**

(1) Any person who breaches an order to maintain confidentiality issued under Article 224-3 (1), inside or outside of the Republic of Korea, without just grounds shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding 50 million won.

(2) No person shall be prosecuted for committing a crime under paragraph (1) without a criminal complaint filed by the person who has requested to issue the order to maintain confidentiality.

### **Article 230 (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 prescribed under Article 225 (1), 228, or 229 in connection with the business of the corporation or the individual, not only shall such offender be punished, but the corporation also shall be punished by the fine prescribed in the following subparagraph, and the individual by the 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 business to prevent such offence:

1. For a violation of Article 225 (1): A fine not exceeding 300 million won;
2. For a violation of Article 228 or 229: A fine not exceeding 60 million won.

### **Article 231 (Confiscation)**

(1) Any product created by an infringement prescribed under Article 225 (1) or any product obtained by such infringement shall be confiscated or ordered to be delivered to the injured party upon the injured party's request.

(2) If the injured party accepts the product delivered under paragraph (1), he or she may claim damages only for the portion exceeding the value of the product.

### **Article 232 (Administrative Fines)**

(1) Any of the following persons shall be subject to an administrative fine not exceeding 500,000 won:

1. A person who makes a false statement before the Korean Intellectual Property Trial and Appeal Board under oath taken under Article 299 (2) or 367 of the Civil Procedure Act;

2. A person who has been ordered by the Korean Intellectual Property Trial and Appeal Board to submit or present a document or any other thing in connection with examination or preservation of evidence, but fails to comply with the order without just grounds;
  3. A person who has been summoned by the Korean Intellectual Property Trial and Appeal Board to appear as a witness, expert witness, or interpreter, but fails to comply with the summon, or refuses to take an oath or make a statement as a witness, expert, or interpreter, without just grounds.
- (2) Administrative fines referred to in paragraph (1) shall be imposed and collected by the Commissioner of the Korean Intellectual Property Office, as prescribed by Presidential Decree.

ADDENDA <Act No. 4207, Jan. 13, 1990>

**Article 1 (Enforcement Date)**

This Act shall enter into force on September 1, 1990: Provided, That matters concerning Chapter II of the Patent Cooperation Treaty as prescribed in Articles 201, 205 and 211 shall enter into force on the day on which Chapter II of the Patent Cooperation Treaty takes effect to the Republic of Korea.

**Article 2 (General Transitional Measures)**

Except as otherwise provided for in Articles 3 through 9 of this Addenda, this Act shall also apply to matters having taken place before this Act enters into force: Provided, That any effect manufactured pursuant to the previous provisions shall not be affected.

**Article 3 (Transitional Measures concerning Patent Application)**

The examination as to a patent application and the appellate trial as to a refusal ruling, which are made before this Act enters into force, shall be governed by the previous provisions.

**Article 4 (Transitional Measures concerning Trial on Patent for Which Right Is Established)**

The trial, appellate trial, review and lawsuit on a patent for which a right is established on the basis of a patent application filed before this Act enters into force, shall be governed by the previous provisions.

**Article 5 (Transitional Measures concerning Submission of Priority Evidentiary Documents under Treaty)**

The period for submitting priority evidentiary documents of a patent application which requests a priority to the Republic of Korea before this Act enters into force, shall be governed by the previous provisions.

**Article 6 (Transitional Measures concerning Rejection of Correction)**

Any correction made before this Act enters into force shall be governed by the previous provisions.

**Article 7 (Transitional Measures concerning Duration of Patent Rights)**

The duration of any patent right established before this Act enters into force and that established by patent application shall be governed by the previous provisions.

**Article 8 (Transitional Measures concerning Expropriation of Patent Rights)**

Any disposition or lawsuit on restriction, expropriation, revocation, or embodiment of a patent right, which is requested before this Act enters into force, shall be governed by the previous provisions.

## **Article 9 (Transitional Measures concerning Procedures and Expenses of Trial, and Compensation for Losses)**

The procedures, expenses, and compensation for losses, etc. concerning any trial, appellate trial, review and lawsuit, which are requested before this Act enters into force, shall be governed by the previous provisions.

ADDENDA <Act No. 4541, Mar. 6, 1993>

### **Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

### **Articles 2 through 5 Omitted.**

ADDENDA <Act No. 4594, Dec. 10, 1993>

(1) (Enforcement Date) This Act shall enter into force on January 1, 1994.

(2) (Transitional Measures concerning Period for Refund of Patent Fees) Patent fees and official fees erroneously paid before this Act enters into force, shall be refunded under the previous provisions.

(3) (Applicability to Refund of Patent Fees) The amended provisions of Article 84 (1) 2 and 3 concerning the refund of patent fees due to a final decision on nullity of a patent, shall apply to those on which a decision on nullity becomes conclusive after this Act enters into force.

ADDENDA <Act No. 4757, Mar. 24, 1994>

### **Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation.

### **Articles 2 through 5 Omitted.**

ADDENDA <Act No. 4892, Jan. 5, 1995>

### **Article 1 (Enforcement Date)**

This Act shall enter into force on March 1, 1998.

### **Article 2 (Transitional Measures on Pending Cases)**

(1) Any case for which a request for trial has been made or a pending case for which a request for appellate trial against a ruling of refusal, decision of revocation, or a decision of rejection for correction before this Act enters into force shall be deemed to have made a request against a trial with the Korean Intellectual Property Trial and Appeal Board and to have been pending therein. <Amended by Act No. 5329, Apr. 10, 1997>



(2) Any case for which a request for trial and decision has been made or a pending case for which a request for immediate appeal against a decision of dismissal for request for trial before this Act enters into force shall be deemed to have brought a litigation against the Patent Court under this Act and to have been pending therein.

### **Article 3 (Transitional Measures on Cases against Which Dissatisfactions May Be Brought)**

(1) Any litigation may be brought against a case on which a trial, a decision of rejection for request for trial, a ruling of refusal, or a decision of dismissal for correction by an examiner as at the time this Act enters into force, and against which a dissatisfaction has not brought with the board of patent appeals under the previous provisions, within 30 days from the date this Act enters into force, a litigation referred to in Article 186 (1) may be brought against a trial and decision of the trial and a decision of rejection for request for trial, and a trial referred to in Article 132-3 or 132-4 may be requested against a ruling of refusal, or a decision of dismissal for correction by an examiner: Provided, That where any period for dissatisfaction has expired under the previous provisions as at the time this Act enters into force, the same shall not apply. <Amended by Act No. 5329, Apr. 10, 1997>

(2) Any dissatisfaction may be brought against a case on which a trial and decision of a trial, a decision of rejection for request for appellate trial and a decision of rejection for correction by the appellate trial judge as at the time this Act enters into force has been served, with the Supreme Court within 30 days from the date this Act enters into force: Provided, That where any period for dissatisfaction has expired under the previous provisions as at the time this Act enters into force, the same shall not apply.

(3) Any case against which a dissatisfaction has been brought with the Supreme Court and which is pending therein before this Act enters into force and any case against which a dissatisfaction on has been brought pursuant to paragraph (2) shall be deemed to have been pending or to have been brought against the Supreme Court.

### **Article 4 (Transitional Measures on Review Cases)**

Articles 2 and 3 of Addenda shall apply mutatis mutandis to any review case pending.

### **Article 5 (Transfer of Documents)**

(1) The Commissioner of the Korean Intellectual Property Office shall transfer documents on a pending case referred to in Article 2 (1) of Addenda (including those applied mutatis mutandis under Article 4 of Addenda) without delay to the President of the Korean Intellectual Property Trial and Appeal Board.

(2) The Commissioner of the Korean Intellectual Property Office shall transfer documents on a pending case referred to in Article 2 (2) of Addenda (including those applied mutatis mutandis under Article 4 of Addenda) without delay to the chief Justice of the Patent Court. In such cases, matters necessary for the transfer etc. of documents shall be determined by the Supreme Court Regulations.

### **Article 6 Omitted.**

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 1996.

**Article 2 (Transitional Measures concerning Invention of Substance to Be Manufactured by Nuclear Conversion Method)**

(1) Any applicant of a patent specifying an invention of a substance to be manufactured by the nuclear conversion method, in the specification or drawings appended first to the patent application of those pending before the Korean Intellectual Property Office (excluding cases where a certified copy of the patent ruling is served), as at the time this Act enters into force, may correct such specification or drawings within six months after this Act enters into force.

(2) The correction as referred to in paragraph (1) shall be deemed the correction made prior to the service of a certified copy of the decision on public announcement on application.

**Article 3 (Transitional Measures concerning Duration of Patent Rights)**

(1) This Act shall not apply to any patent right, the duration of which is terminated pursuant to the previous provisions before this Act enters into force.

(2) The duration of the patent rights existing, or those the application of which is pending before the Korean Intellectual Property Office, and the duration of which is to be shortened due to the enforcement of this Act, as at the time this Act enters into force, shall be governed by the previous provisions.

**Article 4 (Special Cases for Recognition of Non-Exclusive Licenses for Those Preparing Embodiment Project)**

(1) In the event that the patent right to the invention of substance to be manufactured by the nuclear conversion method is established under the amended provisions of Article 32, the person who is carrying on or preparing for the embodiment project of such invention in Korea before January 1, 1995, shall have a non-exclusive license of the patent right to such invention, in the limit of the object of such invention or project which is embodied or prepared.

(2) In the event that the term of a patent right is extended by the enforcement of this Act, any person who is preparing the embodiment project of the invention in Korea before January 1, 1995, in anticipation of the termination of such patent right pursuant to the previous provisions, shall have a non-exclusive license as to such patent right, to the extent of the object of the invention and business which he or she is preparing, during the term extended by the enforcement of this Act from the expiration of the duration as set forth by the previous provisions.

(3) Any person who holds a non-exclusive license under paragraphs (1) and (2), shall pay a considerable compensation to the patentee or exclusive licensee.

(4) The provisions of Article 118 (2) shall be applicable mutatis mutandis to non-exclusive licenses as referred to in paragraphs (1) and (2).

**Article 5 (Transitional Measures concerning Procedures and Expenses of Trial, and Compensation for Losses)**

The procedures, expenses, and compensation for losses, etc. concerning any trial, appellate trial, review and lawsuit, which are requested against any act committed before this Act enters into force, shall be governed by the previous provisions.

ADDENDA <Act No. 5329, Apr. 10, 1997>

#### **Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 1997: Provided, That Articles 15 (2), 16 (1) and (2), 46, 132-3, 140-2, 164 (1), 170, 171 (2), 172, 176 (1) and (2), 224-2 of this Act and Articles 2 (1) and 3 (1) of Addenda to the Patent Act (Act No. 4892) shall enter into force on March 1, 1998.

#### **Article 2 (Special Cases concerning Patent Objections)**

(1) In applying Article 6, "request an appellate trial against a ruling of refusal under Article 167" in the same Article shall be construed as "request an appellate trial against a ruling of refusal or a decision of revocation under Article 167" until February 28, 1998.

(2) In applying Article 164 (1), "until the decision of another trial or appellate trial becomes definite" in the same paragraph shall be construed as "until a decision on a patent objection, of another trial or appellate trial becomes definite" until February 28, 1998.

(3) In applying Article 170 (1), "Articles 50, 51, 63 and 66 through 75" in the former part of the same paragraph shall be construed as "Articles 51, 63 and 66" and the latter part of the same paragraph shall be deemed to be deleted until February 28, 1998, and in applying paragraph (3) of the same Article, "Article 51 (4) through (6)" in the same paragraph shall be construed as "Article 51 (1) and (5)" until February 28, 1998.

(4) In applying Article 171 (3) and (4), "ruling of refusal" in the same paragraph shall be construed as "ruling of refusal or decision of revocation" until February 28, 1998.

(5) In applying Article 172, "procedure for the patent, which was taken for the examination or trial" in the same Article shall be construed as "procedure for the patent, which was taken for the examination, patent objection or trial" until February 28, 1998.

(6) In applying Article 176, "shall reverse the refusal ruling or decision on trial" in the same Article shall be construed as "shall reverse or revoke the refusal ruling, decision of revocation or decision on trial" until February 28, 1998.

#### **Article 3 (Transitional Measures concerning Modification of Patent Objection System)**

(1) Any application for a patent which has been pending before the Korean Intellectual Property Office before this Act enters into force and on which a certified copy of decision to publish application has been served, and any patent, patent right, trial or review related to the application for a patent on which a certified copy of decision to publish application has been served before this Act enters into force shall be governed by the previous provisions.

(2) Any application for a patent on which a copy of decision to publish application has been served before this Act enters into force or any application for a patent which has been filed on the same invention as the invention or device described in the specification or drawings initially attached to the patent application after the date of application for a utility model registration shall, notwithstanding the amended provisions of Article 29 (3), be governed by the previous provisions.

#### **Article 4 (Transitional Measures concerning Penalty Provisions)**

The application of penalty provisions to acts committed before this Act enters into force shall be governed by the previous provisions.

#### **Article 5 Omitted.**

ADDENDA <Act No. 5576, Sep. 23, 1998>

#### **Article 1 (Enforcement Date)**

This Act shall enter into force on January 1, 1999: Provided, That Articles 193 (1) and 198-2, the amended provisions concerning the effect of specification, claims, drawings and abstracts of an international patent application made in Korean of Article 201 (6), the amended provisions concerning the exemption of submission of translations with respect to an international patent application made in the Korean language of Article 208 (1) and the amended provisions concerning the exemption of submission of translations with respect to an international patent application made in Korean of Article 210, shall enter into force on the date when a convention which the Government of the Republic of Korea concludes with the International Bureau in connection with the appointment of an international search authority enters into force, and the amended provisions of Articles 6, 11, 29, 36, 49, 53, 55, 56, 59, 69, 87, 88, 102, 104, 133, 202, 209 and 215 of this Act, and those of Articles 21 and 22 of the Design Act in Article 5 (2) of this addenda shall enter into force on July 1, 1999.

Effective Date of the Agreement: Dec. 1, 1999

#### **Article 2 (General Transitional Measures)**

The previous provisions shall apply to a patent application made under the previous provisions as at the time this Act enters into force, and the patent registration, patent right, opposition to a patent, trial, review and litigation related thereto.

#### **Article 3 (Applicability to Disposition of Procedures Related to Filing of Patent Application by Means of Electronic Documents)**

The amended provisions of Articles 28-3 and 217-2 (5) involving patent application and opposition-related procedures shall apply with respect to a patent application that is filed from January 1, 1999.

<Amended by Act No. 6768, Dec. 11, 2002>

#### **Article 4 (Applicability to Requirements for Patents)**

The amended provisions of Article 29 (3) shall apply in cases where an invention for which a patent application is made after this Act enters into force (hereafter referred to as "later-filed invention" in this

Article) is the same as a device described in the specifications or drawings appended to a written application for utility model registration, which was filed before this Act enters into force and which was laid open after the filing date of the patent application for a later-filed invention.

**Article 5 Omitted.**

ADDENDA <Act No. 6024, Sep. 7, 1999>

**Article 1 (Enforcement Date)**

This Act shall enter into force on October 1, 2000. (Proviso Omitted.)

**Articles 2 through 13 Omitted.**

ADDENDA <Act No. 6411, Feb. 3, 2001>

(1) (Enforcement Date) This Act shall enter into force on July 1, 2001: Provided, That the amended provisions of Articles 56 (1), 84 (2) and (3), the proviso of Article 217 (1) and Article 229-2 shall enter into force on the date of its promulgation.

(2) (Applicability to Requirements for Patents) The amended provisions of Articles 29 (1) 2 and 30 (1) 1 (c) shall apply to a patent application that is filed on and after this Act enters into force.

(3) (General Transitional Measures) The previous provisions shall apply to an examination, patent registration, patent right, opposition to a patent, trial, retrial and litigation related to a patent application which is made under the previous provisions as at the time this Act enters into force: Provided, That this shall not apply to any of the following cases: <Amended by Act No. 7871, Mar. 3, 2006>

1. Where an opposition to a patent is made, Articles 136 (9) and 140 (2) as applied mutatis mutandis under amended Article 77 (3) shall apply;
2. Where a patent application or patent right is deemed to have retroactive effect, amended Article 81-2 shall apply;
3. Where a trial to invalidate a patent is requested, amended Article 133-2 (1), (2), amended Articles 136 (3) through (5), (7) through (11), 139 (3), 140 (1), (2) and (5), and 136 (1) as applied mutatis mutandis under amended Article 133-2 (3) shall apply;
4. Where a trial against ruling of refusal of patent application is requested, the amended provisions of the proviso of Article 140-2 (1), and (3) shall apply;
5. Where each claim of a patent application with two or more claims is abandoned, amended Article 215-2 shall apply.

ADDENDA <Act No. 6582, Dec. 31, 2001>

- (1) (Enforcement Date) This Act shall enter into force six months after the date of its promulgation.
- (2) (Transitional Measures for State or Public Patents) The patents and the rights eligible to obtain the patent on the in-service inventions of the teachers and staff of any State or public school, which have owned by the State or local government as at the time this Act enters into force, shall pass to the fully-responsible systems of the school at the time of such in-service inventions.
- (3) (Transitional Measures for State or Public Utility Model Rights) With regard to the transfer of the utility model rights for an in-service device and in-service creation of the teachers and staff of any State or public school, the rights eligible to obtain a registration of utility model, and the design rights and the rights eligible to obtain a registration of design, which have owned by the State or local government as at the time this Act enters into force, the amended provisions of Article 39 and paragraph (2) of the Addenda applied mutatis mutandis respectively in Article 20 of the Utility Model Act and in Article 24 of the Design Act shall apply mutatis mutandis.

ADDENDA <Act No. 6626, Jan. 26, 2002>

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2002.

**Articles 2 through 7 Omitted.**

ADDENDA <Act No. 6768, Dec. 11, 2002>

- (1) (Enforcement Date) This Act shall enter into force five months after the date of its promulgation: Provided, That the amended provisions of Article 201 (1) shall enter into force three months after the date of its promulgation.
- (2) (Applicability to Handling of Opposition to Grant of Patent) The amended provisions of Article 78-2 shall apply to an opposition to the grant of a patent which is filed on and after the date this Act enters into force.
- (3) (Transitional Measures on Period for Submitting Domestic Documents on International Patent Applications) Notwithstanding the amended provisions of Article 201 (1), the previous provisions shall apply with respect to an international patent application for which the period for submitting domestic documents has expired as at the time this Act enters into force.

ADDENDA <Act No. 7289, Dec. 31, 2004>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation.

**Articles 2 through 5 Omitted.**

ADDENDA <Act No. 7427, Mar. 31, 2005>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation: Provided, That ... (omitted) ... Article 7 (excluding paragraphs (2) and (29)) of the Addenda shall enter into force on January 1, 2008.

**Articles 2 through 7 Omitted.**

ADDENDUM <Act No. 7554, May 31, 2005>

This Act shall enter into force six months after the date of its promulgation: Provided, That the amended provisions of Article 81-3 shall enter into force on September 1, 2005.

ADDENDA <Act No. 7869, Mar. 3, 2006>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation. (Proviso Omitted.)

**Articles 2 through 6 Omitted.**

ADDENDA <Act No. 7871, Mar. 3, 2006>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation: Provided, That the amended provisions of Articles 3 (3), 6, 7-2 and 11 (1), subparagraph 7 of Article 20, subparagraph 6 of Article 21, and Articles 29 (1), (3) and (4) (amendments related to the Utility Model Act), 31, 36 (3), 49, 52, 53, 55 (1), (3) and (4) (amendments related to the Utility Model Act), 56 (1), 58, 58-2, 59 (3), 62, 63-2, 64, 87 (2), 88 (4), 102 (4) (amendments related to the Utility Model Act), 104 (1), 133 (1), 133-2 (4), 135 (1), 154 (8), 193 (1), 202 (3) (amendments related to the Utility Model Act) and (4), 204 and 205 (amendments related to the relevant date), 208 (3), 209, 213, 215 (amendments related to the Utility Model Act), and 229-2 shall take effect on October 1, 2006; and the amended provisions of Articles 3 (2), 4, 15 (1), 35, 55 (3) (amendments related to the patent objections), 57 (1), 65 (6), 69 through 78, 78-2, 84 (1), 132-3, 136 (1) and (6), 137 (1), 140-2, 148, 164 (1), 165 (3) and (4) (amendments related to the patent objections), 171 (2), 172, 176 (1) and (2), 181 (1), 212, 214 (5), 215, 217 (1) (amendments related to the patent objections) and (2), 217-2 (1) and (2) (amendments related to the patent objections), 224-2 (1) (amendments related to the patent objections), 226 (2), and 228, on July 1, 2007.

**Article 2 (Applicability to Patent Requirements)**

The amended provisions of Articles 29 (1) 1, 30 (1) and 36 (4) shall apply from the first patent application filed after this Act enters into force.

**Article 3 (Applicability to Refund of Patent Fees)**

The amended provisions of Article 84 (2) and (3) shall apply with respect to a decision revoking a patent, or a trial ruling invalidating a patent or the registration of the extended term of a patent which becomes final and conclusive after this Act enters into force.

**Article 4 (Applicability to Revision of Patent Invalidation Trial)**

The amended provisions of the proviso of Article 133 (1) (excluding subparagraphs 7 and 8) shall apply to a patent, the establishment of which is registered after this Act enters into force.

**Article 5 (Applicability to Remuneration for Patent Attorney)**

The amended provisions of Article 191-2 shall apply to a fee payable to a patent attorney who performs a lawsuit on behalf of a party after this Act enters into force.

**Article 6 (General Transitional Measures)**

The previous provisions shall apply to the examination of a patent application filed under the previous provisions as at the time this Act enters into force, and the patent registration, patent, trial, retrial and litigation related thereto: Provided, That the calculation of a period shall be governed by the amended provisions of subparagraph 4 of Article 14, and a request for the invalidation trial of the patent shall be governed by the amended provisions of Article 133-2 (4), and a request for a trial to confirm the scope of the patent right, by the amended provisions of Article 135 (1).

**Article 7 (Transitional Measures concerning Abolition of Patent Objection System)**

The previous provisions shall apply to a patent objection against a patent, the establishment of which is registered prior to July 1, 2007.

ADDENDA <Act No. 8171, Jan. 3, 2007>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation. (Proviso Omitted.)

**Articles 2 through 6 Omitted.**

ADDENDA <Act No. 8197, Jan. 3, 2007>

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2007.

**Article 2 (Applicability to Patent Applications)**

The amended provisions of Articles 42, 47 (1) and 55 (3), proviso of Article 59 (2), subparagraph 4 of Article 62, Article 63-2, proviso of Article 64 (1), the latter parts of Articles 170 (1) and 174 (2) shall



apply from the first patent application filed after this Act enters into force.

**Article 3 (Applicability to Cancellation of Designation of Specialized Institutions)**

The amended provisions of Article 58-2 shall apply from the first violation made after this Act enters into force.

**Article 4 (Applicability to Refund of Official Fees for Patent Applications)**

The amended provisions of Article 84 (1) 4 shall apply from the first patent application filed after this Act enters into force.

**Article 5 (Applicability to Correction of Patent in Procedures of Patent Invalidation Trials)**

The amended provisions of Articles 133-2 and 137 shall apply from the first request for a patent invalidation trial made after this Act enters into force.

**Article 6 (Applicability to Amendment Made in Specification and Drawings at Trials to Confirm Scope of Rights)**

The amended provisions of Article 140 (2) 2 shall apply from the first request for a trial to confirm the scope of a patent right, filed after this Act enters into force.

**Article 7 (General Transitional Measures)**

The previous provisions shall apply to a patent application filed under the previous provisions as well as an examination, trial, retrial, or litigation with regard to such application as at the time this Act enters into force.

ADDENDA <Act No. 8357, Apr. 11, 2007>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation: Provided, That ... (omitted) ... and the amended provisions of Article 6 (4) of the Addenda shall enter into force on July 1, 2007.

**Articles 2 through 7 Omitted.**

ADDENDA <Act No. 8462, May 17, 2007>

(1) (Enforcement Date) This Act shall enter into force six months after the date of its promulgation.

(2) (Applicability to Refund of Patent Fees) The amended provisions of Article 84 (3) shall apply even to patent fees and official fees whose time period of the request for refund under the previous provisions does not elapse as at the time this Act enters into force.

ADDENDA <Act No. 8852, Feb. 29, 2008>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

**Articles 2 through 7 Omitted.**

ADDENDUM <Act No. 9249, Dec. 26, 2008>

This Act shall enter into force on the date of its promulgation.

ADDENDA <Act No. 9381, Jan. 30, 2009>

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2009: Provided, That the amended provisions of Articles 15 (1), 29 (4), 55, 56, 58 (1), 63 (2), 81-3, 90 (6), 140, 140-2 (2), 202, 204, 205, 207, 208, 214, 216, 226, 226-2, and 227 through 230 shall enter into force on the date of its promulgation.

**Article 2 (Applicability to Requirements for Patent of International Patent Application Filed in Korean)**

The amended provisions of Articles 29 (4), 204, 205 and 207 shall apply from the first international patent application filed in Korean on or after January 1, 2009.

**Article 3 (Applicability to Amendment to Patent Applications)**

The amended part related to the deletion of Article 47 (4) of the amended provisions of Article 47, the main clause of Article 51 (1) and Article 55 shall apply from the first amendment made after this Act enters into force. Where an amendment is made to a patent application filed before this Act enters into force, "period (in cases of subparagraph 3, that time)" in the proviso of the part other than the subparagraphs of Article 47 (1) shall be construed as "period"; "when an applicant requests a re-examination pursuant to Article 67-2" in subparagraph 3 of the same paragraph as "where a request for a trial against a ruling of refusal to grant a patent is made in accordance with Article 132-17, 30 days from the date of such request for a trial"; and "Article 47 (1) 2 and 3" in the main clause of Article 51 (1) as "Article 47 (1) 2". <Amended by Act No. 14035, Feb. 29, 2016>

**Article 4 (Applicability to Request for Re-Examination)**

The amended part related to a request for re-examination of the amended provisions of Article 47, the amended part related to a request for re-examination of the amended provisions of Article 51, and the amended provisions of Article 67-2 shall apply from the first patent application filed after this Act enters into force.

**Article 5 (Applicability to Divided Applications)**

The amended provisions of Article 52 shall apply to a divisional application based on the first patent application filed after this Act enters into force.

**Article 6 (Applicability to Ex Officio Amendments)**

The amended provisions of Article 66-2 shall apply from the first decision to grant a patent, made after this Act enters into force.

**Article 7 (Applicability to Late Payment and Remaining Payment of Patent Fees)**

The amended provisions of Articles 79, 81 and 81-2 shall apply from the first payment, late payment or remaining payment of patent fees, made after this Act enters into force.

**Article 8 (Applicability to Applications for Registration of Extension of Term of Patent Rights)**

The amended provisions of Article 90 (6) shall apply from the first application for registration of the extension of the term of a patent right, filed after this Act enters into force.

**Article 9 (Applicability to Amendment to Request for Trial)**

The amended provisions of Articles 140 and 140-2 (2) shall apply from the first request for a trial, made after this Act enters into force.

**Article 10 (General Transitional Measures)**

The previous provisions (excluding Articles 15 (1) and 216) shall apply to a patent application filed before this Act enters into force.

**Article 11 Omitted.**

ADDENDUM <Act No. 9985, Jan. 27, 2010>

This Act shall enter into force six months after the date of its promulgation: Provided, That the amended provisions of Article 96 shall enter into force on the date of its promulgation.

ADDENDA <Act No. 10012, Feb. 4, 2010>

**Article 1 (Enforcement Date)**

This Act shall enter into force three months after the date of its promulgation. (Proviso Omitted.)

**Articles 2 through 6 Omitted.**

ADDENDA <Act No. 10716, May 24, 2011>

(1) (Enforcement Date) This Act shall enter into force on July 1, 2011.

(2) (Applicability to Patent Applications) The amended provisions of Articles 42 (3), 63-2 and 133 (1) 1 shall apply from the first patent application filed after this Act enters into force.

ADDENDA <Act No. 11117, Dec. 2, 2011>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date when the Free Trade Agreement between the Republic of Korea and the United States of America and Exchange of Letters related to the Agreement takes effect: Provided, That the amended provisions of the proviso of Article 6 of the Addenda of the Patent Act (No. 7871) shall enter into force on the date of its promulgation.

**Article 2 (Applicability to Inventions Not Deemed to Be Publicly Known)**

The amended provisions of Article 30 shall apply from the first patent application filed after this Act enters into force.

**Article 3 (Applicability to Extension of Term of Patent Rights Following Delayed Registration)**

The amended provisions of Articles 83, 92-2 through 92-5, 93, 132-3, 134, 139, 165, 176 and 187 shall apply from the first patent application filed after this Act enters into force.

**Article 4 (Applicability to Order of Secrecy)**

The amended provisions of Articles 224-3 through 224-5 shall apply from the first lawsuit against infringement of a patent right or exclusive license filed after this Act enters into force.

**Article 5 (Transitional Measures concerning Repeal of Revocation of Patent Rights)**

The revocation of a patent right due to grounds for revocation of a patent right under the previous Article 116 before this Act enters into force, shall be governed by the previous provisions.

ADDENDA <Act No. 11654, Mar. 22, 2013>

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2013: Provided, That the amended provisions of Articles 44, 52 (4), 53 (6), 58-2 (2), 59 (3), 92 (1) shall enter into force on the date of its promulgation.

**Article 2 (Applicability to Invalidation of Procedure)**

The amended provisions of the main clause of Article 16 (2) and Articles 47 (4), 67-3, 81-3 (1), and 84 (1) 4 shall apply from the first patent applications filed on or after the date this Act enters into force.

**Article 3 (Applicability to Divisional Applications)**

The amended provisions of Article 52 (4) shall apply from the first divisional applications filed on or after the date such amended provisions enter into force.

**Article 4 (Applicability to Converted Applications)**

The amended provisions of Article 53 (6) shall apply from the first converted applications filed on or after the date such amended provisions enter into force.

**Article 5 (Applicability to Cancellation of Designation of Specialized Institutions)**

The amended provisions of Article 58-2 (2) shall apply from the first prior notice issued for the suspension of business operations on or after the date such amended provisions enter into force.

**Article 6 (Transitional Measure concerning Requirements for Patent Registration)**

Notwithstanding the amended provisions of Article 29 (1) 2 and subparagraph 2 of Article 129, the patent applications filed pursuant to the previous provisions before this Act enters into force shall be

governed by such previous provisions.

ADDENDA <Act No. 11690, Mar. 23, 2013>

**Article 1 (Enforcement Date)**

(1) This Act shall enter into force on the date of its promulgation.

(2) Omitted.

**Articles 2 through 7 Omitted.**

ADDENDA <Act No. 11848, May 28, 2013>

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2014. (Proviso Omitted.)

**Articles 2 through 20 Omitted.**

ADDENDA <Act No. 11962, Jul 30, 2013>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation. (Proviso Omitted.)

**Articles 2 through 10 Omitted.**

ADDENDA <Act No. 12313, Jan 21, 2014>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation.

**Article 2 (Transitional Measures concerning Incompetent Persons)**

Persons under adult guardianship and persons under limited guardianship under the amended provisions of Article 3 (1) shall be deemed to include persons who have been declared and is currently incompetent or quasi-incompetent under Article 2 of the Addenda to the Civil Act (Act No. 10429).

ADDENDA <Act No. 12753, Jun. 11, 2014>

**Article 1 (Enforcement Date)**

This Act shall enter into force on January 1, 2015: Provided, That the amended provisions of Article 81-3 (3) shall enter into force on the date of its promulgation.

**Article 2 (Applicability to Time of Arrival of Notice or Documents Served by Electronic Documents)**

The amended provisions of Article 28-5 (3) shall apply to notices and documents delivered or served under the amended provisions of Article 28-5 (1) after this Act enters into force.

**Article 3 (Applicability to Reinstatement of Patents Extinguished Due to Failure to Pay Patent Fees)**

The amended provisions of Article 81-3 (3) shall apply from the first request for reinstatement of a patent filed after this Act enters into force.

**Article 4 (Applicability to Trials for Correction)**

The amended proviso of Article 136 (1) and the amended proviso of Article 136 (6) shall apply from the first trial for correction for which a petition is filed after this Act enters into force.

**Article 5 (Applicability to Trials on Invalidation of Correction)**

The amended provisions of Article 137 (1) and (4) shall apply to the first trial on invalidation of correction for which a petition is filed after this Act enters into force.

**Article 6 (Applicability to Amendment of Petitioners for Trial)**

The amended provisions of Articles 140 (2) 1 and 140-2 (2) 1 shall apply to the first trial for which a petition is filed after this Act enters into force.

**Article 7 (Applicability to Provision of Information during Trials on Appeal against Decision Rejecting Patent Applications)**

The amended provisions of the former part of Article 170 (1) (limited to the part to which the amended provisions of Article 63-2 shall apply mutatis mutandis) shall also apply to patent applications on which trial on an appeal against a ruling to reject is pending as at the time this Act enters into force, notwithstanding Article 8 of this Addenda.

**Article 8 (General Transitional Measure)**

The previous provisions shall apply to patent applications filed before this Act enters into force, and examinations and trials pending on a patent application as at the time this Act enters into force.

**Article 9 (Transitional Measure concerning Requirements for Patent Registration)**

Notwithstanding the amended provisions of Article 29 (5) through (7), Article 55 (6), and Article 202 (2) and (3), the previous provisions of Article 29 (4), Article 55 (6), and Article 202 (2) and (3) shall apply where a patent application or an application for registration of a utility model was filed under the previous provisions of Article 29 (3) before this Act enters into force, and a separate patent application stating an invention identical to the invention or design described in the specification or drawings initially accompanying the former patent application or the former application for registration of a utility model is filed after this Act enters into force.

**Article 10 (Transitional Measure concerning Delayed Submission of Scope of Claims)**

The previous provisions shall apply to a patent application filed before this Act enters into force, with the specification in which the scope of claims is omitted under the previous provisions of Article 42 (5).

**Article 11 Omitted.**

**Article 12 (Relationship to Other Statutes or Regulations)**

A citation of any provisions of the previous Patent Act by any other statute or regulation as at the time this Act enters into force shall be deemed a citation of the corresponding provisions of this Act in lieu of the previous provisions, if such corresponding provisions exist herein.

ADDENDA <Act No. 13096, Jan. 28, 2015>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation.

**Article 2 (Applicability)**

(1) The amended provisions of Article 30 (3) shall apply beginning with a patent application filed after this Act enters into force.

(2) The amended provisions of Article 52 (1) 3 shall apply beginning with a patent application concerning which the certified copy of a decision to grant a patent under Article 66 or the certified copy of a trial decision to revoke the decision to reject a patent application under Article 176 (1) (limited to a trial decision made to register a patent but including a trial decision on retrial) is served after this Act enters into force.

ADDENDA <Act No. 13317, May 18, 2015>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation.

**Article 2 (Applicability concerning Return of Official Fees for Requesting Examination)**

The amended provisions of Article 84 (1) 4 and 5 shall apply beginning with the first patent application voluntarily withdrawn (including cases where a patent application is deemed to be voluntarily withdrawn under Article 53 (4) or under the main clause of Article 56 (1)) or abandoned after this Act enters into force.

ADDENDA <Act No. 14035, Feb. 29, 2016>

**Article 1 (Enforcement Date)**

This Act shall enter into force one year after the date of its promulgation.

**Article 2 (Applicability to Correction of Korean Translations)**

The amended provisions of Article 42-3 (7) and 201 (7) (including cases to which Article 201 (7) shall apply mutatis mutandis pursuant to Article 214 (6)) shall apply where a Korean translation is corrected after this Act enters into force.

**Article 3 (Applicability to Rejection of Amendments)**

The amended provisions of Article 51 (1) 1 shall apply where an ex officio amendment is made after this Act enters into force.

**Article 4 (Applicability to Revocation of Designation of Specialized Agencies)**

The amended provisions of Article 58-2 (1) shall apply where any executive or employee of a specialized agency divulges or pirates confidential information known to him or her in the scope of his or her duties with regard to an invention claimed in a pending patent application (including an invention claimed in a pending international patent application) after this Act enters into force.

**Article 5 (Applicability to Order to Submit Results of Examination in Foreign Countries)**

The amended provisions of Article 63-3 shall also apply to patent applications filed with priority claim before this Act enters into force.

**Article 6 (Applicability to Ex Officio Re-Examination)**

The amended provisions of Article 66-3 shall apply to the patent applications according to which a decision to grant a patent is rendered after this Act enters into force.

**Article 7 (Applicability to Publication of Registration of Patents)**

The amended provisions of Article 87 (3) shall apply to the public notice given concerning the registration of a patent the grant of which is registered after this Act enters into force.

**Article 8 (Applicability to Claim for Transfer of Patents)**

The amended provisions of Article 99-2 shall apply to any patent registered as granted to an unentitled person after this Act enters into force.

**Article 9 (Applicability to Extinguishment of Patents Owned by Corporations in Process of Liquidation)**

The amended provisions of Article 124 (2) shall apply to the patents owned by a corporation whose liquidation process is registered as completed after this Act enters into force.

**Article 10 (Applicability to Petitions for Patent Revocation)**

The amended provisions of Chapter VI-2 (Articles 132-2 through 132-15) shall apply to the patents the grant of which is registered after this Act enters into force.

**Article 11 (Applicability to Correction of Patents during Invalidation Trial)**

(1) The amended provisions of the latter part of Article 133-2 (1) shall also apply to the corrections made to a patent of which a trial on invalidation is pending as at the time this Act enters into force.

(2) The following amended provisions shall apply the requests filed to correct the specification or drawings of a patented invention after this Act enters into force:

1. The amended provisions of the former part of Article 133-2 (4) (limited to the part to which the amended proviso of Article 136 (8) shall apply mutatis mutandis);
2. The amended provisions of the latter part of Article 133-2 (4) (limited to the amended part regarding Article 133-2 (1));
3. The amended provisions of Article 133-2 (5).



#### **Article 12 (Applicability to Consent to Petitions for Trial on Correction)**

The amended provisions of Article 136 (8) and (9) shall apply to the trials on correction for which a petition is filed after this Act enters into force.

#### **Article 13 (Applicability to Trials to Invalidate Corrections)**

(1) The amended provisions of the latter part of Article 137 (3) shall also apply to the trials pending on invalidation of corrections as at the time this Act enters into force.

(2) The amended provisions of Article 137 (4) (limited to the part to which the following amended provisions shall apply mutatis mutandis) shall apply the requests filed to correct the specification or drawings of a patented invention after this Act enters into force:

1. The amended provisions of the former part of Article 133-2 (4) (limited to the part to which the amended proviso of Article 136 (8) shall apply mutatis mutandis);

2. The amended provisions of the latter part of Article 133-2 (4) (limited to the amended part regarding Article 133-2 (1));

3. The amended provisions of Article 133-2 (5).

#### **Article 14 (Applicability to Dismissal of Petitions for Trial)**

The amended provisions of Article 141 (2) shall apply to the trials for which a petition is filed after this Act enters into force.

#### **Article 15 (Applicability to Application Mutatis Mutandis of Examination-Related Provisions to Trial on Ruling Rejecting Patent Applications)**

The amended provisions of Article 170 (1) (limited to the amended part related to Article 47 (4)) shall also apply to amendments to patent applications regarding which a trial on a ruling to reject a patent application is pending as at the time this Act enters into force.

#### **Article 16 (Transitional Measure concerning Request for Extending Period for Filing Petition for Trial on Decision to Reject Patent Applications)**

A person who filed a request for extending the period for filing a petition for trial with respect to a decision to reject a patent application or a decision to reject extended registration of the period of existence of a patent with the President of the Korean Intellectual Property Trial and Appeal Board pursuant to the previous main clause of Article 15 (1) before this Act enters into force shall be deemed to have filed the request with the Commissioner of the Korean Intellectual Property Office.

#### **Article 17 (Transitional Measure concerning Subsequent Completion of Procedure)**

Notwithstanding the amended provisions of Article 17, the previous provisions shall apply where the period during which the procedure can be subsequently completed in accordance with the previous provisions as at the time this Act enters into force has already passed.

#### **Article 18 (Transitional Measure concerning Retroactive Filing Date of Patent Applications by Legitimate Right Holders)**

Notwithstanding the amended proviso of Article 35, the previous provisions shall apply to an unentitled person's patent the grant of which has been registered before this Act enters into force.

### **Article 19 (Transitional Measure concerning Period for Requesting Examination of Patent Applications)**

Notwithstanding the amended provisions of the main clause of Article 59 (2), the previous provisions shall apply to the patent applications filed before this Act enters into force.

### **Article 20 (Transitional Measure concerning Ex Officio Amendments)**

Notwithstanding the amended provisions of Article 66-2, the previous provisions shall apply where the specification, drawings, or abstract that accompanies a patent application was amended ex officio before this Act enters into force.

### **Article 21 (Transitional Measure concerning Trial on Invalidity of Patents)**

Notwithstanding the amended provisions of Article 133 (1), the previous provisions shall apply to patents the grant of which has been registered before this Act enters into force.

### **Article 22 (Transitional Measure concerning Permission for Inspection of Documents)**

Notwithstanding the amended provisions of Article 216 (2), the previous provisions shall apply to earlier applications filed before this Act enters into force, on which the priority claim under Article 55 (1) is based.

### **Article 23 Omitted.**

ADDENDA <Act No. 14112, Mar. 29, 2016>

### **Article 1 (Enforcement Date)**

This Act shall enter into force three months after the date of its promulgation.

### **Article 2 (Applicability to Refunds of Patent Fees)**

The amended provisions of Article 84 (1) 6 and Article 215 shall apply from the first case where the patent was abandoned after this Act enters into force.

### **Article 3 (Applicability to Cases of Revoking Ruling Rejecting Patent Applications or Ruling Refusing to Register Extended Term of Patents)**

The amended provision of Article 84 (1) 7 shall apply beginning with a petition for a trial (including a petition filed for a retrial; hereafter the same shall apply in this Addenda) which revoked the ruling rejecting the patent application or the ruling refusing to register the extended term of the patent first after this Act enters into force: Provided, That it shall not apply to a petition for a trial of a patent application for which the petition for a trial was filed pursuant to Article 173 (1) of the previous Patent Act (Act No. 9887), and the specification or drawings thereof were amended and the amendment was notified to the Commissioner of the Korean Intellectual Property Office.

### **Article 4 (Applicability to Cases of Dismissing Petition for Trial by Determination)**

The amended provision of Article 84 (1) 8 shall apply beginning with the first petition for a trial for which a determination of dismissal becomes final after this Act enters into force.

**Article 5 (Applicability to Cases of Withdrawing Petition for Intervention)**

The amended provision of Article 84 (1) 9 shall apply beginning with the first petition for an intervention withdrawn after this Act enters into force.

**Article 6 (Applicability to Cases of Rejecting Petition for Intervention by Determination)**

The amended provision of Article 84 (1) 10 shall apply beginning with the first petition for an intervention rejected by the determination after this Act enters into force.

**Article 7 (Applicability to Cases of Withdrawing Petition for Trial)**

The amended provision of Article 84 (1) 11 shall apply beginning with the first petition for a trial withdrawn after this Act enters into force.

**Article 8 (Applicability to Legal Proceedings on Infringement of Patents or Exclusive Licenses)**

The amended provisions of Articles 128-2, 132 and 224-3 shall apply beginning with the first legal proceeding filed after this Act enters into force.

**Article 9 (Transitional Measure concerning Patent Applications or Patent of Persons Eligible for Assistance under Article 5 of the Previous National Basic Living Security Act)**

Notwithstanding the amended provisions of Article 83 (2), the previous provision shall apply to the patent application filed or the patent of which the grant is registered before this Act enters into force.

**Article 10 Omitted.**

ADDENDA <Act No. 14371, Dec. 2, 2016>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation.

**Article 2 (Transitional Measure concerning Requirements for Registration)**

The specialized agencies designated under the previous provisions before this Act enters into force shall be deemed to have been registered under the amended provisions of Article 58.

ADDENDA <Act No. 14691, Mar. 21, 2017>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation.

**Article 2 (Applicability to Indication of Patent)**

The amended provisions of Article 223 shall apply to the products indicated as patented after this Act enters into force.

ADDENDUM <Act No. 15093, Nov. 28, 2017>

This Act shall enter into force six months after the date of its promulgation.

ADDENDUM <Act No. 15582, Apr. 17, 2018>

This Act shall enter into force three months after the date of its promulgation: Provided, That the amended provisions of Article 217-2 (7) shall enter into force six months after the date of its promulgation.

ADDENDA <Act No. 16208, Jan. 8, 2019>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation.

**Article 2 (Applicability to Obligation to Present Specific Type of Behavior)**

The amended provisions of Article 126-2 shall begin to apply to a lawsuit against infringement of a patent right or exclusive license filed after this Act enters into force.

**Article 3 (Applicability to Claim for Compensation for Loss)**

The amended provisions of Article 128 (8) and (9) shall begin to apply to a violation committed after this Act enters into force.

**Article 4 Omitted.**

ADDENDUM <Act No. 16804, Dec. 10, 2019>

This Act shall enter into force three months after the date of its promulgation: Provided, That the amended provisions of Article 10 shall enter into force on the date of its promulgation.

ADDENDA <Act No. 17422, Jun. 9, 2020>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation.

**Article 3 (Applicability to Claim for Compensation for Loss)**

The amended provisions of Article 128 shall begin to apply to the compensation for losses claimed after this Act enters into force.

ADDENDA <Act No. 17536, Oct. 20, 2020>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation.

## **Article 2 (Applicability to Prosecution)**

The amended provisions of Article 225 (2) shall begin to apply to crimes committed after this Act enters into force.

ADDENDA <Act No. 17730, Dec. 22, 2020>

## **Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation.

## **Article 2 (Applicability to Accelerated Examinations)**

The amended provisions of subparagraph 3 of Article 61 shall also apply to a patent application filed before this Act enters into force.

ADDENDA <Act No. 18098, Apr. 20, 2021>

## **Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation.

## **Article 2 (Applicability)**

The amended provisions of Articles 154-2, 226, and 226-2 shall also apply to a case on trial pending at the Korean Intellectual Property Trial and Appeal Board as at the time this Act enters into force.

## **Article 3 Omitted.**

ADDENDA <Act No. 18409, Aug. 17, 2021>

## **Article 1 (Enforcement Date)**

This Act shall enter into force three months after the date of its promulgation: Provided, That the amended provisions of Articles 83 and 132-16 shall enter into force six months after the date of promulgation of this Act.

## **Article 2 (Applicability to Ex Officio Amendments)**

The amended provisions of Article 66-2 (6) shall begin to apply to patents the grant of which is registered after this Act enters into force.

## **Article 3 (Applicability to Exemption from or Reduction of Patent Fees or Official Fees)**

(1) Of the amended provisions of Article 83, those regarding exemption from or reduction of patent fees shall begin to apply to patent applications regarding which the certified copy of a decision to grant a patent under Article 66 or the certified copy of a trial decision to revoke the decision to reject a patent application under Article 176 (1) (limited to a trial decision made to register a patent but including a trial decision on retrial) is served after this Act enters into force.

(2) Of the amended provisions of Article 83, those regarding exemption from or reduction of official fees shall begin to apply to patent applications filed after the same amended provisions enter into force.

**Article 4 (Applicability to Return of Fees Payable for Request for Examination)**

The amended provisions of Article 84 (1) shall begin to apply to patent applications withdrawn or abandoned after this Act enters into force.

**Article 5 (Applicability to Referral of Cases on Trial to Mediation Committee)**

The amended provisions of Article 164-2 shall also apply to cases pending in court as at the time this Act enters into force.

**Article 6 (Transitional Measures concerning Collection of Amount Reduced or Exempted)**

Notwithstanding the amended provisions of Article 83 (4), the previous provisions shall apply to persons who have been granted a reduction of or exemption from any patent fee or official fee by fraud or other improper means before the amended provisions of Article 83 (4) enter into force.

**Article 7 Omitted.**

ADDENDA <Act No. 18505, Oct. 19, 2021>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation.

**Article 3 (Applicability to Invalidation of Procedures)**

The amended provisions of Article 16 (2) shall also apply where patent-related procedures are invalidated because a person who was ordered to make an amendment before entry into force of this Act has failed to observe the period of amendment for good cause, in which case two months have not elapsed from the date such grounds cease to exist as at the time this Act enters into force.

**Article 3 (Applicability to Divisional Applications)**

(1) The amended provisions of Article 52 (1) shall begin to apply to divisional applications based on the patent application regarding which a certified copy of the decision to reject the patent is served after this Act enters into force.

(2) The amended provisions of Article 52 (4) and (5) shall begin to apply to divisional applications filed after this Act enters into force.

**Article 4 (Applicability to Splitting-Off)**

The amended provisions of Article 52-2 shall begin to apply to where patent applications for which a request for trial against a decision to reject a patent application is filed after this Act enters into force, are split off.

**Article 5 (Applicability to Converted Applications)**

The amended provisions of Article 53 (1) shall begin to apply to converted applications based on application for registration of a utility model regarding which a certified copy of a decision to reject utility model registration is served after this Act enters into force.

#### **Article 6 (Applicability to Priority Claims Based on Patent Applications)**

The amended provisions of Articles 55 (1) 4 and (8) and 56 (1) 2 shall begin to apply to priority claims filed based on the earlier applications regarding which the certified copy of a decision to grant a patent under Article 66 after this Act enters into force; of a decision to register a utility model under Article 66 of the Patent Act applied mutatis mutandis pursuant to Article 15 of the Utility Model Act; or of a decision to revoke a decision to refuse to register a utility model under Article 176 (1) of the Patent Act applied mutatis mutandis pursuant to Article 33 of the Utility Model Act (limited to a trial decision to register a patent or a utility model, but including a trial decision on retrial).

#### **Article 7 (Applicability to Request for Re-Examination)**

The amended provisions of Article 67-2 (1) and (3) shall begin to apply to patent applications regarding which the certified copy of a written decision to grant a patent under Article 66 or the certified copy of a trial decision to revoke the decision to reject a patent application under Article 176 (1) (limited to a trial decision made to register a patent but including a trial decision on retrial) is served after this Act enters into force.

#### **Article 8 (Applicability to Reinstatement of Patent Applications)**

The amended provisions of Article 67-3 (1) shall also apply where a patent application is deemed withdrawn or a decision to reject a patent is deemed made final and conclusive because a patent applicant fails to comply with any of the periods under the subparagraphs of the same paragraph for good cause before entry into force of this Act and where two months have not passed from the date such grounds cease to exist.

#### **Article 9 (Applicability to Reinstatement of Patent Applications or Patents by Making Late Payment of Patent Fees or Payment of Under-Paid Patent Fees)**

The amended provisions of Article 81-3 (1) shall also apply where a person who intends to obtain grant of a patent registered before entry into force of this Act, or where a patentee fails to pay a patent fee within the period for payment of patent fees due to good cause or to pay an under-paid patent fee during the period for payment within such period, and two months have not passed from the date such grounds cease to exist as at the time this Act entered into force.

#### **Article 10 (Applicability to Non-Exclusive Licenses Subsequent to Transfer of Patents by Exercise of Pledge Rights)**

The amended provisions of Article 122 shall begin to apply to cases where a request for the division of a jointly owned patent is filed after this Act enters into force.

#### **Article 11 (Applicability to Trial on Rulings Rejecting Patent Applications)**

The amended provisions of Article 132-17 shall begin to apply to patent applications on which a certified copy of the decision to reject a patent application or a certified copy of the decision to reject an application to register the extended term a patent is served after this Act enters into force.

#### **Article 12 Omitted.**

### **Article 13 (Applicability following Amendments to Other Statutes)**

The amended provisions of Article 10 (1) 1 of the Utility Model Act amended pursuant to Article 12 of the Addenda shall begin to apply to converted applications based on patent applications for which a certified copy of the decision to reject a patent application is served after this Act enters into force.

ADDENDA <Act No. 19007, Oct. 18, 2022>

### **Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation.

### **Article 2 (Applicability to Refund of Patent Fees)**

The amended provisions of Article 84 (3) shall also apply to patent fees or official fees for which the period for a claim for refund under the previous provisions does not elapse as at the time this Act enters into force.



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