

# INDUSTRIAL DESIGN PROTECTION ACT

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Last amended on June 9, 2009 by Act No. 9764  
Promulgated on December 31, 1961 by Act No. 951

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## **CHAPTER I GENERAL PROVISIONS**

### **Article 1 Purpose**

The purpose of this Act is to encourage the creation of designs by ensuring their protection and utilization so as to contribute to the development of industry.

### **Article 2 Definitions**

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

(i) "design" means the shape, pattern, color or a combination of these in an article that produces an aesthetic impression in the sense of sight; the same applies to a part of an article and the style of calligraphy unless Article 12 of this Act applies;

(*ibis*) "style of calligraphy" means a script (including numbers, marks, symbols etc.) made in the form of common features for use in recording, marking or printing;

(ii) "registered design" means a design for which design registration has been granted;

(iii) "design registration" means registration of examined or unexamined designs;

(iv) "examined design registration" means registration of a design that is subject to examination as to whether it is completely qualified for registration;

(v) "unexamined design registration" means registration of a design that is subject to examination as to whether the application for design registration satisfies the requirements for registration under this Act, with the exception of the requirements that are not applied under Article 26(2) of this Act.

(vi) "working" of a design means any act of manufacturing, using, assigning, leasing, importing or offering for assignment or lease (as well as displaying for assignment or lease) the article to which the design has been applied.

### **Article 3 Persons Entitled to Obtain Design Registration**

(1) A person who creates a design or the person's successor is entitled to obtain design registration under this Act; however, employees of the Korean Intellectual Property Office and the Intellectual Property Tribunal may not obtain design registration during their employment except in the case of inheritance or a bequest.

(2) If two or more persons jointly create a design, the right to obtain design registration is jointly owned.

### **Article 4 Capacity of minors.**

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

(2) The legal representative referred to in paragraph (1) may act without the consent of the family council in any opposition to a design registered without substantive examination, trial or retrial procedure initiated by another party.

### **Article 4-2 Associations etc. Other than a Legal Entity**

A representative or an administrator designated by an association or a foundation that is not a legal entity may request an opposition to a design registered without substantive

examination, appear as a plaintiff or defendant in an administrative trial or a retrial in the name of the association or foundation.

#### **Article 4-3 Design Administrator for Nonresidents**

(1) A person who has neither a residential nor business address in the Republic of Korea (referred to as "a nonresident") may not, except when the nonresident (or a representative of the nonresident if a legal entity) is sojourning in the Republic of Korea, initiate any design-related procedure or appeal any decision taken by an administrative agency in accordance with this Act or any decree under this Act, unless the person is represented by an agent (referred to as "a design administrator") who has a residential or business address in the Republic of Korea.

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

#### **Article 4-4 Scope of Power of Attorney**

Unless expressly empowered, a representative authorized to initiate a design-related procedure before the Korean Intellectual Property Office by a person whose residential or business address is in the Republic of Korea may not

- (i) abandon or withdraw an application for a design or abandon a design right;
- (ii) withdraw a petition;
- (iii) withdraw a request for a motion;
- (iv) request an administrative trial under Article 67(2) or 67(3); or
- (v) appoint a sub-representative.

#### **Article 4-5 Proof of Power of Attorney**

The power of attorney for an agent (including a patent administrator) who is initiating a patent-related procedure must be confirmed in writing.

#### **Article 4-6 Ratification Regarding Defect in Legal Capacity, etc.**

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

#### **Article 4-7 Continuation of Power of Attorney**

The power of attorney of an agent representing a person initiating a design-related procedure is not extinguished upon

- (i) the death or loss of legal capacity of the principal;
- (ii) the extinguishment of a legal entity of the principal due to a merger;
- (iii) the termination of the duty of trust of the principal;
- (iv) the death or loss of legal capacity of the legal representative; or
- (v) the modification or extinguishment of the power of attorney.

#### **Article 4-8 Independence of Representation**

Where two or more agents of a person initiating a design-related procedure have been designated, each of them may independently represent the principal before the Korean Intellectual Property Office or the Intellectual Property Tribunal.

#### **Article 4-9 Replacement of Agents etc.**

(1) Where the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner considers that a person initiating a design-related procedure is not qualified to conduct the procedure or make oral statements and so on, the Commissioner or presiding trial examiner may order *ex officio* the appointment of an agent to conduct the procedure.

(2) Where the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner considers that an agent representing a person initiating a design-related procedure is not qualified to conduct the procedure or make oral statements and so on, the Commissioner or presiding trial examiner may order *ex officio* the replacement of the agent.

(3) The Commissioner of the Korean Intellectual Property Office or the presiding trial examiner may, in the case referred to in paragraphs (1) or (2) of this Article, order the appointment of a patent attorney to conduct the procedure.

(4) The Commissioner of the Korean Intellectual Property Office or the presiding trial examiner may invalidate any action taken before the Korean Intellectual Property Office or the Intellectual Property Tribunal by a person initiating a design-related procedure referred to in paragraph (1) of this Article or by an agent referred to in paragraph (2) of this Article before the appointment or the replacement of an agent referred to in paragraphs (1) or (2), respectively, after issuing the order referred to in paragraphs (1) or (2).

#### **Article 4-10 Representation of Two or More Persons**

(1) Where two or more persons jointly initiate a design-related procedure, any of them may represent the joint initiators except for actions falling under any of the following subparagraphs, unless they have appointed a common representative and have notified the Korean Intellectual Property Office or the Intellectual Property Tribunal of the appointment of the representative:

- (1) abandonment or withdrawal of a design application;
- (2) withdrawal of a petition
- (3) withdrawal of a request; and
- (4) a request for a trial under Article 67bis or 67ter.

(2) Where a common representative has been appointed and notification has been given under the proviso of paragraph (1), written proof that the representative has been appointed must be presented.

#### **Article 4-11 *Mutatis Mutandis* Application of the Civil Procedure Act**

Except where this Act specifically provides in relation to agents, Part I, Section 2, Subsection 4 of the Civil Procedure Act applies *mutatis mutandis* to agents under this Act.

#### **Article 4-12 Venue of Nonresidents**

If a nonresident appoints a design administrator to administer a design right or other right related to a design, the residential or business address of the design administrator is deemed to be that of the nonresident. Where a design administrator has not been appointed, the location of the Korean Intellectual Property Office is regarded as the seat of the property under Article 11 of the Civil Procedure Act.

#### **Article 4-13 Calculation of Time Limits**

A time limit in this Act or in any decrees under this Act is calculated as follows:

- (i) the first day of a period is not counted unless the period starts at midnight;
- (ii) when a period is expressed in months or years, it is counted according to the calendar;
- (iii) when the start of a period does not coincide with the beginning of a calendar month or year, the period expires in the final month or year of the day

preceding the date that corresponds to the starting date of the period; however, if no corresponding date occurs in the final month, the period expires on the last day of that month; and

(iv) when the last day of a period for executing a design-related procedure falls on an Saturday or official holiday(including Labor Day, as designated by the Labor Day Designation Act), the period expires on the first working day after the holiday.

#### **Article 4-14 Extension of Time Limits etc.**

(1) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may, upon request or *ex officio* extend the period of amending an opposition to a design registered without substantive examination, etc. under Article 29*ter* or the period of requesting a trial under article 67*bis*, or 67*ter* for once and for up to 30 days. However, the number and period of extension may be further extended for a person residing in an area that is difficult to access.

(2) The Commissioner of the Korean Intellectual Property Office, the President of the Intellectual Property Tribunal, a presiding trial examiner or an examiner who has designated a period for a design-related procedure to be initiated under this Act may shorten or extend the period upon a request or extend the period *ex officio*. In such cases, the Commissioner of the Korean Intellectual Property Office and so on shall decide whether to shorten or extend the period in a way that does not unlawfully violate the interests of the parties involved in the relevant procedure.

(3) A presiding trial examiner or an examiner who has designated a date for initiating a design related procedure under this Act may change the date upon a request or *ex officio*.

#### **Article 4-15 Invalidation of Procedure**

(1) Where a person who has been instructed to make an amendment under Article 17 fails to do so within the designated period, the Commissioner of the Korean Intellectual



Property Office or the President of the Intellectual Property Tribunal may invalidate the design-related procedure.

(2) Where a design-related procedure is invalidated under paragraph (1), if the delay is considered to have been caused by a reason not attributable to the person, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may revoke the disposition of invalidation at the request of the person instructed to make the amendment, provided the request is made within fourteen days of the date on which the reasons for the delay cease to exist and not more than a year after the designated period expired.

(3) When the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal revokes the disposition of invalidation under paragraph (1) or cancels the revocation of the disposition of invalidation under paragraph (2), the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall issue a copy of the disposition notification to the person who was instructed to make an amendment.

#### **Article 4-16 Subsequent Completion of Procedure**

Where a person who has initiated a design-related procedure fails to observe either the period for requesting a trial under Article 67bis, Article 67ter or the period for demanding a retrial under Article 6ter for reasons not attributable to the person, the person may complete the procedure within the fourteen-day period immediately after the date on which the reasons ceased to exist, if not more than one year has elapsed since the designated period expired.

#### **Article 4-17 Succession of Procedural Effects**

The effects of a design-related procedure or other design-related right extend to the successor in title.

#### **Article 4-18 Continuation of a Procedure by a Successor**

Where a design right or other design-related right is transferred while a design-related procedure is pending before the Korean Intellectual Property Office or the Intellectual Property Tribunal, the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner may require the successor in title to continue the design-related procedure.

#### **Article 4-19 Interruption of a Procedure**

A design-related procedure pending before the Korean Intellectual Property Office or the Intellectual Property Tribunal that falls under any of the following subparagraphs, is interrupted, unless a representative is authorized to conduct the procedure:

- (i) when the party involved has died;
- (ii) when the legal entity involved has ceased to exist due to a merger;
- (iii) when the party involved has lost the capacity to conduct the procedure;
- (iv) when the legal representative of the party involved has died or lost the power of attorney;
- (v) when the commission of a trustee given by the trust of the party involved has terminated; or
- (vi) where the representative under the proviso of Article 4-10(1) has died or been disqualified.
- (vii) when the party involved has regular qualification such as trustee in bankruptcy for other people has been disqualified or died.

#### **Article 4-20 Resumption of an Interrupted Procedure**

Where a procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal is interrupted in the manner referred to in Article 4-19, a person who falls under any of the following subparagraphs shall resume the procedure:

- (i) under Article 4-19(i), the deceased person's successor, administrator of inheritance or other person legally authorized to pursue the procedure; however, a successor may not resume the procedure until the right to succession is no longer subject to renunciation;
- (ii) under Article 4-19(ii), the legal entity established by or existing after the merger;
- (iii) under Article 4-19(iii) and (iv), the party whose capacity to carry out the necessary procedure has been restored or any person who becomes the legal representative of the party;
- (iv) under Article 4-19(v), a new trustee;
- (v) under Article 4-19(vi), a new representative or each joint initiator involve;  
or
- (vi) under Article 4-19(vii), a person with the same qualifications.

#### **Article 4-21 Request for a Resumption**

(1) A person provided for under each subparagraph of Article 4-20 and the opposing party may request a resumption of an interrupted procedure under Article 4-19.

(2) Where a request for the resumption of an interrupted procedure under Article 4-19 is made, the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner shall notify the opposing party.

(3) If no grounds are considered to exist for granting a request for the resumption of an interrupted procedure under Article 4-19, the Commissioner of the Korean Intellectual

Property Office or the trial examiner shall dismiss the request *ex officio* by decision after examining the request.

(4) The Commissioner of the Korean Intellectual Property Office or the trial examiner shall decide, upon a request for resumption, whether to permit the resumption of an interrupted procedure after a certified copy of the decision or trial decision has been sent.

(5) If a person referred to in Article 4-20 does not resume an interrupted procedure, the Commissioner of the Korean Intellectual Property Office or the trial examiner shall *ex officio* order the resumption of the procedure within a designated period.

(6) If the procedure is not resumed within the period designated in paragraph (5), the procedure is deemed to have been resumed on the day after the designated period expires.

(7) Having determined that a resumption has been made in accordance with paragraph (6) the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner shall notify the parties involved.

#### **Article 4-22 Suspension of a Procedure**

(1) If the Commissioner of the Korean Intellectual Property Office or the trial examiner is unable to carry out duties due to a natural disaster or other unavoidable circumstances, any procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal is suspended until the impediments cease to exist.

(2) If a party is unable to pursue a procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal on account of impediments of indefinite duration, the Commissioner of the Korean Intellectual Property Office or the trial examiner may order a suspension by decision.

(3) The Commissioner of the Korean Intellectual Property Office or the trial examiner may cancel the decision issued under paragraph (2).

(4) If a procedure is suspended under paragraphs (1) or (2), or a decision is canceled under paragraph (3), the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner shall notify the parties involved.

#### **Article 4-23 Effects of an Interruption or Suspension**

The interruption or suspension of a design-related procedure pending in the Korean Intellectual Property Office suspends the running of a term and the entire term starts to run again from the date of the notification of the continuation or resumption of the procedure.

#### **Article 4-24 Capacity of Foreigners**

Foreigners who have neither a residential nor business address in the Republic of Korea are not entitled to enjoy design rights or other design-related rights, except under any of the following circumstances:

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

#### **Article 4-25 Effects of a Treaty**

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

#### **Article 4-26 Effective Date of Submitted Documents**

(1) Applications, demands or other documents (which in this Article includes articles) submitted to the Korean Intellectual Property Office or the Intellectual Property Tribunal under this Act, or any decree under this Act, are effective from the date on which they are delivered to the Korean Intellectual Property Office or the Intellectual Property Tribunal.

(2) Where applications, demands or other documents are submitted by mail to the Korean Intellectual Property Office or the Intellectual Property Tribunal, they are deemed to have been delivered to the Korean Intellectual Property Office or the Intellectual Property Tribunal on the date stamped by the mail service, if the date stamp is clear. Where the date stamp is unclear, they are deemed to have been delivered on the date on which the mail was submitted to a post office, if the date is verified by a receipt. However, this provision shall not apply if written applications to register a design right and other related rights are submitted by mail.

(3) Notwithstanding paragraphs (1) and (2), details concerning the submission of documents with regard to the delay of mail, loss of mail or interruption of the mail service are prescribed by ordinance of the Ministry of Knowledge Economy.

#### **Article 4-27 Entry of Identification Number**

(1) A person who initiates a design-related procedure prescribed by ordinance of the Ministry of Knowledge Economy shall apply to the Korean Intellectual Property Office or the Intellectual Property Tribunal for an identification number.

(2) Where a person applies for the identification number referred to in paragraph (1), the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall grant an identification number and notify the person.

(3) Where a person who fails to apply for an identification number under paragraph (1), the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall *ex officio* grant an identification number and notify the person.

(4) Where a person to whom an identification number has been granted under paragraphs (2) or (3) initiates a design-related procedure, the person shall enter the identification number in any document prescribed by ordinance of the Ministry of Knowledge Economy; however, notwithstanding this Act or any decree under this Act, the person may not enter a residential address (or a business address if a legal entity) in such a document.

(5) An agent of a person who initiates a design related procedure under paragraphs (1) to (4) apply *mutatis mutandis*

(6) An application for the grant of an identification number, the grant and notification of the grant or other necessary matters are prescribed by ordinance of the Ministry of Knowledge Economy.

#### **Article 4-28 Procedure for Filing Patent Applications by Electronic Means**

(1) A person who initiates a design-related procedure may, in accordance with the methods prescribed by ordinance of the Ministry of Knowledge Economy, convert a written application for a patent or other documents presented to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal under this Act into an electronic document, and may present it by means of any communication network or on a floppy disk.

(2) An electronic document presented under paragraph (1) has the same effect as other documents presented under this Act.

(3) The content of an electronic document presented through a communication network under paragraph (1) is, if the presenter confirms a receipt number through the communication network, considered to be the same as the content of the receipted file saved on a computer system operated by the Korean Intellectual Property Office or the Intellectual Property Tribunal.

(4) The kinds of documents capable of being presented by electronic means under paragraph (1) and the methods of such presentation or other necessary matters are prescribed by ordinance of the Ministry of Knowledge Economy.

#### **Article 4-29 Report on Use of Electronic Documents and Electronic Signatures**

(1) A person who intends to initiate a design-related procedure by means of electronic documents shall report in advance the intended use of electronic documents to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal, and shall affix an electronic signature for identification.

(2) An electronic document presented under Article 4-28 is considered to have been filed by the person who affixes an electronic signature under paragraph (1).

(3) Matters necessary for reporting on the intended use of electronic documents and the methods of signing the electronic signature prescribed under paragraph (1) are prescribed by ordinance of the Ministry of Knowledge Economy.

#### **Article 4-30 Notification etc. through a Communication Network**

(1) When giving notification and transmitting (referred to as "a notification") any pertinent documents to a person who reports the intended use of electronic documents under Article 4-29(1), the Commissioner of the Korean Intellectual Property Office, the President of the Intellectual Property Tribunal, a presiding trial examiner, a trial examiner, a presiding examiner or an examiner through a communication network.

(2) Notification of any pertinent documents through a communication network under paragraph (1) has the same effect as notification given in writing.

(3) Where the notification of any pertinent documents under paragraph (1) is saved in a file of a computer system operated by a person who receives the notification, the notification is considered to be the same as the contents saved in a file of a computer system operated by the Korean Intellectual Property Office or the Intellectual Property Tribunal for the transmission of documents.

(4) Matters necessary for the classification and methods of notification through a communication network under paragraph (1) are prescribed by ordinance of the Ministry of Knowledge Economy.



## **CHAPTER II REQUIREMENTS FOR DESIGN REGISTRATION AND DESIGN APPLICATIONS**

### **Article 5 Requirements for Design Registration**

(1) Designs that are industrially applicable may be registered unless they fall under any of the following subparagraphs:

- (i) the design is publicly known or publicly worked in the Republic of Korea or in a foreign country before the design application is filed;
- (ii) the design is described in a publication distributed in the Republic of Korea or in a foreign country or published electronically before the application for design registration is filed;
- (iii) the design is similar to a design referred to in subparagraph (i) or (ii) of this Article.

(2) Notwithstanding paragraph (1) of this Article, where a design is a design that could have been easily created by a person with ordinary skill in the art to which the design pertains, and the design is a combination of the designs under paragraph (1)(i) or (ii) of this Article, or the design comprises a shape, pattern, color, or any combination of these, that is widely known in the Republic of Korea (other than a design referred to in any subparagraph of paragraph (1) of this Article) before the application for design registration is filed, the design may not be registered.

(3) Notwithstanding paragraph (1) of this Article, where a design for which a registration application has been filed is identical or similar to a part of a design that is indicated in a description of, or represented in a drawing, photograph or sample attached to, another application for design registration that was filed before, and laid open, declared in a public notice, or published in the Design Gazette in accordance with Article 23*sexies* of this Act after the filing date of the application for design registration, the design may not be registered.

## **Article 6 Unregistrable Designs**

Notwithstanding Article 5 of this Article, the following designs are unregistrable:

- (i) designs that are identical or similar to the national flag, national emblem, military flags, decorations, orders of merit, badges and medals of public organizations, national flags and national emblems of foreign countries, or characters or indications of international organizations;
- (ii) designs whose meaning or content is liable to contravene the public order or morality;
- (iii) designs liable to give rise to confusion over articles connected with another person's business; and
- (iv) designs consisting solely of a shape that is essential to secure the functions of the article.

## **Article 7 Similar Designs**

(1) The owner of a design right or an applicant for design registration is entitled to obtain design registration for a design that is similar only to the owner's registered design (referred to as "the principal design") or a design for which a registration application has been filed as a similar design (referred to as "a similar design").

(2) Paragraph (1) of this Article does not apply to a design that is similar only to a similar design that is registered or for which registration has been applied for under paragraph (1) of this Article.

## **Article 8 Exception to Loss of Novelty**

(1) Where a design owned by a person entitled to design registration has fallen under either subparagraph (i) or (ii) of Article 5(1), and where the person files the application for the design within six months of the date on which the design fell under subparagraph

(i) or (ii) of Article 5(1), the application is deemed to have not fallen under subparagraph (i) or (ii) of Article 5(1) if Article 5(1) or (2) applies to the application.

(2) When applying for design registration, a person intending to take advantage of paragraph (1) of this Article shall submit an application for design registration specifying the purport of such intention to the Commissioner of the Korean Intellectual Property Office, and submit documents proving the relevant facts within thirty days of the date of application for design registration; however, this does not apply where the designs concerned fall under each subparagraph of Article 5(1) of this Act against the person's will.

### **Article 9 Applications for Design Registration**

(1) A person seeking to register a design shall file a request for an application for examined design registration or a request for an application for unexamined design registration with the Commissioner of the Korean Intellectual Property Office, stating the following:

(i) the name and address of the applicant (and, if a legal entity, the name and address of the business);

(ii) the name and residential or business address of the agent, if any (and, if a patent legal entity, the name and address of the business and the name of the designated patent attorney);

(iii) deleted;

(iv) the article that is the object of the design;

(ivbis) whether the application is an application for independent design registration or similar design registration;

(v) the registration or application number of the principal design (only where the applicant seeks design registration as a similar design under Article 7(1) of this Act);

(vi) the name and address of the creator of the design; and

(vii) matters prescribed in Article 23(3) of this Act (only when claiming a priority right).

(2) An application for examined design registration or an application for unexamined design registration under paragraph (1) of this Article must be accompanied by a drawing or drawings in which the following matters are indicated for each design:

(i) the article that is the object of the design;

(ii) an explanation of the design and the essentials of the creation; and

(iii) serial numbers of the design (only if the application is for multiple design registration under Article 11*bis* of this Act).

(3) An applicant for design registration may submit a photograph or a sample of the design instead of the drawing(s) referred to in paragraph (2) of this Article.

(4) A person applying for unexamined design registration shall indicate in a request for an application for unexamined design registration whether the application is an application for multiple design registration under Article 11*bis* of this Act, the number of designs and the matters referred to in the subparagraphs of paragraph (1) of this Article.

(5) A person applying for multiple design registration under Article 11*bis* of this Act shall indicate in an application for unexamined design registration the particulars prescribed under paragraph (1)(i) of this Article and the serial numbers of the designs.

(6) Designs that qualify for unexamined design registration are limited to the goods designated by ordinance of the Ministry of Knowledge Economy among the goods classified by Article 11*bis* of this Act. For the designated goods, an application may be made only for unexamined design registration.

(7) Matters other than those as prescribed in paragraphs (1) to (6) of this Article, which are necessary for the application for design registration, are determined by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 10 Joint Application**

Where the right to obtain design registration is jointly owned under Article 3(2), the owners shall jointly file an application for design registration.

### **Article 11 A Single Application for a Single Design Registration**

- (1) An application for design registration must relate to a single design only.
- (2) A person applying for design registration may do so only for the classes of articles prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 11bis Application for Multiple Design Registration**

- (1) Notwithstanding Article 11(1) of this Act, an application for unexamined design registration may be made for twenty designs or less (referred to as "an application for multiple design registration"). In such cases, each design must be represented separately.
- (2) The scope of designs that qualify for an application for multiple design registrations is limited to designs that pertain to the classes of articles which, as mentioned in Article 11(2) of this Act, are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.
- (3) A person applying for multiple design registration may file, with the principal design, an application for a similar design registration that falls within the category of a principal design.
- (4) Notwithstanding paragraph (3) of this Article, where a person files an application for multiple design registration of designs similar to the person's registered design or a design for which the person has applied for design registration, the person may file an application for multiple design registration only for similar designs belonging to one principal design.

### **Article 12 Design of a Set of Articles**

- (1) Where two or more articles are used together as a set of articles, the design of the set may be registered if the set constitutes a coordinated whole.
- (2) The set of articles referred to in paragraph (1) of this Article is governed by ordinance of the Ministry of Commerce, Industry and Energy.
- (3) Deleted.

### **Article 13 Secret Designs**

- (1) An applicant for design registration may request that the design be kept secret for a period designated in the request not exceeding three years after the date on which the establishment of the design right was registered. When applying for multiple design registration, a request must be made for each design for which design registration is sought.
- (2) An applicant for design registration may make a request under paragraph (1) of this Article between the application date for design registration and the date of the initial payment of the design registration fees. However, if the registration fees are waived under Articles 35(1)(i) and 35(2) of this Act, the applicant may make the request up until the time the design right is registered in accordance with Article 39(2) of this Act.
- (3) An applicant for design registration or the owner of a design right may reduce or extend the period designated under paragraph (1) of this Article by a request. The period may not be extended by more than three years after the registration date of the establishment of the design right.
- (4) In any of the following cases, the Commissioner of the Korean Intellectual Property Office shall allow persons to have access to a confidential design under paragraph (1) of this Article:
  - (i) where the request is made by a person who has obtained the consent of the owner of the design right;

(ii) where the request is made by a party or an intervener in examination, opposition to registration of an unexamined design, trial, retrial or litigation proceedings related to a design identical or similar to the design kept secret;

(iii) where the request is made by a person who clearly claims to have been warned of infringing the registered design; or

(iv) where the request is made by a court or the Intellectual Property Tribunal.

(5) When requesting the laying open of an application under Article 23(2) of this Act, the request referred to paragraph (1) of this Article is deemed to have been withdrawn.

#### **Article 14 Application for Design Registration Filed by an Unentitled Person and Protection of the Lawful Holder of a Right**

Where a person applies to register a design but the person (referred to as an "unentitled person") is not the creator of the design nor a successor of the right to obtain design registration, and where the unentitled person fails to obtain design registration because the application falls under Article 26(1)(iii) of this Act on the grounds that the person is not entitled to design registration pursuant to the main part of Article 3(1) of this Act, an application for design registration filed by the lawful right holder after the filing of the application by the unentitled person is deemed to have been filed on the date of the application by the unentitled person. However, this provision does not apply where the subsequent application is filed by the lawful holder of the right more than thirty days after the application by the unentitled person was rejected.

#### **Article 15 Design Registration Granted to an Unentitled Person and Protection of the Lawful Holder of a Right**

If design registration is revoked or invalidated by a trial decision for the lack of entitlement to obtain design registration under Article 3(1) of this Act, a subsequent application for design registration filed by the lawful holder of the right is deemed to have been filed on the date of filing the application that led to the grant of the design registration that was revoked or invalidated; however, this provision does not apply if

the subsequent application is filed more than thirty days after the decision to revoke or to invalidate it became final.

#### **Article 16 First-to-File Rule**

(1) Where two or more applications for design registration related to the same or a similar design are filed on different dates, only the applicant with the earlier filing date may obtain design registration for the design.

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

(3) Where an application for design registration is invalidated, withdrawn or abandoned, or where a decision to refuse the application or a trial decision of refusal becomes final, the application, for the purposes of paragraphs (1) and (2) of this Article, is deemed to have never been filed; however, this provision does not apply if the decision to refuse the application or the trial decision of refusal becomes final in accordance with the latter part of paragraph (2) of this Article.

(4) Where a person who is not the creator of a design or the successor in title to the right to obtain design registration files an application for design registration, the application is deemed never to have been filed, for the purposes of paragraphs (1) and (2) of this Article.

(5) In the case referred to in paragraph (2) of this Article, the Commissioner of the Korean Intellectual Property Office shall instruct the applicants to give notice of the results of the consultation within a designated period. If the notice is not submitted within the designated period, the applicants are deemed not to have reached an agreement within the meaning of paragraph (2) of this Article.



### **Article 17 Amendment of Procedure**

The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall order the correction of a design-related procedure within a designated period in any of the following cases: (i) where the procedure does not comply with Articles 4(1) or 4quater

;

(ii) where the procedure does not comply with the formalities prescribed in this Act or by Presidential Decree; or

(iii) where the fees required under Article 34 of this Act have not been paid.

### **Article 18 Amendment to Application and Change of Gist**

(1) Where the gist of an application for design registration is not changed, an applicant may amend the application's description of the design, as well as any drawing or description of any drawing, or any photograph or sample attached to the application.

(2) An applicant for design registration may convert an application for a similar design registration to an application for a single design registration; the applicant may also convert an application for a single design registration to an application for a similar design registration.

(3) Notwithstanding Article 8(2) of this Act, where an applicant for design registration who amends an application for a similar design registration to an application for a single design registration in accordance with the paragraph (2) of this Article intends the amendment to be subject to Article 8(1) of this Act, the applicant shall specify the purport of this intention in the written amendment and submit the written amendment to the Commissioner of the Korean Intellectual Property Office, and, within thirty days of the date on which the written amendment is submitted, submit to the Commissioner documents that prove the relevant facts.

(4) An applicant for design registration may convert an application for unexamined design registration to an application for examined design registration; the applicant may also convert an application for examined design registration to an application for unexamined design registration.

(5) Where an applicant for design registration may make amendment to the application under paragraphs (1) to (4) until a notification of decision to register under Article 28 or decision to refuse under Article 26 (referred to as “a decision to register or reject”) is delivered. However, if the applicant requests a reexamination under Article 27*bis*, the applicant may amend the application upon requesting the reexamination.

(6) Where an applicant for design registration amends an application under paragraphs (1) to (4) of this Article after the design has been registered, and where the amendment is considered to change the gist of the initial application for design registration, the filing date of the application for design registration is deemed to be the submission date of the amendment.

#### **Article 18*bis* Rejection of Amendment**

(1) Where an amendment under Article 18 of this Act changes the gist of an application for design registration, the examiner shall reject the amendment by decision.

(2) Where a decision under paragraph (1) of this Article has been made, the examiner may not decide to grant or refuse design registration for the concerned application until more than thirty days after the date on which a certified copy of the decision was transmitted

(3) Where an applicant has requested a trial under Article 67*bis* of this Act against a decision to reject an amendment under paragraph (1) of this Article, the examiner shall suspend examination of the application for design registration until the trial decision has become final.

(4) The decision to reject an amendment under paragraph (1) of this Article must be in writing and the reasons for the decision must be stated.

## **Article 19 Division of Applications for the Registration of Designs**

(1) A person falling under any of the following subparagraphs may divide a part of an application for design registration into one or more new applications:

- (i) a person who has applied for registration of two or more designs in contravention of Article 11 of this Act;
- (ii) a person who has applied for multiple design registration; or
- (iii) deleted.

(2) Except under Articles 8(2) or 23(3) and (4) of this Act, divisional applications (referred to as "divisional applications") are deemed to have been filed at the time of filing the original application.

(3) The division of an application for design registration under paragraph (1) of this Article may be made within the period for amendment under Article 18(5) of this Act.

(4) Deleted.

**Article 20 Deleted.**

**Article 20bis Deleted.**

**Article 21 Deleted.**

**Article 22 Deleted.**

### **Article 23 Priority Claim under a Treaty**

(1) Where a national of a member country of a treaty that recognizes the right of priority for an application filed by a national of the Republic of Korea claims a right of priority for an application for design registration in the Republic of Korea based on an earlier application for the same design filed in the national's country or in one of the treaty countries, the filing date of the earlier application in the foreign country is deemed to be the filing date in the Republic of Korea under Articles 5 and 16 of this Act. Where a national of the Republic of Korea has applied for design registration in a country that recognizes, under a treaty, the right of priority for an application for design registration filed by nationals of the Republic of Korea and claims the right of priority for the application for design registration in the Republic of Korea based on an earlier application for the same design in a treaty country, this provision also applies.

(2) A person claiming a right of priority under paragraph (1) of this Article shall file an application for design registration within six months of the filing date of the earlier application that serves as the basis for claiming the right of priority.

(3) When applying for design registration, a person claiming a right of priority under paragraph (1) of this Article shall specify the claim, the name of the country in which the earlier application was filed and the filing date of the application.

(4) A person who has claimed a right of priority under paragraph (3) of this Article shall submit a written statement setting forth the filing date of the application, certified by the government of the country where the earlier application was filed, and a certified copy of the drawing of the design, to the Commissioner of the Korean Intellectual Property Office within three months of the filing date of the application for design registration.

(5) Where a person who has claimed a right of priority under paragraph (3) of this Article fails to submit the document prescribed in paragraph (4) of this Article within the required period, the claim to the right of priority loses its effect.

### **Article 23-2 Laying Open an Application**

(1) Applicants for an examined design registration may request the laying open of their application by ordinance of the Ministry of Commerce, Industry and Energy. However, a request for the laying open of an application for a multiple design registration is limited to cases in which the applicant makes the request for all the designs in the application.

(2) Where the laying open of an application is requested under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall lay open the design application in the Design Gazette in accordance with Article 78. However, the Commissioner of the Korean Intellectual Property Office may not lay open the application if meaning or content of the applied design is liable to contravene public order or morality

(3) When initial certified copies of a decision to grant or refuse design registration on an application for design registration have been transmitted, a person may not request the laying open of an application prescribed in paragraph (1) of this Article.

(4) Deleted.

### **Article 23-3 Effect of Laying Open an Application**

(1) After an application is laid open, the applicant may give a written warning indicating that an application for design registration has been filed to any person who has commercially or industrially worked the filed design or a design similar to the filed design.

(2) An applicant may demand a person who has been warned under paragraph (1) of this Article or who has worked a filed design or a design similar to a filed design knowing that the design has been laid open to pay compensation equivalent to the amount the applicant would normally receive for working the registered design or a design similar to the registered design from the date of warning or the date on which the person

became aware that the design application had been filed to the date of registration of the filed design.

(3) The right to demand compensation under paragraph (2) of this Article may be exercised only after registration of the filed application.

(4) Exercising the right to demand compensation under paragraph (2) of this Article does not preclude exercising the design right.

(5) Articles 63 and 67 of this Act and Articles 760 and 766 of the Civil Act apply *mutatis mutandis* to the exercise of the right to demand compensation under paragraph (2) of this Article. In such a case, "the time when the damaged party or his legal representative became aware of such damage and of the identity of the person causing it" in Article 766(1) of the Civil Act reads "the date of registration of the design right".

(6) Where an application for design registration is abandoned, invalidated or withdrawn after the laying open of the application, a decision to refuse design registration has become final, a decision to revoke a design registration has become final according to Article 29-7(3) or a trial decision to invalidate a design registration under Article 68 of this Act (except cases where Article 68(1)(iv) of this Act is applicable) has become final, the right to request under paragraph (2) of this Article is deemed to have never existed.

#### **Article 23-4 Transfer etc. of the Right to Obtain Design Registration**

(1) The right to obtain registration of a design may be transferable. However, the right to obtain a principal design and the right to obtain a similar design must be transferred together.

(2) The right to obtain registration of a design may not be pledged.

(3) Where the right to obtain registration of a design is jointly owned, the owners may not assign their individual share without the consent of the other owners.

### **Article 23-5 Furnishing of Information**

Any person may furnish the Commissioner of the Korean Intellectual Property Office with information about a design for which an application for design registration has been filed with evidence that the concerned design is unregistrable under any subparagraph of Article 26(1) of this Act.

### **Article 23-6 Publication of Applications Determined to Be Refused in the Design Gazette**

In cases where a decision refusing an application for design registration or a trial decision to the effect that such application is refused becomes final in accordance with the latter part of Article 16(2) of this Act, the Commissioner of the Korean Intellectual Property Office shall publish the particulars of the application in the Design Gazette as provided for in Article 78 of this Act; however, if a design for which an application for registration was filed falls under any of the subparagraphs of Article 23*bis*(2) of this Act, the particulars of the application may not be published.

### **Article 24 Succession of the Right to Receive Design Registration**

(1) The succession of the right to receive a design registration before an application for design registration is filed is not effective against a third party unless the successor files an application.

(2) With regard to rights to receive a registration of the same design succeeded from the same person, where there are more than one applications for design registration on the same date, the right to receive a registration is effective only for the person who is designated after consultation among the applicants.

(3) Except in cases of inheritance or other general successions, the succession of the right to receive a design registration after an application is filed shall not be effective unless a report of change of design registration applicant is made.

(4) Where there is a succession to the right to receive a design registration or other general succession, the successor shall report the succession to the Commissioner of the Korean Intellectual Property Office.

(5) With regard to rights to receive a registration of the same design succeeded from the same person, where there are more than one report of change of applicants for a design registration, the report is effective only for the person who is designated after consultation among the applicants.

(6) Article 16(5) shall apply *mutatis mutandis* in cases of paragraphs (2) and (5).

## **CHAPTER III EXAMINATION**

### **Article 25 Examination by an Examiner**

(1) The Commissioner of the Korean Intellectual Property Office shall have applications for design registration and oppositions to an unexamined design registration examined by an examiner.

(2) The qualifications of examiners are prescribed by Presidential Decree.

### **Article 25-2 Search for Prior Art, etc**

(1) If considered necessary for examination of a design application, the Commissioner of the Korean Intellectual Property Office may designate a specialized search organization and request it to search for prior art and conduct other tasks prescribed by Presidential Decree.

(2) If considered necessary for the examination process, the Commissioner of the Korean Intellectual Property Office may request the cooperation and advice of a government agency, an organization specialized in the design concerned or an expert



with profound knowledge and experience in design matters. In such case, the Commissioner of the Korean Intellectual Property Office may pay them allowances or expenses within the limits of the budget of the Korean Intellectual Property Office.

(3) Standards for designation and matters necessary for the request for prior art searches under paragraph (1) shall be prescribed by Presidential Decree.

### **Article 25-3 Cancellation of the Designation of a Specialized Search Organization**

(1) Where a specialized search organization designated in accordance with Article 25bis(1) falls under subparagraph (1) of this paragraph, the Commissioner of the Korean Intellectual Property Office shall cancel the designation; furthermore, if such an organization falls under subparagraph (2) of this paragraph, the Commissioner shall cancel the designation or order a suspension of the organization's business for a period determined by the Commissioner which does not exceed 6 months:

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

(ii) where the search organization falls out of compliance with the designation standards referred to in Article 25bis(3)

(2) When intending to cancel the designation of a specialized search organization, the Commissioner of the Korean Intellectual Property Office must hold a hearing under the paragraph (1)

(3) Necessary matters concerning the standards and procedures for canceling the designation of a specialized search organization or suspending its business under paragraph (1) are prescribed by ordinance of the Ministry of Knowledge Economy.

### **Article 25-4 Preferential Examination**

The Commissioner of the Korean Intellectual Property Office may direct an examiner to examine an application in preference to another if the former falls under either of the following subparagraphs:

(i) where a person other than the applicant is considered to commercially and industrially work the invention claimed in the design application after the laying open of the application; or (ii) where urgent processing of the design application is considered necessary as prescribed by Presidential decree

Article 26 Decision to Refuse Design Registration (1) An examiner shall decide to refuse design registration under any of the following reasons

(i) where the design in the application for design registration is unregistrable under Articles 4-24, 5 to 7, 9(6), 10,11 ,11*bis*, 12, 16(1) and (2) of this Act

(ii) deleted;

(iii) where a person is not entitled to design registration under Article 3(1) of this Act, or where the design in the application for design registration is unregistrable under the proviso of Article 3(1) of this Act;

(iv) where an application for design registration violates a treaty; or

(v) where an application for a similar unexamined design registration falls under any of the following subparagraphs:

(a) where a design registered as a similar design or a design for which an application for similar design registration has been filed is indicated as the principal design;

(b) where the term of the design right of a principal design has expired;  
or

(c) where an application for a principle unexamined design registration has been invalidated, withdrawn or abandoned, or where a decision to refuse design registration becomes final;

(d) where an applicant for similar unexamined design registration is not identical to the owner of a design right related to a principle design or an applicant for principle design registration; or

(e) where the design of a filed application for similar unexamined design registration is dissimilar to the principle design.

(2) Notwithstanding paragraph (1) of this Article, Articles 5, 7, 11(1) and 16(1) and (2) of this Act do not apply to an application for unexamined design registration; however, if the design of such an application is not industrially applicable as required under the main part of Article 5(1) of this Act or if the design can be easily created by means of a shape, pattern, color, or any combination of these that is widely known in the Republic of Korea as required under Article 5(2) of this Act, a decision must be made to refuse registration of the design.

(3) Notwithstanding Article 2 of this Act, where a person offers information and evidence against an application for unexamined design registration under Article 23*quinquies* of this Act, an examiner may decide on the basis of the information and evidence to refuse the design registration under paragraph (1) of this Article.

#### **Article 27 Notification of Reasons for Refusal**

(1) An examiner who intends to refuse design registration under Article 26 of this Act shall notify the applicant of the reason for refusal (referring to any of the reasons for refusal in the subparagraphs of Article 26(1) of this Act; referred to as "reason for refusal") and give the applicant an opportunity to submit a written opinion within a designated period.

(2) Where reasons exist to refuse some of the designs in an application for multiple design registration, the serial number of the designs concerned, the article that is the object of the design and the reasons for refusal must be indicated.

#### **Article 27bis Request for Reexamination**

(1) Within 30 days (or where the period under Article 67*ter* is extended according to Article 4-14(1), within the period) from the date of receiving a copy of the decision of refusing a design application, the applicant may amend the description or drawing(s)

attached to the application and request for reexamination of the application. However, this paragraph shall not apply when a decision to reject is made after reexamination or there is a request for a trial under *Article 67ter*.

(2) When there is a request for reexamination according to paragraph (1), a decision to reject the application made prior to the request shall be deemed to have been revoked .

(3) A request for reexamination under paragraph (1) may not be withdrawn.

### **Article 28 Decision to Grant Design Registration**

An examiner who finds no reason to refuse an application for design registration shall decide to grant the design registration.

### **Article 29 Method of Deciding to Grant or Refuse Design Registration**

(1) An examiner's decision to grant or refuse design registration must be in writing and must state the reasons for the decision.

(2) Where an examiner decides to grant or refuse design registration, the Commissioner of the Korean Intellectual Property Office shall transmit a certified copy of the decision to the applicant.

### **Article 29-2 Opposition to the Registration of an Unexamined Design**

(1) From the date of the registration of establishment of a design right under an application for unexamined design registration to the expiry of the three-month period after the publication date of an unexamined design registration, any person may file an opposition to the grant of the design right with the Commissioner of the Korean Intellectual Property Office based on the grounds that the registration falls under any of the following subparagraphs; for registration of designs under an application for multiple design registration, an opposition may be filed for each design:

(i) where the design in the application for design registration violates Articles 5, 6, 7(1), 10 and 16(1) and (2) of this Act or Article 25 of the Patent Act as applied under Article 4 of this Act;

(ii) where a person is not entitled to design registration under Article 3(1) of this Act or the design in the application for design registration is unregistrable under the proviso of Article 3(1) of this Act; or

(iii) where an application for design registration violates a treaty.

(2) A person filing an opposition to an unexamined design registration (referred to as a "person filing an opposition to an unexamined design registration") shall submit an application for an opposition to an unexamined design registration with supporting evidence to the Commissioner of the Korean Intellectual Property Office, stating the following:

(i) the name and address of the person filing the opposition (and, if a legal entity, the name and address of the business);

(*ibis*) the name and residential or business address of the agent, if any (and, if a patent legal entity, the name and address of the business and the name of the designated patent attorney);

(ii) the indication of the registered design(s) subject to the opposition to an unexamined design registration;

(iii) the purpose of the opposition to an unexamined design registration; and

(iv) the grounds for the opposition to an unexamined design registration and indication of supporting evidence.

(3) When an opposition to an unexamined design registration is filed, the presiding trial examiner appointed under Article 29<sup>quater</sup>(3) of this Act shall transmit a certified copy of the opposition to an unexamined design registration to the owner of the registered design right subject to the opposition and give the owner an opportunity to submit a written reply within a designated period.

(4) Article 68(6) of this Act applies *mutatis mutandis* to the filing of an opposition to an unexamined design registration under paragraph (1) of this Article.

**Article 29-3 Amendment to Grounds for an Opposition to Unexamined Design Registration etc.**

A person filing an opposition to an unexamined design registration may amend the grounds or evidence indicated on the written opposition to an unexamined design registration within thirty days of the date of filing the opposition.

**Article 29-4 Collegial Body for Examinations and Decisions etc.**

- (1) A collegial body consisting of three examiners shall examine and decide an opposition to an unexamined design registration.
- (2) The Commissioner of the Korean Intellectual Property Office shall designate examiners constituting a collegial body for each opposition to an unexamined design registration.
- (3) The Commissioner of the Korean Intellectual Property Office shall appoint one of the examiners designated by paragraph (2) of this Article as a presiding examiner.
- (4) Articles 72-7(2), 72-8(2) and 72-9(2) and (3) apply *mutatis mutandis* to the collegial body of examiners and the presiding examiner.

**Article 29-5 Ex Officio Examination of an Opposition to an Unexamined Design Registration**

(1) When examining an opposition to an unexamined design registration, the examiner may examine any facts even if those facts were not presented by either the owner of the design right or the person who filed the opposition to the unexamined design registration. In such cases, the owner of the design right or the person who filed the

opposition to the unexamined design registration must be granted an opportunity to give an opinion on the facts within a designated period.

(2) When examining an opposition to an unexamined design registration, the examiner may not examine any registered design that the person who filed the opposition to the unexamined design registration failed to include in the opposition.

#### **Article 29-6 Combination or Separation of Oppositions to Unexamined Design Registration**

A collegial body of examiners may examine and decide upon two or more oppositions to an unexamined design registration by combining or separating the oppositions.

#### **Article 29-7 Decision on Opposition to Unexamined Designs Registration**

(1) A collegial body of examiners shall decide on an opposition to an unexamined design registration after the period provided under Articles *29bis*(3) and *29ter* of this Act has elapsed.

(2) Notwithstanding Article *29bis*(3) of this Act, where a person filing an opposition to an unexamined design registration fails to submit the grounds and evidence for the opposition, the presiding trial examiner may reject the opposition by decision after the period provided under Article *29ter* of this Act has elapsed.

(3) Where an opposition to an unexamined design registration is considered to have merit, the collegial body of examiners shall decide to revoke the registered design (referred to as "a decision to revoke design registration").

(4) Where a decision to revoke design registration becomes final, the design right is deemed never to have existed.

(5) Where an opposition to an unexamined design registration is considered to have no merit, the collegial body of examiners shall decide to maintain the registered design (referred to as "a decision to maintain design registration").

(6) An appeal may not be made against a decision to refuse or maintain design registration in an opposition to an unexamined design registration.

### **Article 29-8 Method of Deciding upon an Opposition to an Unexamined Design Registration**

(1) Where an examiner decides upon an opposition to an unexamined design registration, the examiner shall announce the decision in a document, with the examiner's seal and signature attached, stating the following:

- (i) the docket number of the opposition to the unexamined design registration;
- (ii) the name and address of the owner of the design right and the person who filed the opposition to the unexamined design registration (and, if a legal entity, the name and address of the business);
- (iii) the name and residential or business address of the agent, if any, of the owner of the design right and of the person who filed the opposition to the unexamined design registration (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (iv) an indication of the design that pertains to the decision;
- (v) conclusion and rationale of the decision; and
- (vi) the date of the decision.

(2) After deciding upon an opposition to an unexamined design registration, the presiding examiner shall issue a certified copy of the decision to the owner of the design right and to the person who filed the opposition to the unexamined design registration.



### **Article 29-9 Withdrawal of an Opposition to an Unexamined Design Registration**

(1) Where a person has either been notified to present an opinion under the latter part of Article 29*quinquies*(1) of this Act or issued a certified copy of a decision under Article 29*octies*(2) of this Act, the person may not withdraw an opposition to an unexamined design registration.

(2) If an opposition to a design registered without examination is withdrawn, the opposition is deemed to have never been made .

### **Article 30 *Mutatis Mutandis* Application of the Patent Act**

Articles 72-11 (except subparagraph (vi)) apply *mutatis mutandis* to examination of design applications. In this case, the word “trial” reads “examination,” and “trial examiner” reads “examiner.”

### **Article 30*bis* Suspension of Examination or Litigation**

(1) The examination procedure of a design application may, if necessary, be suspended until a decision of trial examination becomes final or a litigation has been completed.

(2) The court may, if necessary, suspend a litigation procedure until the examiner's decision on a design application becomes final.

(3) An appeal may not be made against a suspension under paragraphs (1) and (2).

### **Article 30*ter* *Mutatis Mutandis* regulation**

Articles 30*bis*, 72-5, 72-11 (except subparagraph (vi)), 72-18(7), 72-21, 72-29(3) to (6) and 72-30 apply *mutatis mutandis* to examination of and decision on the opposition to a design registered without examination.

## **CHAPTER IV REGISTRATION FEES AND REGISTRATION OF DESIGNS**

### **Article 31 Design Registration Fees**

(1) A person who is seeking to register a design right under Article 39(1) shall pay a design fee for a period of three years from the date sought for registration (hereinafter “registration date”), and the owner of design right shall pay an annual design fee from the next year of the three year period on the registration date of the design.

(2) Notwithstanding paragraph (1), the owner of design right may pay the design registration fee for multiple years or the entire period in the order of design term from the year after.

(3) The design registration fees, method of payment, period for payment and other necessary matters under paragraph (1) and (2) are prescribed by ordinance of the Ministry of Knowledge Economy.

### **Article 31bis Abandonment for Each Design at the Time of Paying Registration Fees**

(1) A person who receives a decision to grant design registration for an application for multiple design registration may abandon some individual designs when paying the registration fees.

(2) Necessary matters related to the abandonment of a design under paragraph (1) of this Article are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 32 Payment of Registration Fees by an Interested Party**

(1) Regardless of the intent of a person responsible for paying registration fees, any interested party may pay the fees.

(2) An interested party who has paid the registration fees under paragraph (1) of this Article may demand reimbursement of the fees from the responsible party if the party is currently making a profit.

### **Article 33 Late Payment of Registration Fees**

(1) A owner of design right or a person seeking to register a design right has a period of six months after the expiry of the payment period prescribed under Article 31(3) to pay the late registration fees.

(2) When the registration fee is paid according to paragraph (1), the amount of registration fee to be paid shall be prescribed by ordinance of the Ministry of Knowledge Economy, but not more than twice the registration fees.

(3) Where a owner of design or a person seeking to register a design right fails to pay the additional registration fees within the period under paragraph (1) (or fails to pay the remaining portion within the period of remaining payment when the period of remaining payment designated in Article 33bis (2) has not expired but the period for late payment has expired), the design application is deemed to have been abandoned, and the design right concerned is deemed to have been extinguished retroactively from the next day of the expiry date of the period for the registration fees paid under Article 31(1) or (2).

### **Article 33bis Remaining Payment of Registration Fees**

(1) If the owner of a design right or any person seeking to register a design right fails to pay any portion of the registration fees within the period of late payment under Articles 31(3) or 33(1) of this Act, the Commissioner of the Korean Intellectual Property Office shall order payment of the remaining balance.

(2) A person who has been ordered to pay the remaining balance in accordance with paragraph (1) of this Article may pay the remaining portion of the registration fees within one month of the date of receiving the order.

(3) A person who pays the remaining portion of the registration fees shall pay an amount prescribed by ordinance of the Ministry of Knowledge Economy, but not more than twice the remaining balance if payment of the remaining balance under paragraph (2) of this Article falls under either of the following subparagraphs:

(i) where the remaining portion of the registration fees is paid after the payment period under Article 31(3) of this Act expires; or

(ii) where the remaining portion of the registration fees is paid after the late payment period under Article 33(1) of this Act expires.

**Article 33<sup>ter</sup> Restoration of an Application for Design Registration or a Design Right by Late Payment of Registration Fees etc.**

(1) Where the owner of a design right or a person seeking to register a design right is unable to pay late registration fees within the period of late payment under Article 33(1) of this Act for unavoidable reasons or fails to pay the remaining balance of the registration fees within the period of payment prescribed in Article 33<sup>bis</sup>(2), the person has a period of fourteen days from the date on which the reasons cease to exist in which to pay the late registration fees. However, this provision does not apply where six months have elapsed from the latest expiry date of either the period of late payment or the period for paying the remaining balance.

(2) Notwithstanding Article 33(3) of this Act, where late registration fees are paid in accordance with paragraph (1) of this Article, the application for the design registration is deemed not to have been abandoned and the design right concerned is deemed to have existed continuously.

(3) Where the design right of a registered design being worked is extinguished on the grounds of a failure to pay registration fees within the period of late payment under Article 33(1) of this Act or a failure to pay the remaining balance within the period of

payment prescribed under Article 33*bis*(2) of this Act, the owner of the design right may apply for restoration of the right by paying an amount three times the amount of the registration fees stipulated in Article 31 of this Act within three months of the expiry of the period of late payment or the period of paying the remaining balance. Where a design right is restored in this manner, the design right is deemed to have existed continuously.

(4) The effects of an application for design registration or a design right under paragraph (2) or (3) of this Article do not extend to the act of working the design or a similar design by another person from the date on which the period for late payment of the registration fees expires to the date on which the registration fees are paid or the remaining balance of the registration fees is paid (referred to as "the term of limited effect").

(5) During the term of limited effect, where a person has, in good faith, been commercially or industrially working or preparing to work in the Republic of Korea a design for which an application for design registration has been filed, or for which a design or similar design is registered under paragraph (2) or (3) of this Article, the person is entitled to have a nonexclusive license for the design right concerned within the scope of the objectives of the design or business that the person is working or preparing to work.

(6) A person who has a nonexclusive license under paragraph (5) of this Article shall pay reasonable remuneration to the owner of the design right or the exclusive licensee.

#### **Article 34 Official Fees**

(1) A person who files an application for design registration, makes a request or initiates any other procedure shall pay the official fees.

(2) Matters related to paying official fees, including the method and period of payment and other necessary matters under paragraph (1) of this Article, are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 35 Reduction or Exemption of Registration Fees or Official Fees**

(1) Notwithstanding Articles 31 and 34 of this Act, the Commissioner of the Korean Intellectual Property Office shall grant an exemption from paying registration fees or official fees in the following situations:

- (i) official fees or registration fees for an application for design registration or for a design right belonging to the State; or
- (ii) fees for requesting an invalidation trial by an examiner under Article 68(1) of this Act.

(2) Notwithstanding Articles 31 and 34 of this Act, where an application for design registration has been filed by an entitled person under Article 3 of the National Assistance Act, or a person prescribed by ordinance of the Ministry of Commerce, Industry and Energy, the Commissioner of the Korean Intellectual Property Office may reduce or exempt from payment, the registration fees equivalent to the first three years for the registration of the establishment of a design right and official fees as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) A person taking advantage of reduced registration fees or exemption from paying registration fees or official fees under paragraph (2) of this Article shall submit the documents prescribed by ordinance of the Ministry of Knowledge Economy to the Commissioner of the Korean Intellectual Property Office.

### **Article 36 Refund of Registration Fees etc.**

(1) Registration fees and official fees that have already been paid may not be refunded; however, any of the following fees may be refunded at the request of the person who paid the fees in any of the following cases:

- (i) the registration fees and official fees, where the fees were paid by mistake;
- (ii) the registration fee for the year following the year in which the decision on revocation or invalidation of the design registration becomes final or

(iii) the application fee for a design registration, where the application for design registration (excluding applications for design registration that include a request for a preferential examination divisional applications or applications for design registration that serve as the basis of divisional applications) is withdrawn or abandoned within one month of the filing date of the application for design registration.

(2) Where a person has paid registration fees and official fees in the circumstances of any of the subparagraphs in paragraph (1) of this Article, the Commissioner of the Korean Intellectual Property Office shall notify the person.

(3) Where three years have elapsed since the date on which a person received the notification referred to in paragraph (2) of this Article, the person may not request a refund of registration fees and official fees under the proviso of paragraph (1) of this Article.

### **Article 37 Design Register**

(1) The Commissioner of the Korean Intellectual Property Office shall keep a Design Register at the Korean Intellectual Property Office and shall register the following matters:

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

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

(iii) the establishment, transfer, modification, extinguishment or restriction on disposal of a pledge on a design right or on an exclusive or nonexclusive license.

(2) The Design Register under paragraph (1) of this Article may be stored electronically in whole or in part in format such as an electronic recording medium.

(3) Relevant matters related to the particulars and procedures of registration not stipulated in paragraphs (1) and (2) of this Article are prescribed by Presidential Decree.

#### **Article 38 Issuance of a Design Registration Certificate**

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

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

### **CHAPTER V DESIGN RIGHT**

#### **Article 39 Registration of Establishment of a Design Right**

(1) A design right is effective upon the registration of its establishment.

(2) Where registration fees are paid under Article 31(1) of this Act or paid as a late payment under Article 33(1) of this Act, or the remaining balance of registration fees is paid under Article 33*bis* (2) of this Act, or the registration fees or the remaining balance of the registration fees is paid under Article 33*ter* (1) of this Act, or the registration fees are exempted under Articles 35(1)(i) and 35(2) of this Act, the Commissioner of the Korean Intellectual Property Office shall register the establishment of a design right.

(3) When a right is registered under paragraph (2) of this Article, the Commissioner of the Korean Intellectual Property Office shall publish particulars of the design registration in the Design Gazette, including the name and address of the owner of the design right and the registration number of the design, as prescribed by Presidential Decree.



#### **Article 40 The Term of a Design Right**

(1) The term of a design right is for fifteen years after the registration date of its establishment. However, the expiry date of the term of a design right related to a similar design is the expiry date of the term of the design right related to the principal design.

(2) Where design registration is bestowed to a lawful holder under Article 15, the term of the design right under paragraph (1) of this Article starts on the day after the date of registration of the design right previously filed by the unentitled person.

#### **Article 41 Effects of a Design Right**

The owner of a design right has the exclusive right to commercially and industrially work the registered design and a similar design. However, where the design right is subject to an exclusive license, this provision does not apply to the extent that the exclusive licensee has the exclusive right to work the registered design or similar design under Article 47(2) of this Act.

#### **Article 42 Design Right Related to a Similar Design**

A person may incorporate a design right related to a similar design as defined in Article 7(1) of this Act in a design right related to the principal design.

#### **Article 43 Scope of Protection of a Registered Design**

The scope of protection conferred by a registered design is determined by the terms of the description in the application, the design represented in a drawing attached to the application or shown in a photograph or sample attached to the application, and in the explanation of the intent and purpose of the design attached to the drawing.

#### **Article 44 Limitations of a Design Right**

(1) The effects of a design right do not extend to any of the following:

- (i) the use of a registered design for research or an experiment;
- (ii) vessels, aircraft or vehicles merely passing through the Republic of Korea or the machinery, instruments, equipment or other accessories used in the vessels, aircraft or vehicles; or
- (iii) identical products existing in the Republic of Korea at the time the application for registration of a design was filed.

(2) Where a style of calligraphy has been registered as a design right, the effects of the design right do not extend to the following:

- (i) the use of the style of calligraphy in ordinary process such as typing, typesetting or printing;
- (ii) the result from using the style of calligraphy under subparagraph (i) of this Article.

#### **Article 45 Relationship with another Person's Registered Design**

(1) Where working a registered design would utilize another person's registered design or design similar to the registered design, or patented invention, registered utility model or registered trademark under an application filed before the filing date of the application for the registration of the design concerned, or where a design right conflicts with another person's patent right, utility model right or trademark right under an application filed before the filing date of the application for registration of a design concerned, the owner of the design right or exclusive or nonexclusive licensee may not work the registered design commercially or industrially without the consent of the owner of the earlier patent right, utility model right or trademark right, unless Article 70 of this Act applies.

(2) Where working a design similar to a registered design would utilize another person's registered design or design similar to the registered design, or patented invention, registered utility model or registered trademark under an application filed before the filing date of the application for the registration of the design concerned, or where a design right of the design similar to the registered design conflicts with another person's registered design, patent right, utility model right or trademark right under an application filed before the filing date of the application for registration of the design concerned, the owner of the design right or exclusive or nonexclusive licensee may not work the design similar to the registered design commercially or industrially without the consent of the owner of the earlier patent right, utility model right or trademark right, unless Article 70 of this Act applies.

(3) Where working a registered design or a design similar to the registered design would utilize or conflict with another person's copyright, effective before the filing date of the application for registration of the design concerned, the owner of the design right or exclusive or nonexclusive licensee may not work the registered design or similar design commercially or industrially without the consent of the owner of the copyright.

#### **Article 46 Assignment and Joint Ownership of a Design Right**

(1) A design right may be assigned. However, a design right related to a principal design and a design right related to a similar design must be assigned together.

(2) Where a design right is jointly owned, the owners may not assign or pledge their individual share without the consent of the other owners.

(3) Where a design right is jointly owned, and unless otherwise agreed in a contract of the owners, an owner may individually work the registered design or similar design without the consent of the other owners.

(4) Where a design is jointly owned, an owner may not grant an exclusive license or a nonexclusive license under the design right without the consent of the other owners.

(5) A design right registered as a multiple design may be divided and transferred for each design right.

#### **Article 47 Exclusive License**

(1) The owner of a design right may grant an exclusive license on the design right.

(2) An exclusive licensee granted an exclusive license under paragraph (1) of this Article has the exclusive right to commercially and industrially work the registered design or similar design to the extent allowed in the license contract.

(3) An exclusive licensee may not transfer the license without the consent of the owner of the design right, except when the license is transferred with the business in which it is worked or in the case of inheritance or other general succession.

(4) An exclusive licensee may establish a pledge or grant a nonexclusive license on the exclusive license only with the consent of the owner of the design right.

(5) Article 46(2) to (4) of this Act applies *mutatis mutandis* to exclusive licenses.

#### **Article 48 Effects of Registration of a Patent Right and an Exclusive License**

(1) The following matters are not effective unless registered:

(i) the transfer (except through inheritance or other general succession) or extinguishment by abandonment, or restriction on the disposal of a design right;

(ii) the grant, transfer (except through inheritance or other general succession), modification, extinguishment (except through confusion) or restriction on the disposal of an exclusive license; and

(iii) the establishment, transfer (except through inheritance or other general succession), modification, extinguishment (except through confusion) or restriction on the disposal of a pledge on a design right or exclusive license.

(2) The Commissioner of the Korean Intellectual Property Office must be notified immediately of the inheritance or other general succession related to a design right, an exclusive license or a pledge under paragraph (1).

#### **Article 49 Nonexclusive License**

(1) The owner of a design right may grant a nonexclusive license on the design right.

(2) A nonexclusive licensee is entitled to work the registered design and a design similar to the registered design commercially and industrially to the extent allowed in this Act or by the license contract.

(3) A nonexclusive license under Article 70 must be transferred with the design right concerned and is extinguished when the design right is extinguished.

(4) A nonexclusive license other than those described in paragraphs (3) may not be transferred without the consent of the owner of design right (or the owner of design right and the exclusive licensee for a nonexclusive license on an exclusive license), except in cases of transfer of nonexclusive license with the underlying business, inheritance or other general succession.

(5) A pledge may not be established on a nonexclusive license other than those under paragraphs (3) without the consent of the owner of design right (or the owner of design right and the exclusive licensee for a nonexclusive license on an exclusive license).

(6) Article 46(2) and (3) applies *mutatis mutandis* to a nonexclusive license.

#### **Article 50 Nonexclusive License by Virtue of Prior Use**

Where a person has been commercially or industrially working, or making preparations to work, a design that is identical or similar to a design for which an application has been filed in the Republic of Korea, and where the person created the design without knowledge of the contents of the design in the application at the time the application was filed, the person is entitled to have a nonexclusive license on the design right of the design in the application, provided the license is limited to the scope of the design that

has been worked or for which preparations for working have been made by the person, and to the purpose of the working or preparations.

#### **Article 50bis Nonexclusive License by Virtue of Prior Application**

Where a person falls under both of the following subparagraphs, and where the person (excluding any person who falls under Article 50 of this Act) has been commercially or industrially working, or making preparations to work, a design that is identical or similar to a design for which an application has been filed in the Republic of Korea, and where the person created the design without knowledge of the contents of the design in the application at the time the application was filed, the person is entitled to have a nonexclusive license on the design right of the design in the application, provided the license is limited to the scope of the design that has been worked or for which preparations for working have been made by the person, and to the purpose of the working or preparations:

(i) before the date on which another person files an application to register the design, the person files an application to register the same design or a similar design and has commercially or industrially worked, or made preparations to work, the design in the registration application and

(ii) the person's design for which an application for registration was filed earlier, as indicated in subparagraph (i) of this paragraph, falls under any of the subparagraphs of Article 5(1) of this Act and, accordingly, a decision to refuse the application or a trial decision of refusal becomes final.

#### **Article 51 Nonexclusive License Due to Working before Registration of Demand for an Invalidation Trial**

(1) Where a person falling under any of the following subparagraphs has, in good faith, been commercially or industrially working, or has been making preparations to work, a registered design or a similar design in the Republic of Korea before the registration of a request for an invalidation trial of the design registration concerned, without knowing

that the registered design is subject to invalidation, the person is entitled to have a nonexclusive license on the relevant design right or on the exclusive license existing at the time the design registration was invalidated, provided the license is limited to the scope of the design that has been worked or for which preparations for working have been made by the person, and to the purpose of the working or preparations;

(i) the original owner of the design right, where one of two or more design registrations granted for the same or similar design has been invalidated;

(ii) the original owner of the design right, where the design registration has been invalidated and design registration for the same or similar design has been granted to an entitled person;

(iii) in the cases referred to in subparagraphs (i) and (ii) of this Article, a person who, at the time of registration of the request for an invalidation trial of the design right that has been invalidated, has been granted an exclusive or nonexclusive license or nonexclusive license on the exclusive license and:

a. who has registered the nonexclusive license or exclusive license.

b. who acquired a nonexclusive license under the article 52-2(2).

(2) A person granted a nonexclusive license under paragraph (1) of this Article shall pay reasonable remuneration to the owner of the design right or the exclusive licensee.

#### **Article 52 Nonexclusive License after a Design Right Expires etc.**

(1) Where a design similar to a registered design conflicts with a design right registered on or before the date of application for registration of the design (referred to as "a primary design right"), the owner of the primary design right is entitled to have a nonexclusive license for the design right not exceeding the scope of the primary design right when the term of the primary design right expires, or a nonexclusive license for an exclusive license of the design right that exists when the term of the primary design right expires.

(2) Under paragraph (1), an exclusive licensee of a primary design right that exists when the term of the primary right expires, or a nonexclusive licensee under Article 52-2(1) is entitled to have a nonexclusive license for a design right not exceeding the scope of the primary design right, or a nonexclusive license for the exclusive license of the design right that exists when the term of the primary design right expires.

(3) Paragraphs (1) and (2) of this Article apply *mutatis mutandis* where a registered design or a design similar to a registered design conflicts with a patent right or a utility model right registered on or before the date of application for registration of design, and where the term of the patent right or utility model right expires.

(4) The owner of a nonexclusive license paragraph (2) of this Article (including when (3) of this Article applies *mutatis mutandis*) shall pay reasonable remuneration to the owner of the design right or the exclusive licensee for the design right.

#### **Article 52bis Effects of Registration of a Nonexclusive License**

(1) When a nonexclusive license has been registered, it is also effective against any person who subsequently acquires the design right or an exclusive license.

(2) A nonexclusive license granted under Articles 33ter(5), 50, 50bis, 51, 52 ,58,74-2,and 74-3 of this Act and Article 10(1) of the Invention Promotion Act has the same effect as prescribed under paragraph (1) of this Article even if it has not been registered.

(3) The transfer, modification, extinguishment or restriction on disposal of a nonexclusive license or the establishment, transfer, modification, extinguishment or restriction on disposal of a pledge related to a nonexclusive license is not effective against a third party unless it is registered.

#### **Article 53 Abandonment of a Design Right**

The owner of a design right may abandon the design right.



#### **Article 54 Restriction on Abandonment of a Design Right etc.**

(1) The owner of a design right may not abandon the design right without the consent of the exclusive licensee, pledgee or nonexclusive licensee under Articles 47(4) or 49(1) of this Act or Article 8(1) of the Invention Promotion Act as applied *mutatis mutandis* under Article 24 of this Act.

(2) An exclusive licensee may not abandon the exclusive license without the consent of the pledgee or nonexclusive licensee under Article 47(4) of this Act.

(3) A nonexclusive licensee may not abandon the nonexclusive license without the consent of the pledgee.

#### **Article 55 Effect of Abandonment**

When a design right or an exclusive or nonexclusive license is abandoned, the design right or the exclusive or nonexclusive license on the design right is extinguished.

#### **Article 56 Pledge**

Where a design right or an exclusive or nonexclusive license is the subject of a pledge, the pledgee may not work the registered design except as otherwise provided by contract.

#### **Article 57 Subrogation for the Right of a Pledge**

A pledge may be exercised against the remuneration allowed under this Act or against remuneration or goods to be received for working a design right; however, an attachment order must be obtained before the payment or delivery of the remuneration or goods.

**Article 58 Nonexclusive License when Transferring the Design Right by Exercising the Pledge Right**

Where the owner of a design right has worked a registered design or similar design that is the subject of a pledge before the establishment of the pledge, and the design right is subsequently sold at an auction and so on, the owner is entitled to have a nonexclusive license on the registered design right; however, the owner of the design right shall pay reasonable remuneration to the pledgee.

**Article 59 Extinguishment of a Design Right in the Absence of a Successor**

A design right is extinguished if no successor exists at the time of succession.

**Article 60 Deleted.**

**Article 61 The Title of Execution on Amount of Compensation and Remuneration**

A final ruling by the Commissioner of the Korean Intellectual Property Office on the amount of the compensation or remuneration to be paid under this Act has the same effect as an enforceable title of execution. In such case, an official of the Korean Intellectual Property Office shall give the legal writ, which has the force of execution.

## **CHAPTER VI PROTECTION OF OWNER OF DESIGN RIGHT**

### **Article 62 Injunction against an Infringement etc.**

(1) The owner or exclusive licensee of a design right may request a person who is infringing or likely to infringe the design right to discontinue or refrain from the infringement.

(2) Any owner or exclusive licensee of a design right who has requested that the design be kept secret under Article 13(1) of this Act may not make a request under paragraph (1) of this Article otherwise he gives a warning with a document which the Commissioner of the Korean Intellectual Property Office has verified the following on the design;

(i) the name and address of the owner or exclusive licensee of the design right (if the exclusive licensee makes a request); (and, if a legal entity, the name and address of the main office);

(ii) the application number for the design registration and the date of application;

(iii) the registration number and the date of registration; or

(iv) the contents of any drawing, photo or sample attached to the application for design registration.

(3) An owner of a design right or an exclusive licensee who is acting under paragraph (1) may demand the destruction of the articles that resulted from the act of infringement, the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

### **Article 63 Acts Considered to be Infringing**

Acts of commercially or industrially manufacturing, assigning, leasing, importing or offering for assignment or lease (including displaying for assignment or lease) articles

used exclusively for manufacturing articles to which a registered design or similar design has been applied for are shall be considered to infringe the design right or exclusive license.

#### **Article 64 Presumption etc. of the Amount of Damages**

(1) Where the owner of a design right or exclusive licensee claims compensation from a person who has intentionally or negligently infringed a design right or exclusive license for damages caused by the infringer's transfer of articles, the amount of damages suffered by the owner of the trademark right or exclusive licensee may be calculated as the number of transferred articles multiplied by the profit per unit of the articles that the owner of the trademark right or exclusive licensee might have sold in the absence of the infringement. However, the compensation may not exceed an amount calculated as follows: the estimated profit per unit multiplied by the number of articles that the owner of the trademark right or licensee could have produced subtracted by the number of units actually sold. If the owner of the trademark right or exclusive licensee is unable to sell part or all of the articles for reasons other than the infringement, a sum calculated according to the number of articles subject to the reasons must be deducted.

(2) Where the owner of a design right or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a design right or exclusive license, the profits gained by the infringer as a result of the infringement are presumed to be the amount of damage suffered by the owner of the design right or exclusive licensee.

(3) The owner of a design right or exclusive licensee may claim, as damages for an infringement, the amount of money that the owner or exclusive licensee would normally be entitled to receive for working the registered design from the person who has intentionally or negligently infringed the design right or exclusive license.

(4) Notwithstanding paragraph (3) of this Article, where the amount of damage exceeds the amount referred to in paragraph (3) of this Article, the excess amount may also be claimed as compensation

for damages. When awarding damages, the court may consider whether the person who infringed the design right or the exclusive license was willful or grossly negligent.

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

#### **Article 65 Presumption of Negligence**

(1) A person who has infringed a design right or exclusive license of another person is presumed to have been negligent regarding the act of infringement. However, this provision does not apply to the infringement of a design right or exclusive license related to a design registered as a secret design under Article 13(1) of this Act.

(2) Paragraph (1) of this Article applies *mutatis mutandis* if the owner of the design right or exclusive or nonexclusive licensee of registration design of unexamined design infringes another person's design right or exclusive license.

#### **Article 66 Measures for Recovering the Reputation of the Owner of a Design Right etc.**

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

### **Article 67 Submission of Documents**

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

## **CHAPTER VII TRIAL**

### **Article 67bis Trial against a Decision to Reject an Amendment**

Where a person who receives a decision to reject an amendment under Article 18bis(1) of this Act is dissatisfied with the decision, the person may request a trial within thirty days of receiving a certified copy of the decision.

### **Article 67ter Trial against a Decision to Refuse or Revoke Design Registration**

A person who has received a decision to refuse or revoke design registration may request a trial within thirty days of receiving a certified copy of the ruling.

### **Article 68 Trial to Invalidate a Design Registration**

(1) In any of the following cases, an interested person or an examiner may request a trial to invalidate a design registration; a request may be made for each design for which an application for the registration of multiple designs is made under Article 11bis:

- (i) the registration violates Articles 4-24, 5, 6, 7(1), 10, and 16(1) and (2)
- (ii) where the registration is filed by a person not entitled to a patent or it is unpatentable under the proviso of Article 3(1) of this Act;
- (iii) the registration violates a treaty; or
- (iv) after registration, the owner of the design right is no longer capable of enjoying the design right under Article 4-24 of the Patent Act as applied under Article 4 of this Act, or the registration no longer complies with a treaty.

(2) A trial under paragraph (1) of this Article may be requested even after the extinguishment of a design right.

(3) Where a trial decision invalidating a design registration has become final (except for the design registration of a similar design), the design right is deemed never to have existed; however, where the design registration falls under paragraph (1)(iv) of this Article and a trial decision invalidating the design registration has become final, the design right is deemed to have never existed from the time the design registration first fell under paragraph (1)(iv) of this Article.

(4) Where a trial decision invalidating the design registration of a principal design has become final, the design registration of a similar design also becomes invalid.

(5) Where a trial decision invalidating a design registration of a similar design has become final or where the design registration of a similar design becomes invalid under paragraph (4) of this Article, the design right of the similar design is deemed to have never existed from the beginning. However, where a trial decision invalidating the design registration of a similar design under paragraph (1)(iv) of this Article has become final, the design right of the similar design is deemed not to have existed from the time the design registration of the similar design first fell under paragraph (1)(iv) of this Article.

(6) Where a trial for invalidation under paragraph (1) of this Article has been requested, the presiding trial examiner shall notify the exclusive licensee of the design right and any other persons who have registered rights related to the design registration.

### **Article 69 Trial to Confirm the Scope of a Design Right**

The owner of a design right, an exclusive licensee or an interested person may request a trial to confirm the scope of a design right protected by the design registration.

### **Article 70 Trial for Granting a Nonexclusive License**

(1) Where the owner of a design right or exclusive or nonexclusive licensee seeks permission to exercise the right under Article 45(1) or (2) of this Act and the other party refuses permission without justifiable reasons or permission is impossible to obtain, the owner or exclusive or nonexclusive licensee may request a trial for the grant of a nonexclusive license to the extent necessary to work the registered design.

(2) Where a person who has granted a nonexclusive license under paragraph (1) of this Article seeks to work the registered design of the person who has been granted the nonexclusive license and the latter refuses permission or permission is impossible to obtain, the former may request a trial for the grant of a nonexclusive license for the registered design or within the scope of a design similar to the registered design.

(3) A nonexclusive licensee granted a nonexclusive license under paragraphs (1) or (2) of this Article shall remunerate the patentee, the owner of the utility model right, the owner of the design right or the exclusive licensee; if payment is not possible for unavoidable reasons, the remuneration must be deposited.

(4) A nonexclusive licensee under paragraph (3) of this Article may not work a patented invention, registered utility model or design right or similar design without paying or depositing the remuneration.



### **Article 71 *Mutatis Mutandis* Application of the Provisions of Examination to Trial against the Decision to Refuse Design Registration**

(1) The main stipulation of Articles 18(1) to (4), the main part of 18(5), 18*bis*, 27 and 28 of this Act applies *mutatis mutandis* to a trial against the decision to refuse design registration. In such cases, “Where an applicant for design registration has not been notified of either the decision to grant design registration under Article 28 of this Act or the decision to refuse design registration under Article 26 of this Act (referred to as “a decision to grant or refuse design registration”)” in the main part of Article 18(5) reads “within the period of submitting a written statement of opinion by virtue of notification of the reason for refusal”, “Where an applicant has requested a trial under Article 67*bis* of this Act” in Article 18*bis*(3) reads “Where a legal action has been brought under Article 75(1)”, and “until the trial decision has become final” reads “until the decision on the legal action has become final”.

(2) Articles 18*bis*(1) and (4), and 27, which apply *mutatis mutandis* under paragraph (1) of this Article, apply only where the reasons for refusal differ from the grounds of the examiner's original decision to refuse design registration.

### **Article 72 Request for a Joint Trial etc.**

(1) Where two or more persons request an invalidation trial under Articles 68(1) or a trial to confirm the scope of a design right under Article 69 with regard to the same design right, the persons may individually or jointly request the trial.

(2) Where a trial is requested against any of the joint owners of a design right, the requestor shall name all the joint owners as defendants.

(3) Notwithstanding paragraph (1), where one of the joint owners of a design right or of a right to obtain a design registration request a trial concerning the right under joint ownership, the request must be made jointly by all the owners.

(4) Where grounds exist for the suspension of trial proceedings that apply to one of the requestors under paragraphs (1) or (3) or one of the defendants under paragraph (2), the suspension is effective against all of them.

#### **Article 72-2 Formal Requirements of a Request for a Trial**

(1) A person requesting a trial shall submit a written request to the President of the Intellectual Property Tribunal, stating the following:

(i) the names and addresses of the parties (and, if a legal entity, the name and address of the business);

(ii) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);

(iii) identification of the trial case; and

(iv) the purpose and grounds of the request.

(2) The intent or purpose of a request for a trial submitted under paragraph (1) may not be amended; however, this provision shall not apply in any of the following circumstances;

(i) where a correction (including addition of a matter) is made to correct the matters under subparagraph (1)(i) of the owner of design right among parties;

(ii) where the grounds for requesting a trial under paragraph (1)(iii) is amended; or

(iii) where, in the case of a trial confirming the scope of rights as requested by a owner of design right or an exclusive licensee, the requester amends the description and drawing(s) of the design specified in the written request for a trial (the design of the defendant as contended by the requester) in order to make the design the same as the design being worked by the defendant if the

defendant argues, on the basis of a comparison, that the requestor's design differs from the design being worked by the defendant.

(3) When a trial is requested to confirm the scope of a patent right under Article 69, the explanation and the necessary drawing(s) that can be compared with the registered design must be attached to the written request.

(4) In addition to stating the particulars referred to in paragraph (1), a written request for a trial under Article 70(1) must state the following:

- (i) the number and title of the registered design required to be worked;
- (ii) the number, title and date of the other party's patent, registered utility model or registered design to be worked; and
- (iii) the scope, duration and remuneration for the nonexclusive license on a patented invention, a registered utility model or a design.

### **Article 72-3 Formal Requirements of a Request for a Trial on a Decision to Refuse a design registration**

(1) Notwithstanding Article 72-2(1) a person who requests a trial against a decision to reject an amendment, refuse or revoke a design registration under Article 67bis or 67ter shall submit a written request to the President of the Intellectual Property Tribunal and specify the following. And the President of the Intellectual Property Tribunal should let the petitioner of opposition to an unexamined design registration in case there is a request a trial on a decision to revoke a design registration under article 67ter.

- (i) the name and address of the petitioner (if the petitioner is a legal entity, the name and address of the business);
- (ii) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);

(iii) the filing date and file number of the application (and, for dissatisfaction with a decision to revoke a patent, the registration date and number of the patent);

(iv) the product for the design

(v) the date of the decision of refuse or revoke a design registration, or reject an amendment;

(vi) identification of the trial case; and

(vii) the purpose and grounds of the request.

(2) Where a request for a trial is amended under paragraph (1), the intent or purpose of the request may not be amended. However, it may be amended where:

(i) an amendment (including addition of new matter) is made to correct a statement under subparagraph (1)(i) by the petitioner; or

(ii) the reason for the request under subparagraph (1)(vii) is amended.

#### **Article 72-4 Rejection of a Request for a Trial**

(1) When either of the following subparagraphs applies, a presiding trial examiner shall instruct the applicant to make a written amendment within a designated period:

(i) where a request for a trial does not comply with Articles 72bis(1), (3) and (4) or 72ter(1)

(ii) where a trial-related procedure falls under any of the following cases:

(a) where the procedure does not comply with Articles 4(1) or 4-4;

(b) where the fees required under Article 34 have not been paid; or

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

(2) Where a person instructed to make an amendment under paragraph (1) fails to do so within the designated period, the presiding trial examiner shall reject the request for a trial by decision.

(3) A decision to reject a request for a trial under paragraph (2) must be in writing and must state the reasons for the decision.

#### **Article 72-5 Rejection of a Request for a Trial Containing Incurable Defects**

Where a request for a trial contains unlawful defects or opposition to an unexamined design registration that cannot be corrected by amendment, the request may be rejected by a ruling without giving the defendant an opportunity to submit a written reply.

#### **Article 72-6 Trial Examiners**

(1) When a trial is requested, the President of the Intellectual Property Tribunal shall direct the trial examiners to hear the case.

(2) The qualifications of trial examiners are prescribed by Presidential Decree.

(3) A trial examiners shall conduct official trial duties for a trial in an independent manner.

#### **Article 72-7 Designation of Trial Examiners**

(1) For each trial, the President of the Intellectual Property Tribunal shall designate trial examiners to constitute a collegial body under Article 72nonies..

(2) Where a trial examiner designated under paragraph (1) is ineligible to participate in a trial, the President of the Intellectual Property Tribunal may appoint another trial examiner to replace the designated trial examiner.

#### **Article 72-8 Presiding Trial Examiner**

(1) The President of the Intellectual Property Tribunal shall select one of the trial examiners designated under Article 72-7(1) as the presiding trial examiner.

(2) A presiding trial examiner shall preside over all matters related to the trial.

#### **Article 72-9 Collegial Body for a Trial**

(1) A trial must be conducted by a collegial body of three or five trial examiners.

(2) The collegial body referred to in paragraph (1) shall make its decisions by a majority vote.

(3) The consultations of trial examiners are not open to the public.

#### **Article 72-10 Submission of a Response etc.**

(1) When a trial has been requested, the presiding trial examiner shall transmit a copy of the written request to the defendant and shall give the defendant an opportunity to submit a response within a designated period.

(2) Upon receipt of the response under paragraph (1), the presiding trial examiner shall transmit a copy of the response to the petitioner.

(3) The presiding trial examiner may directly examine the parties in relation to the trial.

#### **Article 72-11 Exclusion of a Trial Examiner**

A trial examiner is excluded from a trial in any of the following cases:

(i) the trial examiner or the present or former spouse of the trial examiner is a party, intervener or a person who has opposition to an unexamined design registration.

(ii) the trial examiner is or was a blood relative or a member of the household of a party intervener or a person who has opposition to an unexamined design registration.

(iii) the trial examiner is or was a legal representative of a party ,intervener or a person who has opposition to an unexamined design registration.

(iv) the trial examiner has become a witness or expert witness or was an expert witness;

(v) the trial examiner is or was an agent of a party, intervener or a person who has opposition to an unexamined design registration.

(vi) the trial examiner participated as an examiner or trial examiner in a decision to reject an amendment, grant a design registration, opposition to an unexamined design registration or a trial decision related to the case; or

(vii) the trial examiner has a direct interest.

#### **Article 72-12 Request for Exclusion**

Where grounds exist for exclusion under Article 72-11, a party or intervener may request that a trial examiner be excluded.

#### **Article 72-13 Recusal of a Trial Examiner**

(1) In circumstances where the participation of a trial examiner would prejudice the fairness of a trial, a party or intervener may present a motion to recuse the trial examiner.

(2) After a party or intervener has made a written or oral statement with regard to a case before a trial examiner, the party or intervener may not present a motion to recuse the trial examiner, except when the party or intervener did not know grounds for recusal existed or the grounds for recusal arose later.

#### **Article 72-14 Indication of Grounds for Exclusion or Recusal**

(1) A person who presents a motion for exclusion or recusal under Articles 72-12 or 72-13 shall submit a document to the President of the Intellectual Property Tribunal stating the grounds for the motion. However, in an oral trial examination, an oral challenge may be made.

(2) The underlying causes for exclusion or recusal must be substantiated within three days of the date on which the motion was presented.

#### **Article 72-15 Decision on a Request to Exclude or Recuse**

- (1) A request for exclusion or recusal must be decided by a trial.
- (2) A trial examiner subject to a motion for exclusion or recusal may not participate in the trial of the request but may, however, give an opinion.
- (3) A decision made under paragraph (1) must be in writing and must state the reasons for the decision.
- (4) An appeal may not be made against a decision made under paragraph (1) of this Article.

#### **Article 72-16 Suspension of Trials**

When a motion for exclusion or recusal has been presented, trial proceedings must be suspended until a decision has been made, except when the motion requires urgent attention.

#### **Article 72-17 Trial Examiners Recusing Themselves**

Where Articles 72-11 or 72-13 apply to trial examiners, the trial examiners may recuse themselves from trial proceedings related to the case with the consent of the President of the Intellectual Property Tribunal.

#### **Article 72-18 Trial Proceedings etc.**

- (1) Trial proceedings are conducted by oral hearing or documentary examination. However, when a concerned party requests an oral hearing, the trial proceedings must be conducted by oral hearing unless a decision can obviously be made on the basis of documentary examination alone.
- (2) Except when public order or morality is likely to be injured, oral hearings are conducted in public.



- (3) Where trial proceedings are conducted by oral hearings in accordance with paragraph (1), the presiding trial examiner shall designate the date and place of the hearings and transmit a document containing such information to the parties and interveners of the case unless the parties or interveners have already been notified.
- (4) Where trial proceedings are conducted by oral hearings under paragraph (1), an official designated by the President of the Intellectual Property Tribunal shall, under the direction of the presiding trial examiner, prepare a protocol setting forth the essence of the proceedings and other necessary matters in time for the date of each trial proceeding.
- (5) The presiding trial examiner and the official who has prepared the protocol under paragraph (4) shall sign the protocol and affix their seals to the protocol.
- (6) Articles 153, 154 and 156 to 160 apply *mutatis mutandis* to the protocol under paragraph (5).
- (7) Articles 143, 259, 299 and 367 apply *mutatis mutandis* to a trial.

#### **Article 72-19 Intervention**

- (1) A person with the right to request a trial under Article 72(1) may intervene in the trial before the conclusion of the trial examination.
- (2) An intervener under paragraph (1) may continue a trial even after the request for the trial has been withdrawn by the original party.
- (3) A person with an interest in the result of a trial may intervene in the trial before the conclusion of the trial examination to assist one of the parties.
- (4) An intervener under paragraph (3) may initiate and take part in any trial-related procedure.
- (5) Where grounds for suspending a trial proceeding apply to an intervener under paragraphs (1) or (3), the suspension is also effective against the original party.

### **Article 72-20 Request for an Intervention and Decision**

- (1) To intervene in a trial, a person shall submit a written request for an intervention to the presiding trial examiner.
- (2) The presiding trial examiner shall transmit copies of a request for an intervention to the parties and other interveners and give them an opportunity to submit written opinions within a designated period.
- (3) Where a request for an intervention is made, the decision must be made by a trial.
- (4) A decision under paragraph (3) must be in writing and must state the reasons for the decision.
- (5) An appeal may not be made against a decision under paragraph (3).

### **Article 72-21 Taking and Preserving Evidence**

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

### **Article 72-22 Continuation of Trial Proceedings**

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

### **Article 72-23 *Ex Officio* Trial Examination**

(1) Grounds that have not been pleaded by a party or intervener in a trial may be examined; however, in such cases, the parties and interveners must be given an opportunity within a designated period to state their opinions regarding the grounds.

(2) In a trial, an examination may not be made on the purpose of a claim not requested by the petitioner.

### **Article 72-24 Combination or Separation of a Trial or Ruling**

A trial examiner may either combine or separate an examination or decision with regard to two or more same trials by both or one parties to the trial.

### **Article 72-25 Withdrawal of a Request for a Trial**

(1) A request for a trial may be withdrawn by the petitioner before the trial decision has become final; however, the consent of the defendant for the withdrawal must be obtained where a response has already been submitted.

(2) Where a request for a trial or a request for each claim is withdrawn under paragraphs (1) the request is deemed never to have been made.

### **Article 72-26 Ruling on a Trial**

(1) Except as otherwise stipulated, when a trial ruling has been given, the trial is closed.

(2) A trial ruling under paragraph (1) must be in writing, and it must be signed and sealed by the trial examiners who made the ruling; the ruling must state the following:

- (i) the number of the trial;
- (ii) the name and address of the parties and interveners (and, if a legal entity, the name and address of the business);
- (iii) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (iv) the identification of the trial case;
- (v) the text of the ruling (including the scope, duration and remuneration in trial cases under Article 70);
- (vi) the reasons for the decision (including the purpose and a summary of the reason for the request); and
- (vii) the date of the ruling.

(3) When ready to make a ruling after thoroughly examining a case, the presiding trial examiner shall notify the parties and interveners of the closure of the trial examination.

(4) After giving notification of the closure of a trial examination under paragraph (3), if necessary, the presiding trial examiner may reopen the examination upon the motion of a party or an intervener or *ex officio*.

(5) A decision must be made within twenty days of the date on which the notification of the closure of a trial examination is served under paragraph (3).

(6) When a trial decision or a ruling has been made, the presiding trial examiner shall transmit a certified copy of the trial decision or the ruling to the parties, interveners, and persons who have requested intervention to the trial, but have been rejected.

### **Article 72-27 *Res Judicata***

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

### **Article 72-28 Relationship Between Trial and Litigation**

(1) The presiding trial examiner may, if necessary, suspend a proceeding until a trial decision of opposition to an unexamined design registration or another trial becomes final or litigation proceedings of another trial are concluded.

(2) The court may, if considered necessary in the litigation proceedings, suspend the litigation proceedings until a trial decision on the design becomes final.

(3) Where an action related to the infringement of a design right or exclusive license is started and when litigation proceedings have been terminated, the relevant Court must notify the President of the Intellectual Property Tribunal accordingly.

(4) Where a trial for invalidating a design and so on is requested in response to a legal action against an infringement of a design right or exclusive license under paragraph (3) and, when a decision to reject, a request for a trial or a withdrawal of a request has occurred, the President of the Intellectual Property Tribunal must notify the relevant Court under paragraph (3) accordingly.

### **Article 72-29 Costs of a Trial**

(1) The imposition of costs of a trial under Articles 68(1), 69 is decided either by a trial decision if a trial is terminated by a trial decision, or by a decision in the trial if the trial is terminated in a manner other than by a trial decision.

(2) Articles 98 to 103, 107(1) and (2), 108, 111, 112 and 116 of the Civil Procedure Act apply *mutatis mutandis*.

- (3) The petitioner or a person who has a opposition to an unexamined design registration shall bear the costs of trials under Article 67bis and 67ter.
- (4) Article 102 of the Civil Procedure Act applies *mutatis mutandis* to the costs borne by the petitioner or a person who has a opposition to an unexamined design registration.
- (5) Upon the request of an interested party, the President of the Intellectual Property Tribunal shall determine the total costs of a trial after the trial decision or ruling has become final.
- (6) The extent, amount and payment of the costs of a trial, as well as the payment of the costs for performing any procedural acts in the trial, are governed by the relevant provisions of the Act of Civil Procedure Costs, unless they are incompatible.
- (7) The payment that a party has paid or will pay to a patent attorney who represents the party in a trial is considered an element of the trial costs in determining the extent of the costs by the Commissioner of the Korean Intellectual Property Office. If two or more patent attorneys represent a person in a trial, the person is deemed to have been represented by a single patent attorney.

#### **Article 72-30 Title of Enforcement of Costs or Remuneration**

A final ruling on the costs of a trial decided by the President of the Intellectual Property Tribunal or on the compensation to be paid under this Act, as decided by the trial examiner, has the same effect as an enforceable title of liability; an official of the Intellectual Property Tribunal shall give the legal writ, which has the force of execution.

#### **Article 72-31 Special Provisions for a Trial against a design registration**

Articles 72-10(1), and (2), 72-19 and 72-20 shall not apply to a trial against article under 67-2 or 67-3.

### **Article 72-32 Effect of Examination or the process of opposition to an unexamined design registration**

Proceedings previously undertaken during the course of an examination or the process of opposition to an unexamined design registration remain effective in a trial against a ruling of refusal to register a design or a ruling of revoke to register a design.

### **Article 72-33 Reversal of a Ruling of Refusal of design registration etc.**

(1) Where a trial examiner considers that a request for a trial under Articles 67bis or 67ter is well grounded, the trial examiner shall reverse the examiner's ruling of refusal to register a design, ruling of revoke to register a design or a decision to reject an amendment.

(2) Where a ruling of refusal or revoke of register a design, or a decision to reject an amendment is reversed in a trial, a presiding trial examiner may rule that the issue be submitted for examination.

(3) In ruling on a trial under paragraphs (1) and (2) of this Article, the reasons constituting the basis for the reversal are binding on the examiner

## **CHAPTER VIII RETRIAL AND LITIGATION**

### **Article 73 Request for a Retrial**

(1) Any party may request a retrial against a trial decision that has become final.

(2) Articles 451 and 453 of the Civil Procedure Act apply *mutatis mutandis* to a request for a retrial under paragraph (1).

### **Article 73bis Request for a Retrial on Account of Collusion**

(1) Where the parties in a trial colluded to bring about a trial decision that damages the rights or interests of a third party, the third party may request a retrial against the final trial decision.

(2) In a request for a retrial under paragraph (1), the parties of the trial must be joint defendants.

### **Article 73ter Period for Requesting a Retrial**

(1) A retrial must be requested within thirty days of the date on which the petitioner becomes aware of the grounds for a retrial after the trial ruling has become final.

(2) Where a retrial is requested because of defects in a power of attorney, the period designated in paragraph (1) is counted from the day after the date on which the petitioner or the petitioner's legal representative becomes aware, by means of a transmittal of a certified copy of the ruling, that the trial ruling has been given.

(3) A person may not request a retrial more than three years after the date on which the trial ruling became final.

(4) Where grounds for a retrial arise after a trial ruling becomes final, the period prescribed in paragraph (3) is counted from the day after the date on which the grounds first arose.

(5) Paragraphs (1) and (3) shall not apply to a request for a retrial made on the grounds that the trial ruling conflicts with an earlier trial ruling that is final.

### **Article 74 Restriction on Effects of Design Rights Restored by a Retrial**

(1) The effects of a design right related to an invalidated design registration that has been restored through a retrial do not extend to any product that was, in good faith, imported into or manufactured or acquired in the Republic of Korea after the trial



decision became final but before a request for a retrial has been registered if the design right falls under any of the following subparagraphs:

- (i) where a design right (including a design right that has been finally revoked in a trial against a decision to revoke design registration) has been invalidated but restored by a retrial;
- (ii) where a trial decision ruling that a product is outside the scope of a design right became final but a decision to the contrary at a retrial has become final; or
- (iii) where the establishment of a design right for an application for design registration previously rejected by a trial decision has been registered through a retrial.

(2) Where a design right falls under paragraph (1) of this Article, the effects of the design right do not extend to the following acts:

- (i) working a design in good faith after a trial decision becomes final but before the registration of a request for a retrial;
- (ii) manufacturing, assigning, leasing, importing, or offering for assignment or lease products for which an application for design registration has been made, after a trial decision becomes final but before the registration of a request for a retrial.

#### **Article 74-2 Nonexclusive License for Prior User of a Design Right Restored by a Retrial**

For cases that fall under any subparagraph of Article 74(1), when a person has, in good faith, commercially or industrially worked a design in the Republic of Korea, or has been making preparations to work the invention, after a trial ruling became final but before the registration of a request for a retrial, the person is entitled to have a nonexclusive license on the patent right limited to the purpose of the business and the scope of the invention being worked or for which preparations for working are being made.

### **Article 74-3 Nonexclusive License for Person Deprived of a Nonexclusive License by a Retrial**

(1) Where, after a decision to grant a nonexclusive license under Article 70(1) or (2) has become final, a decision to the contrary is made at a retrial, a person who has, in good faith, commercially or industrially worked the design in the Republic of Korea or has been making preparations to work the invention under a nonexclusive license, before the registration of a request for a retrial, the person is entitled to have a nonexclusive license on the design right or on the exclusive license existing at the time the decision at the retrial becomes final, the license being limited to the purpose of the person's business and to the scope of the design under the original nonexclusive license.

(2) A person who has nonexclusive license has to pay for certain amount of money to design right holder and the original nonexclusive license holder under paragraph (1).

### **Article 74-4 *Mutatis Mutandis* Application of Provisions on Trial to Retrial**

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

### **Article 74-5 *Mutatis Mutandis* Application of the Civil Procedure Act**

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

### **Article 75 Action on a Trial Decision etc.**

(1) The Patent Court of Korea has original jurisdiction over any action against a trial decision or dismissal of a request for a trial or retrial under Article 18*bis*(1) apply *mutatis mutandis* apply article 71(2)( include the case *mutatis mutandis* apply 74-4)

(2) The action prescribed in paragraph (1) may be brought by a person who is a party or intervener in the trial or by any person who has requested an intervention in the trial but has had the request rejected.

(3) The action prescribed in paragraph (1) may be brought within the thirty-day period immediately after the date on which a certified copy of the trial decision or ruling was received.

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

(5) For the peremptory period referred to in paragraph (3) of this Article, a presiding trial examiner may *ex officio* determine any additional period for the benefit of a person residing in an area that is remote or difficult to access.

(6) An action may not be brought unless it relates to matters for which a trial may be requested.

(7) An action under paragraph (1) on a trial decision on remuneration under Article 72-26(2)(v) and a trial decision or ruling on trial costs under Article 72-29(1) may not be brought independently.

(8) Any person who has received a ruling from the Patent Court may appeal to the Supreme Court under paragraph (1).

#### **Article 75-2 Qualification of Defendant**

In an action under Article 75(1), the Commissioner of the Korean Intellectual Property Office is the defendant. However, in an action on the decisions of a trial under Articles 68(1), 69, 70(1) and (2) or a retrial, the petitioner or the defendant is the defendant.

#### **Article 75-3 Notification of Institution of Action and Transmittal of Document**

(1) When an appeal against a trial decision, an action under Article 71(1) (including cases that Article 74-4 applies), appeal against a decision to reject under Article 18-2(1) that Article 71(1) applies or an appeal under Article 75(i) is filed, the Patent Court shall immediately notify the President of the Intellectual Property Tribunal accordingly.

(2) When an action under the proviso of Article 75(1) has been concluded, the Patent Court shall immediately transmit a certified copy of the judgment on the action to the President of the Intellectual Property Tribunal.

#### **Article 75-4 Revoking a Trial Decision or Ruling**

(1) Where the Patent Court considers that an action under Article 75(1) is well grounded, the Patent Court shall revoke the trial decision or ruling by judgment.

(2) Where the reversal of a trial decision or ruling becomes final under paragraph (1), the trial examiner shall review the case and make a trial decision or ruling again.

(3) The reasons for a judgment on an action under paragraph (1) that constitute the basis for a revocation are binding on the Intellectual Property Tribunal.

#### **Article 75-5 Action against Decision on Amount of Compensation or Remuneration**

(1) A person who is dissatisfied with a decision or ruling regarding the amount of compensation or remuneration under Articles 70(3) may bring an action before the court.

(2) An action under paragraph (1) must be filed within thirty days of the date on which a certified copy of the decision, ruling or adjudication was received.

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

#### **Article 75-6 Defendant in an Action Related to Compensation or Remuneration**

In an action under Article 75(5), the nonexclusive licensee, exclusive licensee or design right holders are the defendants for compensation under article 70(3)

#### **Article 75-7 Compensation for Patent Attorneys and Costs of Litigation**

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

## CHAPTER IX SUPPLEMENTARY PROVISIONS

### Article 76 Inspection of Documents

(1) A person may request the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal for a certified copy of an application for design registration or a trial certificate, a certified copy or extract of documents, or to inspect or copy of the Design Register or other documents.

(2) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may not grant the request under paragraph (1) of this Article if the required document is related to an application that has not been published, that has not led to the registration of a design right or is liable to contravene public order or morality.

### Article 77 Prohibition of Opening or Removing a Design Register and Documents Related to an Application, Examination or Trial

(1) Except in any of the following cases, removal of the Design Register or documents related to an application for design registration, examination, opposition to the registration of an unexamined design, trial or retrial is prohibited:

(i) where documents related to an application or examination for design registration are removed for the purpose of prior art searches of designs in accordance with Articles 25(1) or (2)

(ii) where documents related to an application for design registration, examination, opposition to an unexamined design registration, trial or retrial, or the Design Register are removed for the purpose of commissioning computerization of design documents in accordance with Article 77bis(1)

(iii) where documents related to an application for design registration, examination, opposition to an unexamined design registration, trial or retrial, or the Design Register are removed for the purpose of remote on-line performance of duties under Article 30 of the Electronic Government Act.<sup>1</sup>

(2) A response may not be given to a request for an expert opinion, testimony or an inquiry regarding the contents of a pending application for design registration, examination, opposition to the registration of an unexamined design, trial or retrial or the contents of a decision or ruling.

#### **Article 77-2 Agency for Digitizing design Documents**

(1) When considered necessary for dealing effectively with design procedures, the Commissioner of the Korean Intellectual Property Office may entrust a legal entity that meets the standards of facilities and human resources as prescribed by ordinance of the Ministry of Knowledge Economy with digitizing documents related to design applications, examinations, opposition to an unexamined design registration, trials, retrials or the design Register through an electronic information processing system and the technology for using the electronic information processing system.

(2) Officers or employees of a person entrusted with digitizing design documents under paragraph (1) (referred to as "an agency for digitizing design documents") may not divulge or appropriate an invention disclosed in a pending application to which they had access during the course of their duties.

(3) The Commissioner of the Korean Intellectual Property Office may, under paragraph (1), convert into electronic form a written application for a design or other documents prescribed by ordinance of the Ministry of Knowledge Economy that were not submitted as electronic documents as prescribed in Article 4-28(1), and may save them in a file of an electronic information processing system operated by the Korean Intellectual Property Office or the Intellectual Property Tribunal.

(4) The contents of a file under paragraph (3) of this Article are deemed to be the same as the contents of the documents concerned.

(5) The method of digitizing design documents and other matters necessary for digitizing design documents are determined by ordinance of the Ministry of Knowledge Economy.

(6) Where an agency that is commissioned to digitize design documents fails to meet the standards of facilities and human resources as prescribed by ordinance of the Ministry of Knowledge Economy in accordance with paragraph (1) and fails to comply with a request from the Commissioner of the Korean Intellectual Property Office to take corrective action, the Commissioner may cancel the agency's commission to digitize patent documents. In such cases, the Commissioner shall give the agency a prior opportunity to present its opinions.

### **Article 77-3 Transmittal of Documents**

In addition to the provisions in this Act, matters related to the transmittal of documents and procedures of transmittal are prescribed by Presidential Decree.

### **Article 77-4 Transmittal by Public Notification**

(1) When documents cannot be transmitted because the residential or business address of the addressee is unclear, the addressee is notified by public notification.

(2) Public notification is conducted by publishing a notice in the Design Gazette that the documents to be transmitted are available at any time to the addressee.

(3) Documents are deemed to have been served two weeks after the date on which the notice is published in the Design Gazette; however, a subsequent public notification for the same party is deemed to have been served on the day after its publication in the Design Gazette.

### **Article 77-5 Transmittal of Documents to Nonresidents**

(1) Documents to be transmitted to a nonresident who has a design administrator must be transmitted to the design administrator.

(2) Documents to be transmitted to a nonresident who does not have a design administrator may be sent to the nonresident by registered airmail.

(3) When documents have been sent by registered airmail under paragraph (2), the documents are deemed to have been served on the mailing date.

#### **Article 78 Design Gazette**

(1) The Korean Intellectual Property Office shall publish the Design Gazette. (2) The Design Gazette may be published in electronic media as prescribed by ordinance of the Ministry of the Commerce, Industry and Energy.

(3) When the Design Gazette is published in electronic media, the Commissioner of the Korean Intellectual Property Office shall publicize on a communication network matters regarding the Design Gazette's publication, main contents and service.

(4) Matters to be published in the Design Gazette under paragraph (1) are prescribed by Presidential Decree.

#### **Article 78bis Submission of Documents etc.**

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

#### **Article 79 Design Registration Marking**

The owner of a design right or an exclusive or nonexclusive licensee may mark an identification of the registered design on a product for which a registered design has been applied for or on the product's container or package.

#### **Article 80 Prohibition of False Marking**

All of the following acts are unlawful:



(i) marking on a product for which design registration has not been granted or for which an application for design registration is not pending, or on the product's container or package, an indication that design registration has been granted or that an application for design registration has been filed or any sign likely to cause confusion over the registration;

(ii) assigning, leasing or displaying a product that has been marked as referred to in subparagraph (i) of this Article;

(iii) marking an indication that a product is subject to a registered design or an application for design registration, or any confusingly similar indication on advertisements, signboards or tags to cause others to manufacture, use or lease the product for which design registration has not been granted or a design application is not pending.

#### **Article 81 Restriction on Objections**

(1) An objection may not be raised against a decision to reject an amendment, a decision to grant a design, a trial decision or the dismissal of a request for a trial or retrial under any other Act, and an objection may not be raised under any other Act against any disposition against which an objection may not be raised under this Act.

(2) Any objection to measures other than those set out in paragraph (1) is subject to the Administrative Appeals Act or the Administrative Litigation Act.

### **CHAPTER X PENAL PROVISIONS**

#### **Article 82 Offense of Infringement**

(1) A person who infringes a design right or an exclusive license is liable to imprisonment with labor not exceeding seven years or to a fine not exceeding 100 million won.

(2) Prosecution for offenses under paragraph (1) of this Article is initiated when an injured party files a complaint.

### **Article 83 Offense of Perjury**

(1) Having taken an oath under the law, a witness, expert witness or interpreter who makes a false statement or gives a false expert opinion or interprets falsely before the Intellectual Property Tribunal is liable to imprisonment with labor not exceeding five years or to a fine not exceeding 10 million won.

(2) Having committed an offense under paragraph (1) of this Article, a person who admits the offense before the examiner's decision or decision on opposition to registration of an unexamined design is made or before a trial decision on the case becomes final may be partially or completely exempted from the penalty.

### **Article 84 Offense of False Marking**

A person who violates Article 80 of this Act is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

### **Article 85 Offense of Fraud**

A person who fraudulently or unjustly obtains a design registration or a trial decision is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

### **Article 86 Offense of Divulging Secrets**

Any present or former officials of the Korean Intellectual Property Office or the Intellectual Property Tribunal who have divulged or appropriated secrets related to a design contained in a design application, or a design requested to be kept secret under

Article 13(1) of this Act, to which they had access during the course of their duties are liable to imprisonment with labor not exceeding five years or to a fine not exceeding 50 million won.

#### **Article 86bis Officers and Employees of Special Searching Agency as Public Officials and Irrefutable Presumption**

When applying Article 86, a person who is a present or former officer or employee of a special searching agency or agency for digitizing design documents prescribed under Article 25bis(1) is deemed to be a present or former employee of the Korean Intellectual Property Office under article 77-2.

#### **Article 87 Dual Liability**

Where a representative of a legal entity or an agent, employee or any other servant of a legal entity or natural person has violates Articles 82(1), 84 or 85 of this Act with regard to the business of the legal entity or natural person, in addition to the offender, the legal entity is liable to a fine as prescribed in either of the following subparagraphs, and the natural person is liable to a fine as prescribed in the relevant Article:

- (i) under Article 82(1) of this Act, a fine not exceeding 300 million won; or
- (ii) under Articles 84 or 85 of this Act, a fine not exceeding 60 million won.

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

#### **Article 87bis Confiscation etc.**

(1) Any article that is the subject of an infringing act under Article 82(1) or any article arising out of the infringing act must be confiscated or, upon request of the injured party, a judgment must be made requiring the article to be delivered to the injured party.

(2) Where an article is delivered to an injured party under paragraph (1), the injured party may claim compensation for damages in excess of the value of the article.

### **Article 88 Administrative Fine**

(1) A person who commits any of the following acts is liable to an administrative fine not exceeding 500,000 won:

(i) making a false statement before the Intellectual Property Tribunal after having taken an oath under Articles 299(2) and 367 of the Civil Procedure Act;

(ii) failing to comply, without justifiable reasons, with an order of the Intellectual Property Tribunal to submit or show documents or other materials related to taking or preserving evidence;

(iii) Deleted.

(iv) failing to comply, without justifiable reasons, with a subpoena of the Intellectual Property Tribunal to appear as a witness, expert witness or interpreter, or refusing to take an oath, make a statement, testify, give an expert opinion or interpret.

(2) The Commissioner of the Korean Intellectual Property Office shall impose and collect the administrative fine referred to in paragraph (1) of this Article as prescribed by Presidential Decree.

### **ADDENDUM <No. 4208, January 13, 1990>**

#### **Article 1 Date of Entry into Force**

This Act enters into force on September 1, 1990.

## **Article 2 General Transitional Measures**

Except as otherwise prescribed by Articles 3 to 7 of this addendum, this Act applies to matters that take place before this Act enters into force. However, this Act has no influence on any effect produced under the previous provisions.

## **Article 3 Transitional Measures on Applications etc.**

An appeal against the examination of an application for design registration and a ruling of rejection made before this Act enters into force is subject to the previous provisions.

## **Article 4 Transitional Measures on Trials Related to Registering the Establishment of a Design Right**

Any trial, appeal, retrial and lawsuit on a registered design whose right is established on the basis of an application for design registration filed before this Act enters into force is subject to the previous provisions.

## **Article 5 Transitional Measures on the Dismissal of an Amendment**

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

## **Article 6 Transitional Measures on Expropriation of a Design Right etc.**

Any disposition or lawsuit pertaining to a restriction, expropriation, revocation or the working of a design right requested before this Act enters into force is subject to the previous provisions

## **Article 7 Transitional Measures on the Procedure and Expenses of Trials and Compensation for Damages etc.**

The previous provisions govern the procedure, expenses, compensation for damages and so on for a trial, appeal, retrial and lawsuit requested against any act committed before this Act enters into force.

**ADDENDUM (Government Organization Act) <No. 4541, March 6, 1993>**

**Article 1 Date of Entry into Force**

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

**Articles 2 and 3 Deleted**

**Article 4 Amendment of Other Acts Following the New Establishment of the Ministry of Knowledge Economy**

(1) and <47> Deleted

<48> The following provisions of the Industrial Design Act are amended as follows:

In Articles 9-(5) and (6), 11-(2), 12-(2), 31-(2), 34-(2), and 35-(2) and (3), " ordinance of the Ministry of Commerce and Industry" reads "ordinance of the Ministry of Commerce, Industry and Energy".

<49> or <100> Deleted,

**Article 5 Deleted**

**ADDENDUM <No. 4595, December 10, 1993>**

**Article 1 Date of Entry into Force**

This Act enters into force on January 1, 1994.

## **Article 2 Transitional Measures on the Term of a Design Right**

Notwithstanding amended Article 40(1) of this Act, the previous provisions govern the term of a design right that has been established or for which establishment has been sought by an application for design registration before this Act enters into force.

## **Article 3 Transitional Measures on the Period for Refunding Design Registration Fees etc.**

The previous provisions govern the refund of design registration fees and other fees mistakenly paid before this Act enters into force.

## **Article 4 Application Examples on Returning Design Registration Fees**

Amended Article 36(1)(ii) of this Act, which concerns the return of design registration fees due to the final decision of a trial on the invalidation of a design registration, applies to final decisions of invalidation made after this Act enters into force.

## **ADDENDUM <No. 4894, January 5, 1995>**

### **Article 1 Date of Entry into Force**

This Act enters into force on March 1, 1998.

### **Article 2 Transitional Measures on Pending Cases**

(1) Any case in which a request has been made before this Act enters into force for a trial or an appeal against a ruling of refusal or against a decision to dismiss a correction is deemed to be continued with the Intellectual Property Tribunal under this Act and to be pending at the Intellectual Property Tribunal.

(2) Any case in which a request has been made before this Act enters into force for an appeal against the decision of a trial or for immediate appeal against a decision to

dismiss the request is deemed to be continued with the Patent Court under this Act and to be pending at the Patent Court.

### **Article 3 Transitional Measures on Cases that May Be Appealed**

(1) A court action may be brought against a case on which a decision on a trial, a decision to dismiss a request for a trial, a ruling of rejection or a decision to dismiss an amendment by an examiner when this Act enters into force, and against which an appeal has not been brought to the Patent Tribunal under the previous provisions within 30 days of the enforcement date of this Act, and a court action referred to in Article 186(1) of the Patent Act applied *mutatis mutandis* under Article 75 of this Act may be brought against a decision on the trial and a decision to dismiss a request for a trial, and a trial referred to in Article 132<sup>ter</sup> or 132<sup>quater</sup> of the Patent Act applied *mutatis mutandis* under Article 72 of this Act may be requested against a ruling of rejection or a decision to dismiss an amendment by the examiner. However, this provision does not apply if any period for appeal has expired under the previous provisions when this Act enters into force.

(2) An appeal may be brought within 30 days of the enforcement date of this Act against a case on which a decision or appeal, a decision to dismiss a request for an appeal and a decision to dismiss an amendment by the appellate trial examiner has been served with the Supreme Court when this Act enters into force. However, this provision does not apply if any period for appeal has expired under the previous provisions when this Act enters into force.

(3) Any case against which an appeal has been brought to the Supreme Court and which is pending at the Supreme Court before this Act enters into force, and any case against which an appeal has been brought under paragraph (2) of this Article, is deemed to be pending or to be brought against the Supreme Court by this Act.

### **Article 4 Transitional Measures on Retrials**

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

### **Article 5 Transfer etc. of Documents**

(1) The Commissioner of the Korean Intellectual Property Office shall immediately transfer the documents of a pending case referred to in Article 2(1) of this addendum



(including those applied *mutatis mutandis* under Article 4 of this addendum) to the President of the Intellectual Property Tribunal.

(2) The Commissioner of the Korean Intellectual Property Office shall immediately transfer the documents of a pending case referred to in Article 2(2) of this addendum (including those applied *mutatis mutandis* under Article 4 of this addendum) to the chief of the Patent Court. In this case, matters necessary for the transfer and so on of documents are prescribed by Supreme Court regulations.

#### **ADDENDUM <No. 5082, December 29, 1995>**

##### **Article 1 Date of Entry into Force**

This Act enters into force on July 1, 1996.

##### **Article 2 Transitional Measures on the Procedures and Expenses for Trials and Compensation for Damages etc.**

The previous provisions govern the procedure, expenses, compensation for damages and so on for a trial, appeal, retrial and lawsuit requested against any act committed before this Act enters into force.

#### **ADDENDUM (Patent Act) <No. 5329, April 10, 1997>**

##### **Article 1 Date of Entry into Force**

This Act enters into force on July 1, 1997. (Proviso deleted.)

## **Articles 2 to 4 Deleted**

### **Article 5 Amendment of Other Acts**

(1) Deleted.

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

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

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

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

(3) When publishing the Design Gazette in electronic media, the Commissioner of the Korean Intellectual Property Office shall publicize on a communication network matters regarding the Design Gazette's publication, main contents and service.

## **ADDENDUM <No. 5354, August 22, 1997>**

### **Article 1 Date of Entry into Force**

This Act enters into force on March 1, 1998.

### **Article 2 Transitional Measures on Applications for Registration etc.**

The previous provisions govern an examination or ruling to reject an application for design registration made before this Act enters into force.

### **Article 3 Transitional Measures on Trials Related to Registered Designs**

The previous provisions govern trials, retrials and court actions for registered designs on which rights are established in accordance with applications for design registration filed before this Act enters into force.

### **Article 4 Transitional Measures on the Dismissal of Amendments**

The previous provisions do not apply to amendments before this Act enters into force.

### **Article 5 Application Examples of Admission of Exceptions to Loss of Novelty**

Amended Article 8(1) and (2) of this Act is effective for an application for design registration initiated after this Act enters into force.

### **Article 6 Application Examples on Extension of the Term of Design Rights**

Amended Article 40(1) of this Act is effective for a design right registered by an application for design registration initiated after this Act enters into force.

### **Article 7 Application Examples Related to Another Person's Design Right etc.**

Amended Article 45(2) of this Act applies to the owner or exclusive licensee of a design right registered by an original application for design registration submitted after this Act enters into force.

## **ADDENDUM (Patent Act) <No. 5576, September 23, 1998>**

### **Article 1 Date of Entry into Force**

This Act enters into force on January 1, 1999. However, [deleted] amended Articles 21 and 22 of this Act enter into force on July 1, 1999.

## **Articles 2 to 4 Deleted**

### **Article 5 Amendment of Other Acts**

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

In Article 4, "Articles 3 to 28 of the Patent Act" reads "Article 3 to 28<sup>quinquies</sup> of the Patent Act";

Articles 21 and 22 are deleted;

In Article 81, "Article 218 of the Patent Act" reads "Article 217<sup>bis</sup> of the Patent Act", and in Article 89, "Article 231 of the Patent Act" reads "Articles 229<sup>bis</sup> and 231 of the Patent Act".

2) deleted.

## **ADDENDUM (National Basic Livelihood Act) <No. 6024, September 7, 1999>**

### **Article 1 Date of Entry into Force**

This Act enters into force on October 1, 2000; however, Article 5(1) enters into force on January 1, 2003.

### **Article 2 Deleted**

### **Article 3 Amendment of Other Acts**

(1) to (7) Deleted.

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

In Article 35(2), "an entitled person under Article 3 of the National Basic Livelihood Security Law" reads "the recipient under Article 5 of the National Basic Livelihood Security Act".

(9) and (10) Deleted.

## **Articles 4 to 13 Deleted**

### **ADDENDUM <No. 6413, February 3, 2001>**

#### **Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2001. However, amended Article 36(2) and (3) of this Act enters into force on the date of its promulgation.

#### **Article 2 General Transitional Measures**

The previous provisions apply to the requirements for registration, division, conversion, examination, design registration, a design right, an opposition to an unexamined design registration, a trial, retrial or litigation related to an application for design registration submitted when this Act enters into force, except under any of the following circumstances:

- (i) amended Article 31*bis* of this Act applies if each design in an application for multiple design registration is abandoned;
- (ii) amended Article 33*bis* of this Act applies if an application for design registration or design right is deemed to have existed retroactively by late payment of the registration fees; and
- (iii) Article 140*bis*(1) and (3) of the Patent Act as applied *mutatis mutandis* under amended Article 72 applies if a trial against a ruling to reject a design registration is requested.

**ADDENDUM (Civil Procedure Act) <No. 6626, January 26, 2002>**

**Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2002.

**Articles 2 to 5 Deleted**

**Article 6 Amendment of Other Acts**

(1) to (18) Deleted.

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

In Article 73-(2), "Article 422 of the Civil Procedure Act and Article 424 of this Act" reads "Article 451 of the Civil Procedure Act and Article 453 of this Act".

In Article 88(1)(i), "Article 271(2) of the Civil Procedure Act and Article 339 of this Act" reads "Article 299(2) of the Civil Procedure Act and Article 367 of this Act".

(20) to (29) Deleted.

**Article 7 Deleted**

**ADDENDUM <No. 6767, December 11, 2002>**

**Article 1 Date of Entry into Force**

This Act enters into force five months after its promulgation.

## **Article 2 Application of the Treatment of Oppositions Against Unexamined Design Registration**

Amended Article 30(2) of this Act applies to an opposition against an unexamined design registration initiated after the enforcement of this Act.

## **ADDENDUM <No. 7289, December 31, 2004>**

### **Article 1 Date of Entry into Force**

This Act enters into force after six months from the promulgation.

### **Article 2 Transitional Measures on Applications and Other Matters**

The previous provisions prescribe the requirements for registration, conversion of an application, examination, trial, retrial or litigation related to an application for design registration filed before this Act enters in to force.

### **Article 3 Transitional Measures on Adjudication of Registered Design**

The previous provisions govern an opposition to an unexamined design registration, trial, retrial or litigation related to the registered design rights of an application for design registration filed before this Act enters into force.

### **Article 4 Transitional Measures on Name Change Including Registered Design**

When this Act enters in to force, any design that is registered, or for which registration has been applied for under the previous provisions is deemed to be a registered design or application for registration under the amended Act.

### **Article 5 Amendment of Other Acts**

(1) The following provisions of the Government Organization Act is amended as follows:

In Article 37-(5), "design[uijiang]" reads "design[dizain]".

(2) The following provision of the current 22nd Summer Universiad Support Act is amended as follows:

In the proviso of Article 25, " Industrial Design Act"[uijiang] "Industrial Design Protection Act"[dizain].

(3) The following provision of the Income Tax Act is amended as follows:

In Article 119-(xi)(a), "design"[uijiang] reads "design"[dizain].

(4) The following provision of the Corporate Income Tax Act is amended as follows:

In Article 93-(ix)(a), "design"[uijiang] reads "design"[dizain].

(5) The following provisions of the Technology Transfer Promotion Act are amended as follows:

In Article 2-(i), "design"[uijiang] reads "design"[dizain], and, in Article 15(2), "Industrial Design Act" [uijiang] reads "Industrial Design Protection Act"[dizain].

(6) The following provision of the Monopoly Regulation and Fair Trade Act is amended as follows:

In Article 59, the "Industrial Design Act"[uijiang] reads "Industrial Design Protection Act"[dizain].

(7) The following provisions of the Unfair Competition Prevention and Trade Secret Protection Act is amended as follows:

In Article 15(1), the "Industrial Design Act"[uijiang] reads "Industrial Design Protection Act"[dizain].

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

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



In Article 98, "registered design"[uijiang] reads "registered design"[dizain], "design"[uijiang] reads "design"[dizain], "design right"[uijiang] reads "design right"[dizain], and "owner of design right "[uijiang] reads "owner of design right"[dizain].

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

In the title of Article 105, "design right"[uijiang] reads "design right" [dizain]:and from paragraph (1) of the same Article, "design right" [uijiang] reads "design right"[dizain], "owner of original design right" [uijiang] reads "owner of original design right"[dizain], "original design right [uijiang] reads "original design right"[dizain]: and from paragraph (2) of the same Article, "design right"[uijiang] reads "design right"[dizain] and "Industrial Design Act"[uijiang] reads "Industrial Design Protection Act"[dizain].

In Article 132*bis*-(1), "design"[uijiang]" reads "design"[dizain].

In Article 138-(4), "owner of the design right"[uijiang] reads "owner of the design right"[dizain], and, from paragraph(5) of the same Article, "registered design"[uijiang] reads "registered design"[dizain] and "design[uijiang] reads "design[dizain].

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

In Article 191-(iii), "owner of a design right"[uijiang] reads "owner of a design right"[dizain].

(9) The following provisions of the Utility Model Act are amended as follows:

In Article 18(4), the "Industrial Design Act"[uijiang] reads the "Industrial Design Protection Act"[dizain].

In Article 39, "registered design"[uijiang] reads registered design"[dizain], "design"[uijiang] reads "design"[dizain], "design right"[uijiang] reads "design right"[dizain] and "owner of a design right"[uijiang] reads "owner of design right"[dizain].

In the title of Article 41, "Design Right"[uijiang] reads "Design Right "[dizain], from paragraph (1) of the same Article, "design right"[uijiang]" reads design right"[dizain], "owner of an original design right"[dizain] reads "owner of an original design right"[dizain], "original design right"[uijiang] reads "original design right"[dizain]; and, from paragraph(2) of the same Article, "design right"[uijiang] reads "design right"[dizain] and "Industrial Design Act"[uijiang] reads the "Industrial Design Protection Act"[dizain].

In the main part of Article 53-(4), "owner of a design right"[uijiang] reads "owner of a design right"[dizain], and, from paragraph(5) of the same Article, "registered design"[uijiang] reads "registered design" [dizain] and "design"[uijiang] reads "design "[dizain].

In Article 55(3)(ii) and (iii), "registered design"[uijiang] reads "registered design"[dizain].

(10) The following provisions of the Invention Promotion Act are amended as follows:

In Article 2(i)-(ii)-(iv) and (v), "Industrial Design Act"[uijiang] reads "Industrial Design Protection Act"[dizain].

In Article 2(*vibis*), "Industrial Design Act"[uijiang] reads the "Industrial Design Protection Act"[dizain] and "design right" [uijiang] reads "design right"[dizain].

In Article 14, " Industrial Design Act"[uijiang] reads "Industrial Design Protection Act"[dizain].

In Article 33-(1)-(iv), "design"[uijiang] reads "design"[dizain].

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

In Articles 2, *7bis* and 8, "design"[uijiang] reads "design"[uijiang].

(12) The following provision of the Act on Special Measures for the Promotion of Venture Businesses is amended as follows:

In Article 6-(1), "design right"[uijiang] reads "design right"[dizain].

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

In the title of Article 53, "Design Right"[uijiang] reads "Design Right"[dizain], and, from the main part of the same Article, "design right"[uijiang] reads "design right"[dizain], and "owner of a design right"[uijiang] reads "owner of a design right"[dizain].

In Article 57*bis*(6), "design right"[uijiang] reads "design right"[dizain].

(14) The following provisions of the National Defense Science Research Institute Act is amended as follows:

In Article 18, "design right"[uijiang] reads "design right"[dizain].

(15) The following provision of the Military Court Act is amended as follows:

In Article 469(vi), "design right"[uijiang] reads "design right"[dizain].

(16) The following provisions of the Court Organization Act are amended as follows:

In Article 28*quater*(i) and 54*bis*(2), " Industrial Design Act"[uijiang] reads "Industrial Design Protection Act"[dizain].

#### **ADDENDUM <No. 7556, May 31, 2005>**

This Act enters into force on September 1, 2005.

## **ADDENDUM (Invention Promotion Act) <No. 7869, March 3, 2006>**

### **Article 1 Date of Entry into Force**

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

### **Articles 2 to 5 deleted**

### **Article 6 Amendment of Other Laws**

(1) and (2) Deleted.

(3) The Industrial Design Protection Act is partly amended as follows:

"Article 39(1) of the Patent Act as applied *mutatis mutandis* under Article 24" in Article 54(1) reads "Article 8(1) of the Invention Promotion Act".

## **ADDENDUM <No. 8187, January 3, 2007>**

### **Article 1 Date of Entry into Force**

This Act enters into force on the date of its promulgation; however, the amended provisions of the latter part of Article 4, Article 13(2), Article 16(3), Article 18(3) to 18(6), Article 23*sexies*, Article 26bis, Article 29*quinquies* to Article 29*nonies*, Article 30(2), Articles 36(1)(iii), 36(2) and 36(3), Article 50bis, the latter part of Article 72 and the latter part of Article 81 enter into force on July 1, 2007.

### **Article 2 Application Examples on Secret Designs**

The application of amended Article 13(2) begins when the first application for design registration is filed on or after July 1, 2007.

### **Article 3 Application Examples on Prior Applications, etc.**

(1) The application of amended Article 16(3) begins when the first application for design registration filed on or after July 1, 2007, is abandoned or when a decision of refusal of the application for design registration or a trial decision of refusal becomes final.

(2) The application of amended Article 23*sexies* begins when a decision of refusal of the first application for design registration filed on or after July 1, 2007, or a trial decision of refusal becomes final.

### **Article 4 Application Examples on the Amendment of Applications**

The application of amended Article 18(3) begins when the first application for an amendment of a design registration is filed on or after July 1, 2007.

### **Article 5 Application Examples on the Decision to Refuse Design Registration**

The application of amended Article 26(2) begins when the first application for an unexamined design registration is filed on or after July 1, 2007.

### **Article 6 Application Examples on the Refund of Registration Fees, etc.**

The application of amended Article 36(1)(iii), 36(2) and 36(3), which pertain to the costs of an application for design registration, begins when the first application for design registration is filed on or after July 1, 2007.

### **Article 7 Application Examples on a Nonexclusive License Obtained by Virtue of a Prior Application**

The application of amended Article 50*bis* begins when the first application for design registration that is filed on or after July 1, 2007, meets the requirements stipulated in amended Article 50*bis*.

### **Article 8 Application Examples on Remuneration for Patent Attorneys**

The application of amended Article 75 begins when a patent attorney represents a relevant party in a litigation after this Act enters into force.

### **Article 9 Transitional Measures on the Refund of Registration Fees, etc.**

Notwithstanding amended Articles 36(2) and 36(3) of this Act, where a decision to revoke a design registration or a trial decision to invalidate a design registration becomes final before July 1, 2007, the previous provisions of Article 36(3) of this Act apply to a request for a refund of an amount corresponding to the registration fees under Article 36(1)(ii) of this Act.

## **ADDENDUM (Invention Promotion Act) <No. 8357, April 11, 2006>**

### **Article 1 Date of Entry into Force**

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

### **Articles 2 to 5 Deleted**

### **Article 6 Amendment of Other Laws**

(1) The Industrial Design Protection Act is partly amended as follows:

"Article 8(1) of the Invention Promotion Act" in Article 54(1) reads "Article 10(1) of the Invention Promotion Act".

(2) to (4) Deleted.

### **Article 7 Deleted**

**ADDENDUM <No. 9764, June 09, 2009>**

**Article 1 Date of Entry into Force**