

# UTILITY MODEL ACT

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Note: This English version of the Utility Model Act of Korea is provided for information purpose only. This English version should neither be relied on either as an authoritative law nor an official translation of the Utility Model Act of Korea.

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## **CHAPTER I. GENERAL PROVISIONS**

### **Article 1 Purpose**

The purpose of this Act is to encourage, protect and utilize practical devices, thereby improving and developing technology, and to contribute to the development of industry.

### **Article 2 Definitions**

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

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

### **Article 3 *Mutatis Mutandis* Application of the Patent Act**

Articles 3 to 7, 7*bis*, 8 to 26, 28, 28*bis* to 28*quinquies* of the Patent Act apply *mutatis mutandis* to utility models.

## **CHAPTER II. REQUIREMENTS FOR UTILITY MODEL REGISTRATION AND UTILITY MODEL APPLICATIONS**

### **Article 4 Requirements for Utility Model Registration**

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

(i) devices publicly known or worked in the Republic of Korea or a foreign country before the filing of the utility model application; or

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

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

(3) Notwithstanding paragraph (1), where a device for which a utility model application is filed is identical to a device or an invention described in the description or drawing(s) originally attached to another utility model application or a patent application, and where the other utility model application was filed before the utility model application and published after registration for public inspection after the filing date of the utility model application, or where a patent application was filed before the utility model application and laid open or published after grant for public inspection after the filing date of the utility model application, a utility model may not be granted for the device of the utility model application. This provision does not apply, however, where the

inventor of the utility model application and the inventor of the other utility model or patent application are the same person or where the applicant of the utility model application and the applicant of the other utility model or patent application are the same person at the time of filing.

(4) In applying paragraph (3), where the other utility model or patent application falls under one of the following subparagraphs, “laid open” of paragraph 3 reads “laid open or was the subject of an international publication under Article 21 of the Patent Cooperation Treaty”, and "a device or invention described in the description or drawing(s) originally attached" reads, in case the application was filed in Korean, "a device or invention described in the description, claim(s) or drawing(s) of the international application as of the international filing date" and, in case the application was filed in a foreign language, “a device or an invention described in the description, claim(s) or drawing(s) described both in the international application as of the international filing date and its translated version”:

(i) the other utility model application is an international application (including an international application that is deemed a utility model application according to Article 40(4)) that is deemed a utility model application according to Article 34(1); and

(ii) the patent application is an international application that is deemed a patent application according to Article 199(1) of the Patent Act (including an international application that is deemed a patent application according to Article 214(4) of the Patent Act).

#### **Article 5 Devices Deemed to be Not Known etc.**

(1) Where a device that belongs to a person with the right to obtain a utility model registration falls under any of the following subparagraphs, the device is not considered to fall under either subparagraph of Article 4(1) where Article 4(1) or (2) applies if the utility model application is

filed within six months of the applicable date:

(i) where a person with the right to obtain a utility model registration causes the device to fall under either subparagraph of Article 4(1); however, this provision does not apply if an application is laid open or the registration is published in the Republic of Korea or in a foreign country in accordance with a treaty or applicable law.

(ii) where the device falls under either subparagraph of Article 4(1) against the intention of the person with the right to obtain a utility model registration;

(2) A person seeking to take advantage of paragraph (1)(i) of this Article shall file an application for utility model registration, and, within thirty days of the filing date of the application, specify in the application the purport of the intention to take advantage of paragraph (1)(i) of this Article and submit documents proving the relevant facts to the Commissioner of the Korean Intellectual Property Office.

### **Article 6 Unregistrable Devices**

Notwithstanding Article 4, devices falling under either of the following subparagraphs are unregistrable:

(i) devices that are identical or similar to the national flag or decorations; or

(ii) devices liable to contravene public order or morality, or to injure public health.

### **Article 7 First-to-File Rule**

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

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

(3) Where a utility model application has the same subject matter as a patent application and the applications are filed on different dates, paragraph (1) of this Article applies *mutatis mutandis*. If the utility model application and the patent application are filed on the same date, paragraph (2) of this Article applies *mutatis mutandis*.

(4) In the application of paragraphs (1) to (3) of this Article, where an application for utility model registration or a patent application is invalidated, withdrawn or abandoned, or where a decision to refuse an application or a trial decision of refusal becomes final, the application for utility model registration or the patent application is deemed never to have existed however, this provision does not apply if the decision to refuse the application for utility model registration or the patent application or the trial decision of refusal becomes final under the latter part of paragraph (2) of this Article (including those cases to which paragraph (2) of this Article applies *mutatis mutandis* under paragraph (3) of this Article).

(5) A utility model application or patent application filed by a person who is not the deviser, inventor or successor in title to the right to obtain a utility model registration or a patent, for the purposes of paragraphs (1) to (3) of this Article, is deemed never to have been filed.

(6) In the case of paragraph (2) of this Article, the Commissioner of the Korean Intellectual Property Office shall order the applicant for utility model registration to report the consultation results within a designated period. If the applicant fails to file the report within the designated period, the applicant is deemed to have not reached an agreement.

## **Article 8 Application for a Utility Model Registration**

(1) A person seeking to register a utility model shall file a utility model application 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 an 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 title of the device; and

(iv) the name and address of the deviser;

(2) A utility model application under paragraph (1) must be accompanied by an abstract, drawing(s) and a description stating the following:

(i) the title of the device;

(ii) a brief explanation of the drawing(s);

(iii) a detailed description of the device; and

(iv) the claim(s).

(3) In a method prescribed by ordinance of the Ministry of Commerce, Industry and Energy, the detailed description of a device under paragraph (2)(iii) of this Article must be clear and detailed enough to enable a person with ordinary skill in the art to which the device pertains to work the device easily.

(4) The claim(s) under paragraph (2)(iv) must describe the matter for which protection is sought

in one or more claims (referred to as "claim(s)"), and the claim(s) must comply with each of the following subparagraphs:

- (i) the claim(s) must be supported by a detailed description of the device;
- (ii) the claim(s) must define the device clearly and concisely
- (iii) deleted.

(5) Notwithstanding paragraph (2) of this Article, when a person files an application to register a utility model, the description that must be submitted with the application may exclude the scope of claims claim(s) referred to in paragraph (2)(iv). In this case, however, the person shall amend the description to include the scope of claim(s) not later than the relevant deadline stipulated in either of the following subparagraphs:

- (i) the date on which a period of one year and six months elapses after the date that falls under any of the subparagraphs of Article 64(1) of the Patent Act, which applies *mutatis mutandis* under Article 15 of this Act; or
- (ii) the date on which a period of three months elapses after the date on which a notice of the purport of a request to examine an application is given under Article 60(3) of the Patent Act, which applies *mutatis mutandis* under Article 15 of this Act, before the deadline stipulated in subparagraph (i) of this paragraph (provided the notice is given more than one year and three months after the date that falls under any of the subparagraphs of Article 64(1) of the Patent Act, which applies *mutatis mutandis* under Article 15 of this Act).

(6) In stating the scope of claims for utility model registration under paragraph (2)(iv) of this Article, the applicant shall specify the shape and structure or a combination of these for the purpose of clarifying which specific parts of the design are to be protected.

(7) Where a person who has applied to register a utility model fails to amend the description that does not contain the scope of claim(s) by the relevant deadline stipulated in the subparagraphs of paragraph (5) of this Article, the application for utility model registration is deemed to have been withdrawn on the date immediately following the relevant deadline.

(8) Necessary matters related to the method of stating the scope of claims for utility model registration under subparagraph (2)(iv) of this Article are prescribed by Presidential Decree.

(9) Necessary matters related to the method of preparing an abstract under paragraph(2) of this Article are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 9 Scope of a Utility Model Application**

(1) A utility model application must relate to a single device only, unless a group of devices is linked to form a single general device concept.

(2) The requirements for a utility model application under paragraph (1) are prescribed by Presidential Decree.

#### **Article 10 Converted Application**

(1) A patent applicant may convert a patent application to an application for utility model registration within the scope of matters stated in the description or drawing initially attached to the patent application; however, the conversion to an application for utility model registration is not permitted if more than thirty days have elapsed since the date on which a certified copy of refusal of the patent application was initially served.

(2) When an application is filed for the conversion of a patent application to an application for utility model registration under paragraph (1) of this Article (referred to as "converted

application"), the converted application is deemed to have been an application for utility model registration at the time the relevant patent application was filed however, this provision does not apply if the converted application falls under any of the following circumstances:

(i) where Article 4(3) of this Act or Article 29(3) of the Patent Act applies on the grounds that the converted application is the subject of another application for utility model registration under Article 4(3) of this Act or under Article 29(3) of the Patent Act;

(ii) where Article 5(2) of this Act applies

(iii) where Article 54(3) of the Patent Act, as applied *mutatis mutandis* under Article 11 of this Act, applies or

(iv) where Article 55(2) of the Patent Act, as applied *mutatis mutandis* under Article 11 of this Act, applies.

(3) Any person who converts an application under paragraph (1) of this Article shall state in the conversion application the purport of the conversion as well as details of the patent application that serves as the basis of the converted application.

(4) Where a patent application is converted to an application for utility model registration, the relevant patent application is deemed withdrawn.

(5) Where the period stipulated in Article 132<sup>ter</sup> of the Patent Act is extended under Article 15(1) of the Patent Act, the thirty-day period under the proviso of paragraph (1) of this Article is extended by the same period of extension.

(6) Any person who claims a priority right under Article 54 of the Patent Act when applying to convert an application shall submit the documents referred to in Article 54(4) of the Patent Act to the Commissioner of the Korean Intellectual Property Office within three months of applying

to convert the application, regardless of the period stipulated in Article 54(5) of the Patent Act.

### **Article 11 *Mutatis Mutandis* Application of the Patent Act**

Articles 33 to 35, 37, 38, 41, 43, 44, 46, 47, 51, 52, and 54 to 56 of the Patent Act apply *mutatis mutandis* to the requirements of utility model registration and the applications for utility model registration.

## **CHAPTER III. TECHNICAL EVALUATION**

### **Article 12 Request for an Examination of an Application for Utility Model Registration**

(1) An application for utility model registration may be examined only when the applicant requests an examination.

(2) Any person who has filed an application for utility model registration may submit a request for an examination to the Commissioner of the Korean Intellectual Property Office within three years of the filing date however, an applicant for utility model registration may request an examination only if a detailed statement specifying the scope of claims for utility model registration is attached to the application.

(3) For a converted application or a divisional application under Article 52(2) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act, a person may request an examination within thirty days of the date on which the converted application or divisional application was filed, even if the period stipulated in paragraph (2) of this Article has expired.

(4) A request for an examination of an application may not be withdrawn.

(5) Where an applicant fails to request an examination of an application for utility model registration within the period stipulated in paragraph (2) or (3) of this Article, the application is deemed to have been withdrawn.

### **Article 13 Decision to Refuse a Utility Model Registration**

Where an application for utility model registration falls under any of the following subparagraphs (referred to as "the reasons for refusal"), an examiner (referred to as "an examiner"), under Article 57(1) of the Patent Act as applied *mutatis mutandis* under Article 15 of this Act, shall refuse to register the utility model:

(i) where the utility model is unregistrable under Articles 4, 6 and 7(1) to 7(3) of this Act and Article 25 of the Patent Act as applied *mutatis mutandis* under Article 3 of this Act or Article 44 of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act;

(ii) where the applicant is not entitled to register a utility model under the main part of Article 33(1) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act or the utility model is unregistrable under the proviso of the Article 33(1) of the Patent Act;

(iii) where the registration of the utility model violates a treaty;

(iv) where the registration of the utility model fails to meet the requirements of Articles 8(3), 8(4), 8(8) and 9 of this Act;

(v) where the converted application is beyond the scope referred to in Article 10(1) of this Act;

(vi) where the amendment is beyond the scope referred to in Article 47(2) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act; or

(vii) where the divisional application is beyond the scope referred to in Article 52(1) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act.

#### **Article 14 Notification of the Reasons for Refusal**

(1) Where an examiner intends to refuse the registration of a utility model under Article 13 of this Act, the examiner shall notify the applicant of the reasons for refusal and give the applicant an opportunity to submit a statement of opinions within a designated period; however, the provision does not apply where the examiner intends to make a decision of rejection according to Article 51(1)(i) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act.

(2) When an examiner gives notice of the reasons for refusal under the main part of paragraph (1) of this Article, with respect to an application for utility model registration with two or more claims, the examiner shall specify which of the claims are refused and the concrete reasons for refusal with respect to the claim. .

#### **Article 15 *Mutatis Mutandis* Application of the Patent Act**

Articles 57, 58, 58*bis*, 60, 61, 63*bis*, 64 to 66, 66*bis*, 67, 67*bis*, 68, and 78 of the Patent Act apply *mutatis mutandis* to any examination or decision pertaining to an application for utility model registration.



## **CHAPTER IV. REGISTRATION FEES AND UTILITY MODEL REGISTRATION, etc.**

### **Article 16 Registration Fees**

(1) A person who seeking to register a utility model right under Article 21(1) shall pay a utility model fee for a period of three years from the date sought for registration (hereinafter “registration date”), and a patentee shall pay an annual utility model fee from the next year of the three year period on the registration date of the patent.

(2) Notwithstanding paragraph (1), a utility model right holder may pay the fee for multiple years in successive order of or the entire term.

(3) The utility model 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 17 Official Fees**

(1) Any person who applies to register a utility model registration shall pay official fees.

(2) Where a detailed statement attached to an application for utility model registration is amended after any person other than the applicant of the utility model registration requests examination of the application and, as a result of the amendment, the number of claims specified in the scope of claims for utility model registration increases, the applicant shall pay examination fees for the additional claims.

(3) Matters necessary for paying official fees, including the method and period of payment

under paragraph (1), are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 18 Utility Model Register**

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

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

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

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

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

(3) Necessary matters related to the procedures of registration and the maintenance of the register are prescribed by Presidential Decree.

(4) The description and drawing(s) of registered utility models and other documents prescribed by Presidential Decree are considered to be part of the Utility Model Register.

### **Article 19 Issuance of a Utility Model Registration Certificate**

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

owner of the utility model right.

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

(3) When a trial decision for a correction under Article 136(1) of the Patent Act as applied *mutatis mutandis* under Article 33 of this Act has become final, the Commissioner of the Korean Intellectual Property Office shall issue a new utility model registration certificate in accordance with the trial decision.

#### **Article 20 *Mutatis Mutandis* Application of the Patent Act**

Articles 80, 81, 81*bis*, 81*ter*, 83 and 84 of the Patent Act apply *mutatis mutandis* to registration fees and utility model registrations.

## CHAPTER V. UTILITY MODEL RIGHT

### **Article 21 Registration of Establishment of a Utility Model Right and Publication of Registration**

- (1) A utility model right comes into effect upon registration of its establishment
- (2) The Commissioner of the Korean Intellectual Property Office shall register the establishment of a utility model right if a situation in either of the following subparagraphs applies;
  - (i) where registration fees are paid under Article 16(1) of this Act;
  - (ii) where registration fees are paid late under Article 81(1) of the Patent Act, which applies *mutatis mutandis* under Article 20 of this Act;
  - (iii) where the remaining balance of registration fees is paid under Article 81*bis*(2) of the Patent Act, which applies *mutatis mutandis* under Article 20 of this Act;
  - (iv) where registration fees are paid late or the remaining balance of registration fees is paid under Article 81*ter*(1) of the Patent Act, which applies *mutatis mutandis* under Article 20 of this Act; or
  - (v) where registration fees are exempted under Articles 83(1)(i) and 83(2) of the Patent Act, which apply *mutatis mutandis* under Article 20 of this Act.
- (3) Where a registration has been made under paragraph (2), the Commissioner of the Korean Intellectual Property Office shall publish the registration of the utility model with relevant information in the Utility Model Gazette.
- (4) Notwithstanding paragraph (3) of this Article, where a utility model application is ordered to be treated confidentially under Article 41(1) of the Patent Act as applied *mutatis mutandis* under

Article 11 of this Act, the Commissioner of the Korean Intellectual Property Office shall reserve publication of the utility model registration until the registration is declassified. Upon declassification of the registration, the Commissioner shall immediately publish the registration.

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

(6) Matters to be published in the Utility Model Gazette regarding publication of registrations under paragraph (3) are prescribed by Presidential Decree.

### **Article 22 Term of a Utility Model Right**

(1) The term of a utility model right commences on the date the utility model is registered under Article 21(1) and ends on the date that marks the lapse of 10 years since the filing date of the utility model application.

(2) Where a utility model right is granted to the lawful holder of a right under Articles 34 and 35, which applies *mutatis mutandis* under Article 11 of the Patent Act, the term of the utility right under paragraph (1) is calculated from the day after the date on which an unentitled person files the utility model application.

### **Article 23 Effects of a Utility Model Right**

The owner of a utility model right has an exclusive right to work the registered utility model commercially and industrially. However, where the utility model right is the subject of an exclusive license, this provision does not apply to the extent that the exclusive licensee has the exclusive right to work the registered utility model under Article 100(1) of the Patent Act as

applied *mutatis mutandis* under Article 28 of this Act.

#### **Article 24 Limitations on a Utility Model Right**

The effects of a utility model right do not extend to the following::

- (i) working a registered utility model for research or experimentation;
- (ii) vessels, aircraft or vehicles merely passing through the Republic of Korea or machinery, instruments, equipment or other accessories used on the vessels, aircraft or vehicles; or
- (iii) articles existing in the Republic of Korea at the time the utility model application was filed.

#### **Article 25 Relation with Registered Utility Models of Other Persons**

Where the working of a registered utility model involves the use of another person's previously filed registered utility model, patented invention, registered design or design similar to a registered design, or where a registered utility model right conflicts with another person's previously filed design right or trademark right, the owner of the subsequently filed registered utility model right or the exclusive or nonexclusive licensee may not work the registered utility model commercially or industrially without the permission of the person who owns the previously filed utility model right, patent right, design right or trademark right.

#### **Article 26 Nonexclusive License Due to Working before the Registration of a Request for an Invalidation Trial**

(1) Where a person falling under any of the following subparagraphs, before a request for an invalidation trial of a relevant registered utility model or patent, has been commercially or industrially working a

device or invention in the Republic of Korea in good faith, or has been making preparations to work the device or invention, without knowing that the registered utility model or patented invention is subject to invalidation, the person is entitled to have a nonexclusive license on that utility model or on the exclusive license existing at the time the registered utility model or patent was invalidated, provided the nonexclusive license is limited to the scope of the device or invention being worked or for which preparations for working are being made and to the purpose of the working or preparations:

(i) the original owner of a utility model right, where one of two or more utility model registrations granted for the same device has been invalidated;

(ii) the original owner of a patent right, where a registered utility model and a patented invention are the same and the patent has been invalidated;

(iii) the original owner of a utility model right, where the original owner's utility model registration has been invalidated and a utility model registration for the same device has been granted to an entitled person;

(iv) the original patentee, where the original patentee's patent has been invalidated and a utility model registration for the same device as the invention has been granted to an entitled person; or

(v) in cases referred to in subparagraphs (i) to (iv), a person who, at the time of registration of the request for an invalidation trial of an invalidated utility model or patent right, has been granted an exclusive license or a nonexclusive license, or a nonexclusive license on the exclusive license, and the license has been registered. However, a person falling under Article 118(2) of the Patent Act as applied *mutatis mutandis* under Article 28 of this Act is not required to register the license.

(2) A person granted a nonexclusive license under paragraph (1) shall pay reasonable remuneration for the nonexclusive license to the owner of a utility model right or the exclusive

licensee.

### **Article 27 Nonexclusive License after a Design Right Expires**

(1) Where a design right filed and registered on or before the filing date of a utility model application conflicts with the utility model right, and the term of the design right has expired, the owner of the design right is entitled to have a nonexclusive license on the utility model right to the extent of the design right, or on the exclusive license existing at the time the design right expired

(2) Where a design right filed and registered on or before the filing date of a utility model application conflicts with the utility model right, and the term of the design right has expired, a person who, at the time of expiry, has an exclusive license on the expired design right or a nonexclusive license (limited to the nonexclusive license under Article 118(1) of the Patent Act as applied *mutatis mutandis* under Article 61 of the Industrial Design Act) on the expired design right or on the exclusive license is entitled to have a nonexclusive license, to the extent of the scope of the expired right, on the utility model right or on the exclusive license existing at the time the design right expired.

(3) A person granted a nonexclusive license under paragraph (2) shall pay reasonable remuneration for the nonexclusive license to the owner of the utility model right or the exclusive licensee.

### **Article 28 *Mutatis Mutandis* Application of the Patent Act**

Articles 97, 99 to 103, 106 to 111, 111*bis*, 112 to 116, 118 to 125 and 125*bis* of the Patent Act apply *mutatis mutandis* to a utility model right.

## **CHAPTER VI. PROTECTION OF OWNER OF UTILITY MODEL RIGHT**

### **Article 29 Acts Considered to be an Infringement**

Commercial acts of manufacturing, assigning, leasing or importing, or the act of offering for commercial or industrial assignment or lease, of goods used exclusively for manufacturing a product related to a utility model registration are considered to infringe a utility model right or an exclusive license under the utility model registration.

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

Articles 126, 128, 130, 131 and 132 of the Patent Act apply *mutatis mutandis* to protection of the owner of a utility model right.

## CHAPTER VII. TRIALS, RETRIALS AND LITIGATION

### Article 31 Trial for Invalidation of Utility Model Registration

(1) Any interested party or an examiner may request a trial to invalidate a utility model registration under any of the following subparagraphs; when the registered utility model contains two or more claims, a request for an invalidation trial may be made for each claim; however, where a person requests an invalidation trial on any of the grounds in the following subparagraphs (except subparagraph (v)), the request must be submitted within the period from the publication date of the utility model right registration until three months after the registration date:

(i) where the registration of a utility model violates Articles 4, 6, 7(1) to 7(3), 8(3) and 8(4) of this Act or Article 25 of the Patent Act as applied *mutatis mutandis* under Article 3 of this Act;

(ii) where the utility model has been registered to a person who is not entitled to the utility model right or who may not obtain a patent under Article 25 of the Patent Act as applied *mutatis mutandis* under Article 3 of this Act;

(iii) where the registration of a utility model violates a treaty;

(iv) where the amendment is beyond the scope stipulated under Article 14; or

(v) where the owner of the registered utility model is not entitled to register a utility model under the main part of Article 33(1) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act or the registration of the utility model violates Article 44 of the Patent Act;

(vi) where the utility model is unregistrable under the proviso of Article 33(1) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act;

(vii) where the amendment is beyond the scope stipulated in Article 47(2) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act; or

(viii) where the divisional application is beyond the scope stipulated in Article 52(1) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act.

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

(3) Where a trial decision invalidating a utility model registration has become final, the utility model right is deemed never to have existed; however, where a trial decision invalidating a utility model registration under paragraph (1)(ii) has become final, the utility model right is deemed not to have existed from the time the utility model registration first became subject to paragraph (1)(ii).

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

### **Article 32 Trial to Grant a Nonexclusive License**

(1) Where the owner of a utility model right or an exclusive or nonexclusive licensee seeks permission to exercise the registered utility model under Article 25 and the other person refuses permission without justifiable reasons or permission is impossible to obtain, the owner or exclusive or nonexclusive licensee may request a trial to grant a nonexclusive license with the scope necessary to work the registered utility model.

(2) When a trial under paragraph (1) has commenced, a nonexclusive license may be granted only where the registered utility model of the later application constitutes an important technical advance that has substantial economic value in comparison to the other person's registered utility model or patented invention for which an application was filed before the filing date of the later application.

(3) If a person ordered to grant a nonexclusive license in accordance with a trial under paragraph (1) needs to work the registered utility model of the party who has been granted the nonexclusive license, and if the party refuses to give permission or if permission is impossible to obtain, the person may request a trial for the grant of a nonexclusive license with the scope necessary to work the registered utility model.

(4) A party granted a nonexclusive license under paragraphs (1) and (3) shall remunerate the owner of the utility model right, the patentee, the owner of the design right or the exclusive licensee; if payment is not possible for unavoidable reasons, the remuneration must be placed in deposit.

(5) A nonexclusive licensee under paragraph (4) may not work a registered utility model, a patented invention or a registered design or a similar design without paying the remuneration or placing a deposit.

### **Article 33 *Mutatis Mutandis* Application of the Patent Act**

Articles 132<sup>ter</sup>, 133<sup>bis</sup>, 135 to 137, 139, 140, 140<sup>bis</sup>, 141 to 153, 153<sup>bis</sup>, 154 to 166, 170 to 172, 176, 178 to 188, 188<sup>bis</sup>, 189 to 191, and 191<sup>bis</sup> of the Patent Act shall apply *mutatis mutandis* to a trial, retrial and lawsuit on utility models.

## **CHAPTER VIII. INTERNATIONAL APPLICATIONS UNDER THE PATENT COOPERATION TREATY**

### **Article 34 Utility Model Application Based on an International Application**

(1) Where an international application for which an international filing date has been recognized under the Patent Cooperation Treaty designates the Republic of Korea as a designated State to obtain a utility model registration, the application is considered to be a utility model application filed on its international filing date.

(2) Article 54 of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act does not apply to an international application considered to be a utility model application filed on its international filing date under paragraph (1) (referred to as "an international utility model application").

### **Article 35 Translation of International Utility Model Application**

(1) An applicant who has filed an international utility model application in a foreign language shall submit to the Commissioner of the Korean Intellectual Property Office, a Korean translation of the description, claim(s), the drawing(s) and the abstract filed on the international filing date, within a period (referred to as "the domestic period for submitting documents") that is not more than two years and seven months after the priority date as defined in Article 2(xi) of the Patent Cooperation Treaty (referred as "the priority date"). However, if the claim(s) of an international utility model application have been amended under Article 19(1) of the Patent Cooperation Treaty, the applicant may replace the Korean translation of the scope of claims submitted on the international filing date with a Korean translation of the amended scope of

claims.

(2) Where a Korean translation of the description and claim(s) under paragraph (1) have not been submitted within the domestic period for submitting documents, the international utility model application is deemed to have been withdrawn.

(3) An applicant who has submitted the Korean translation referred to in paragraph (1) may submit a new translation to replace the earlier translation only within the designated domestic period for submitting documents. If the applicant requests an examination of an application, this provision does not apply.

(4) Matters that were disclosed in the description, claim(s) and textual matter of the drawing(s) of an international utility model application filed on the international filing date but not disclosed in the Korean translation under paragraph (1) or (3) (referred to as "the translated version") submitted within the domestic period for submitting documents (or the date of the request for an examination where the applicant has made the request before the designated date, referred to as "the relevant date") are deemed not to have been disclosed in the description, claim(s) and textual matter of the drawing(s) of the international utility model application filed on the international filing date.

(5) An application submitted on the international filing date of an international utility model application is deemed to be an application submitted under Article 8(1).

(6) The translated version of the description, claim(s), drawing(s) and abstract of an international utility model application (or the description, claim(s), drawing(s) and abstract submitted on the international filing date if the international utility model application is filed in the Korean language) is deemed to be the description, claim(s), drawing(s) and abstract submitted under Article 8(2).

(7) Article 204(1) and (2) of the Patent Act as applied *mutatis mutandis* under Article 41 of this

Act does not apply where a Korean translation of the amended claims is submitted in accordance with paragraph (1) of this Article.

(8) Where a Korean translation has been submitted under the proviso of paragraph (1) only for the amended claim(s), the claim(s) submitted on the international filing date are not recognized.

### **Article 36 Submission of Drawings**

(1) An applicant for an international utility model application shall submit a drawing or drawings (including a brief description of the drawing(s)) to the Commissioner of the Korean Intellectual Property Office no later than the relevant date if no drawing of the international application submitted on the international filing date is included.

(2) The Commissioner of the Korean Intellectual Property Office may require the applicant for an international utility model application to submit a drawing or drawings within a designated period when the drawing(s) under paragraph (1) have not been submitted on or before the relevant date. The same procedure applies where the Korean translation of the drawing(s) under Article 35(1) or (3) has not been submitted by the relevant date.

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

(4) A drawing and a Korean translation of the drawing(s) submitted under paragraph (1) or (2) is deemed to be an amendment under Article 47(1) of the Patent Act as applied *mutatis mutandis* under Article 11 of this Act. However, the period allowed for amendment under Article 13(1) of this Act does not apply to such a drawing.

### **Article 37 Limitations on the Timing of a Converted Application**

Notwithstanding Article 10(1) of this Act, an application to convert an international application that is deemed to be a patent application filed on the international filing date under Article 199(2) of the Patent Act into an application for utility model registration may not be filed unless the official fees under Article 82(1) of the Patent Act have been paid and the Korean translation under Article 201(1) of the Patent Act (excluding international patent applications filed in Korean) has been filed (or, if the application for conversion is based on an international application deemed to have been filed on a date recognized as the international filing date under Article 214(4) of the Patent Act, the application for conversion may not be filed unless a decision under Article 214(4) of the Patent Act has been made).

### **Article 38 Limitations on the Timing of Request for Application Examination**

Notwithstanding Article 12(2) of this Act, an applicant for an international utility model registration may not request an examination of the application for international utility model registration unless the applicant has undergone the procedure prescribed in Article 35(1) (with the exception of applications for international utility model registration filed in Korean) and paid the official fees under Article 17(1); furthermore, no person other than the applicant for international utility model registration may request an examination of the application unless the period stipulated in Article 35(1) has expired.

### **Article 39 Special Provisions on an Invalidation Trial of a Utility Model Registration**

A person may request a trial to invalidate a utility model registration for an international application filed in a foreign language on the grounds that the device does not fall under either of the following subparagraphs or under any subparagraph of Article 31(1):

(i) the device is disclosed in the description, claim(s) or the drawing(s) of an international application submitted on the international filing date and in the translated version; or

(ii) the device is disclosed in the drawing(s) (excluding the textual matter of the drawing(s)) of an international application submitted on the international filing date.

#### **Article 40 International Application Considered to be a Utility Model Application by Decision**

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

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

(ii) where the receiving office referred to in Article 2(xv) of the Patent Cooperation Treaty has made a declaration referred to in Article 25(1)(a) or (b) of the Treaty on the international application; or

(iii) where the International Bureau referred to in Article 2(xix) of the Treaty has made a finding referred to in Article 25(1)(a) of the Treaty on the international application.

(2) A person making a request under paragraph (1) shall submit to the Commissioner of the Korean Intellectual Property Office a Korean translation of the description, claim(s), the drawing(s) (only the textual matter of the drawing(s)) and other documents related to the

international application as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) Where a request under paragraph (1) has been made, the Commissioner of the Korean Intellectual Property Office shall decide whether the refusal, declaration or finding referred to in the request was properly made under the Patent Cooperation Treaty and its Regulations.

(4) Where the Commissioner of the Korean Intellectual Property Office has decided under paragraph (3) that the refusal, declaration or finding was not properly made under the Patent Cooperation Treaty and its Regulations, the relevant international application is deemed to be a utility model application filed on the date that would have been recognized as the international filing date if the refusal, declaration or finding had not been made for the international application.

(5) When determining whether a refusal, declaration or finding was properly made in accordance with paragraph (3) of this Article, the Commissioner of the Korean Intellectual Property Office shall issue a certified copy of the decision to the international applicant concerned.

(6) Articles 200, 202(1) and (2), and 208 of the Patent Act as applied *mutatis mutandis* under Articles 34(2), 35(4) to 35(8), 38, 39 and 41 of this Act apply *mutatis mutandis* to an international application considered to be a utility model application filed on the date that would have been recognized as the international filing date under paragraph (4).

(7) With regard to laying open an international application considered to be a utility model application under paragraph (4), the "date of a patent application" under Article 64(1) of the Patent Act as applied *mutatis mutandis* under Article 15 of this Act reads "priority date under Article 35(1)."

**Article 41 *Mutatis Mutandis* Application of the Patent Act**

Articles 192 to 198, 198*bis*, 200, 202 to 208, and 211 of the Patent Act apply *mutatis mutandis* to international utility model applications.

## **CHAPTER IX. SUPPLEMENTARY PROVISIONS**

### **Article 42 Utility Model Gazette**

- (1) The Korean Intellectual Property Office shall publish the Utility Model Gazette.
- (2) The Utility Model Gazette may be published in electronic media as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.
- (3) When publishing the Utility Model Gazette in electronic media, the Commissioner of the Korean Intellectual Property Office shall publicize on a communication network matters regarding the Utility Model Gazette's publication, main contents and service.

### **Article 43 Legal Fiction as Public Officials Regarding Employees and Officers of Specialized Search Organizations, etc.**

Current or former employees and officers of specialized search organizations under Article 58(1) of the Patent Act as applied *mutatis mutandis* under Article 15 of this Act and current or former employees of agencies that digitize patent documents under Article 217*bis*(3) of the Patent Act as applied *mutatis mutandis* under Article 44 of this Act are considered current or former employees of the Korean Intellectual Property Office with respect to the application of Article 46 of this Act.

### **Article 44 *Mutatis Mutandis* Application of the Patent Act**

Articles 215, 215*bis*, 216, 217, 217*bis*, 218 to 220, 222 to 224 and 224*bis* of the Patent Act

apply *mutatis mutandis* to a utility model.

## **CHAPTER X. PENAL PROVISIONS**

### **Article 45 Offense of Infringement**

(1) A person who infringes a utility model right or 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) are initiated upon the filing of a complaint by an injured party.

### **Article 46 Offense of Divulging Secrets**

Any present or former officials of the Korean Intellectual Property Office or the Intellectual Property Tribunal who have disclosed or appropriated a device disclosed in a pending utility model application (including a device disclosed in an international application) to which they had access during the course of their duties are liable to imprisonment with labor not exceeding five years or to a fine not exceeding 50 million won.

### **Article 47 Offense of Perjury**

(1) Having taken an oath under Article 33 of this Act and under the Civil Procedure Act as applied *mutatis mutandis* under Article 157(2) of the Patent Act, a witness, expert witness or interpreter who makes a false statement, gives a false expert opinion or interprets falsely is liable to imprisonment with labor not exceeding five years or a fine not exceeding 10 million won.

(2) Having committed an offense under paragraph (1), a person who admits the offense before

the decision of an opposition or a trial decision related to a utility model registration becomes final may be partially or totally exempted from the application of the sentence.

#### **Article 48 Offense of False Marking**

A person who violates subparagraphs 1 to 3 of Article 224 of the Patent Act as applied *mutatis mutandis* under Article 44 of this Act is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

#### **Article 49 Offense of Fraud**

A person who fraudulently or unjustly obtains a utility model registration, a decision on a technical evaluation, or an official or trial decision in an opposition to a utility model registration is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

#### **Article 50 Dual Liability**

Where a representative of a legal entity or an agent, employee or other servant of a legal entity or natural person violates Articles 45(1), 48 or 49 with regard to the business of the legal or natural person, the legal person in addition to the offender is liable to a fine as prescribed in either of the following paragraphs, and the natural person is liable to a fine prescribed in the relevant Article:

- (i) under Article 45(1), a fine not exceeding 300 million won;

(ii) under Article 47 or 48, a fine not exceeding 60 million won.

#### **Article 51 Confiscation etc.**

(1) Any goods that are the subject of an act of infringement under Article 45(1) or any goods arising out of the act of infringement must be confiscated or, upon the request of the injured party, a judgment must be made requiring the goods to be delivered to the injured party.

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

#### **Article 52 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) failing to comply, without justifiable reasons, with a subpoena of the Intellectual Property Tribunal to appear as a witness, an expert witness or an 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) as prescribed by Presidential Decree.

(3) A person who objects to the imposition of an administrative fine under paragraph (2) may protest to the Commissioner of the Korean Intellectual Property Office within thirty days of being notified of the imposition.

(4) Where a person who has been notified of the imposition of an administrative fine under paragraph (2) raises an objection under paragraph (3), the Commissioner of the Korean Intellectual Property Office shall immediately notify the competent court, which shall adjudicate the case of the administrative fine according to the Noncontentious Case Litigation Procedure Act.

(5) Where no objection has been raised within the period prescribed in paragraph (3) and where the fine has not been paid, the Commissioner of the Korean Intellectual Property Office shall collect the fine in accordance with the rules of collecting national taxes in arrears through the head of a competent tax office.

## **ADDENDUM**

<No. 7872, March 3, 2006>

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

This Act enters into force on October 1, 2006; however, the amended provisions of Article 5, the proviso of Article 7(4) and Article 52 of this Act, and the proviso of Article 3 of this Addendum enter into force on the date of promulgation.

### **Article 2 Application Examples on the Requirements of Utility Model Registration**

The application of amended Articles 4(1)(i), 5(1) and 7(4) begins when the first application for utility model registration is filed after these amended provisions enter into force.

### **Article 3 General Transitional Measures**

An application for utility model registration as well as any related examination, utility model registration, utility model right, trial, retrial or lawsuit filed under the previous provisions when this Act enters into force is subject to the previous provisions; however, this provision does not apply in either of the following cases:

- (i) where Article 77(3) of the Patent Act as applied *mutatis mutandis* under the previous Article 27(4) of this Act applies in a technical evaluation of a utility model or
- (ii) where Article 77(3) of the Patent Act as applied *mutatis mutandis* under the previous Article 48 of this Act applies in the filing of an opposition to a utility model

registration.

#### **Article 4 Transitional Measures on Opposition to Utility Model Registration**

Where an opposition to a utility model registration is filed on or before June 30, 2007, the opposition is subject to the previous provisions.

#### **Article 5 Amendment of Other Laws**

(1) The Court Organization Act is partly amended as follows:

"Article 55 of the Utility Model Act" in Articles *28quater*(i) and Article *54bis*(2) of the Court Organization Act reads "Article 33 of the Utility Model Act".

(2) The Technology Transfer Promotion Act is partly amended as follows:

"Article 34 of the Utility Model Act" in the main part of Article 15(2) of the Technology Transfer Promotion Act reads "Article 20 of the Utility Model Act."

#### **ADDENDUM**

<No. 8193, January 3, 2007>

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

This Act enters into force on July 1, 2007.

## **Article 2 Application Examples on an Application for Utility Model Registration, etc.**

The application of amended Article 8, the proviso of Article 12(2) and Article 13(iv) begins when the first application for utility model registration is filed after this Act enters into force.

## **Article 3 Application Examples on the Correction of a Utility Model Registration in Proceedings Invalidating a Utility Model Registration**

The application of amended Article 133*bis* of the Patent Act as applied *mutatis mutandis* under Article 33 of this Act begins when the first application for the invalidation of a utility model registration is filed after this Act enters into force.

## **Article 4 Application Examples on the Amendment of Descriptions and Drawings in Trials Confirming the Scope of Rights**

The application of amended Article 140(2)(ii) of the Patent Act as applied *mutatis mutandis* under Article 33 of this Act begins when the first application for a trial confirming the scope of claims is filed after this Act enters into force.

## **Article 5 General Transitional Measures**

An application for utility model registration as well as any related examination, trial, retrial or lawsuit filed under the previous provisions when this Act enters into force is subject to the previous provisions.