

# DESIGN PROTECTION ACT

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Act No. 12288, Jan. 21, 2014

## CHAPTER I GENERAL PROVISIONS

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

The purpose of this Act is to contribute to the development of industries by promoting the protection and use of designs and encouraging the creation of designs.

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

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

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

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

- (1) A person who creates a design or such person's successor shall have a right to have the design registered in accordance with provisions of this Act: Provided, That no employee of the Korean Intellectual Property Office or the Intellectual Property Tribunal shall have any design registered while he/she is in service, except for a registered design acquired by inheritance or bequest.
- (2) If two or more persons jointly create a design, the persons shall jointly have the right to have the design registered.

#### **Article 4 (Legal Capacity of Minors, etc.)**

- (1) Neither a minor nor a person under limited guardianship or under adult guardianship shall file an application or a claim or initiate any other procedure in relation to design registration (hereinafter referred to as "design-related procedure") without being represented by his/her legal representative: Provided, That the foregoing shall not apply where a minor or a person under limited guardianship is allowed to conduct a legal act independently.
- (2) A legal representative under paragraph (1) may initiate a procedure for a petition to object to partially-examined design registration sought by an adverse party or a petition for an administrative patent trial or retrial on such petition to object without the guardianship supervisor's consent thereto.

#### **Article 5 (Unincorporated Associations, etc.)**

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

#### **Article 6 (Design Administrators for Overseas Residents)**

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

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

#### **Article 7 (Scope of Power of Attorney)**

An agent (including a design administrator; the same shall apply hereinafter) to whom power of attorney is granted by a person who has a domicile or place of business in the Republic of Korea shall not conduct any of the following acts, unless he/she is expressly so empowered:

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

#### **Article 8 (Proof of Power of Attorney)**

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

#### **Article 9 (Ratification of Defects in Legal Capacity, etc.)**

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

#### **Article 10 (Survival of Power of Attorney)**

The power of attorney granted to an agent by a person who initiates a design-related procedure shall survive even after the occurrence of any of the following events:

1. The principal's death or loss of legal capacity;
2. The principal's disappearance as a consequence of a merger, if the principal is a corporation;
3. The termination of the principal's duty as a trustee;
4. The legal representative's death or loss of legal capacity;
5. The termination of, or a change in, the legal representative's power of attorney.

#### **Article 11 (Independence of Representation)**

If a person who initiates a design-related procedure is represented by two or more agents, each of the agents shall independently represent the principal before the Commissioner of the Korean

Intellectual Property Office or the President of the Intellectual Property Tribunal.

**Article 12 (Order to Appoint or Replace Agent, etc.)**

- (1) If the Commissioner of the Korean Intellectual Property Office or a presiding administrative patent judge appointed under Article 132 (hereinafter referred to as “presiding judge”) finds that a person who initiates a design-related procedure is unable to properly carry out the procedure or to make oral arguments in oral hearings or is incompetent for initiating the procedure on any other ground, he/she may issue an order to appoint an agent who shall initiate the procedure on behalf of the person.
- (2) If the Commissioner of the Korean Intellectual Property Office or a presiding judge finds that an agent who initiates a design-related procedure is unable to properly carry out the procedure or to make oral arguments in oral hearings or is incompetent for initiating the procedure on any other ground, he/she may issue an order to replace the agent with another person.
- (3) In cases of paragraph (1) or (2), the Commissioner of the Korean Intellectual Property Office or a presiding judge may order a patent attorney to represent the person.
- (4) When the Commissioner of the Korean Intellectual Property Office or a presiding judge issues an order to appoint or replace an agent under paragraph (1) or (2), he/she may completely or partially invalidate the design-related procedure that the person who initiated the procedure under paragraph (1) or the agent under paragraph (2) has formerly undergone before the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal, upon receipt of a request from the person who carries on the design-related procedure.

**Article 13 (Representation of Two or More Persons)**

- (1) Where two or more persons jointly carry on a design-related procedure, each of them shall represent all of them, except for any of the following acts: Provided, That if such persons appoint a person as their representative and report to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal on the appointment, the representative shall represent all of them:
  1. Abandonment or withdrawal of an application for design registration;
  2. Withdrawal of an application;
  3. Withdrawal of a petition;
  4. Request for the publication of an application under Article 52;

5. Petition for an administrative patent trial under Article 119 or 120.

(2) When a report is filed in accordance with the proviso to paragraph (1), the appointment of the representative shall be proved in writing.

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

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

**Article 15 (Jurisdiction over Overseas Residents)**

If an overseas resident has a design administrator already appointed for his/her design right or any right to a design, the domicile or place of business of the design administrator shall be deemed the place where the property under Article 11 of the Civil Procedure Act is situated, whereas the seat of the Korean Intellectual Property Office shall be deemed the place where such property is situated, if an overseas resident has no design administrator.

**Article 16 (Calculation of Period)**

The periods provided for in this Act or an order issued pursuant to this Act shall be determined as follows:

1. The first day of a period shall not be counted: Provided, That the foregoing shall not apply where a period starts at midnight;
2. If a period is expressed in months or years, it shall be counted according to the calendar;
3. If a period does not start at the first day of a month or year, the period shall expire on the day immediately preceding the date corresponding to the start date of the period in the last month or year: Provided, That if a period is counted by months or years but there is no corresponding day in the last month, the period shall expire on the last day of the month;
4. If the last day of a period for a design-related procedure is Saturday or an official holiday (including the Workers' Day under the Designation of Workers' Day Act), the period shall expire on the day immediately following the Saturday or official holiday.

**Article 17 (Extension of Period, 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 for amending reasons, etc. in filing a petition to object to partially-examined design registration under Article 69 or the period for filing a petition for an administrative patent trial under Article 119 or 120 only once by not more than 30 days: Provided, That the number of extensions and the period of extension

may be additionally increased or extended for a person from a remote and hardly accessible area, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

- (2) When the Commissioner of the Korean Intellectual Property Office, the President of the Intellectual Property Tribunal, a presiding judge, or an examiner defined under Article 58 (hereinafter referred to as “examiner”) specifies the period for a design-related procedure under this Act, he/she may, upon request, reduce or extend the period or may, *ex officio*, extend the period. In such cases, the Commissioner of the Korean Intellectual Property Office or other competent authority shall ensure that the interests of interested parties involved in the procedure shall not be unfairly jeopardized when he/she makes a decision on whether to reduce or extend a period.
- (3) When a presiding judge or an examiner specifies a deadline for a design-related procedure under this Act, he/she may change the deadline, upon request or *ex officio*.

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

- (1) If a person who has been ordered to amend a design-related procedure under Article 47 fails to amend the procedure within the specified period, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may invalidate the procedure.
- (2) If the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal invalidates a design-related procedure under paragraph (1) but finds that the invalidation results from an event or cause not attributable to the person who has been ordered to amend the procedure but fails to amend it within the specified period, he/she may revoke the invalidation within two months after the event or cause terminates, upon receipt of a request from the person who has been ordered to amend the procedure: Provided, That the foregoing shall not apply to cases where one year has passed since the end of the specified period.
- (3) When the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal invalidates a procedure under paragraph (1) or revokes invalidation under the body of paragraph (2), he/she shall give notice of the disposition to the person who has been ordered to amend the procedure.

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

If a person who initiated a design-related procedure fails to complete the procedure within the

period specified in any of the following subparagraphs due to an event or cause for which he/she is not liable, he/she may subsequently amend the procedure within 14 days after the event or cause terminates: Provided, That the foregoing shall not apply where one year has passed since the end of the specified period.

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

#### **Articles 20 (Transfer of Effect of Procedure)**

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

#### **Articles 21 (Continuation of Procedure)**

Where a design right or any other right relating to a design is transferred while a design-related procedure is pending in the Korean Intellectual Property Office or in the Intellectual Property Tribunal, the Commissioner of the Korean Intellectual Property Office or the presiding judge may permit the successor to the design right or the relevant right relating to the design to continue the design-related procedure.

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

In any of the following cases, a design-related procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal shall be interrupted: Provided, That the foregoing shall not apply where an agent has been authorized to continue the procedure:

1. If a party is dead;
2. If a corporation involved as a party ceases to exist as a consequence of a merger;
3. If a party loses the capacity for carrying out the procedure;
4. If a party's legal representative is dead or forfeits power of attorney;
5. If the duty of a trustee entrusted by a party terminates;
6. If the representative under the proviso to Article 13 (1) is dead or forfeits his/her qualification;
7. If a bankruptcy trustee or a person who has intervened in the procedure for other person in his/her name with a certain qualification forfeits the qualification or is dead.

#### **Article 23 (Resumption of Interrupted Procedure)**

If a procedure pending in the Korean Intellectual Property Office or in the Intellectual Property Tribunal is interrupted under Article 22, any of the following persons shall resume the procedure:

1. In cases of subparagraph 1 of Article 22: The heir, the administrator of the inherited estate, or a person authorized to resume the procedure under any Act: Provided, That no heir may resume the procedure during the period in which an heir may renounce inheritance;
2. In cases of subparagraph 2 of Article 22: The corporation established as a consequence of a merger or the corporation surviving a merger;
3. In cases of subparagraph 3 or 4 of Article 22: The party whose capacity for carrying out the procedure is reinstated or a person who becomes the legal representative;
4. In cases of subparagraph 5 of Article 22: The new representative;
5. In cases of subparagraph 6 of Article 22: The new representative or either party;
6. In cases of subparagraph 7 of Article 22: A person who has the same qualification.

#### **Article 24 (Application for Resumption)**

- (1) The resumption of a procedure interrupted under Article 22 may be applied for by a person specified in any subparagraph of Article 23. The adverse party in such cases may request the Commissioner of the Korean Intellectual Property Office or administrative patent judges under Article 130 (hereinafter referred to as “administrative patent judges”) to order the person specified in any subparagraph of Article 23 to file an application for resumption.
- (2) Upon receipt of an application for the resumption of an interrupted procedure under Article 22, the Commissioner of the Korean Intellectual Property Office or the presiding judge shall notify the other party thereof.
- (3) If the Commissioner of the Korean Intellectual Property Office or a presiding judge finds, as a result of investigations conducted by him/her *ex officio*, that an application filed for the resumption of an interrupted procedure under Article 22 is groundless, he/she shall make a decision to dismiss the application.
- (4) If a person specified in any subparagraph of 23 does not resume an interrupted procedure, the Commissioner of the Korean Intellectual Property Office or the presiding judge shall order the person to resume the procedure within the period specified by him/her *ex officio*.
- (5) If a person who has been ordered to resume a procedure under paragraph (4) does not resume the procedure within the period specified under the aforesaid paragraph, the procedure shall be deemed resumed on the day immediately after the end of the period.
- (6) Where a procedure is deemed resumed under paragraph (5), the Commissioner of the Korean Intellectual Property Office or the presiding judge shall notify the parties to the case thereof.



## **Article 25 (Suspension of Procedure)**

- (1) If the Commissioner of the Korean Intellectual Property Office or an administrative patent judge is unable to perform his/her duties due to a natural disaster or other extenuating circumstances, the procedure pending in the Korean Intellectual Property Office or in the Intellectual Property Tribunal shall be suspended until such event or cause terminates.
- (2) If either party is unable to resume a procedure pending in the Korean Intellectual Property Office or in the Intellectual Property Tribunal due to a disability, the Commissioner of the Korean Intellectual Property Office or the competent administrative patent judge may make a decision to issue an order to suspend the procedure until the disability is eliminated.
- (3) The Commissioner of the Korean Intellectual Property Office or an administrative patent judge may revoke a decision made under paragraph (2).
- (4) When the Commissioner of the Korean Intellectual Property Office or a presiding judge suspends a procedure under paragraph (1) or (2) or revokes a decision under paragraph (3), he/she shall notify each party thereof.

## **Article 26 (Effect of Interruption or Suspension)**

When a design-related procedure is interrupted or suspended, the running of a term shall be interrupted, and the entire term shall start to run again from the time when the resumption of the procedure is notified or when the procedure is continued.

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

No foreigner, among overseas residents, shall enjoy a design right or any other right relating to a design, except in any of the following cases:

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

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

- (1) An application, a petition, or any other document (including articles; hereafter the same shall apply in this Article) filed with the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal under this Act or in accordance with an order issued under this Act, shall take effect on the date it arrives at the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal.
- (2) An application, a petition, or any other document under paragraph (1), if filed with the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal by mail, shall be deemed delivered to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal on the date specified in either of the following subparagraphs: Provided, That documents for applying for the registration of a design right or any other right relating to a design shall take effect on the date it is delivered to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal, if filed by mail:
  1. If the date stamped on the postal article by postal authorities is clear: The date stamped thereon;
  2. If the date stamped on the postal article by postal authorities is not clear: The date proved by the receipt of the postal article.
- (3) Except as otherwise provided for in paragraphs (1) and (2), matters necessary for the submission of documents in cases where the delivery of a postal article is delayed, a postal article is lost, or postal services are interrupted shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

**Article 29 (Entry of Identification Number)**

- (1) A person who initiates a design-related procedure shall apply for the grant of his/her own identification number to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy.
- (2) Upon receipt of an application under paragraph (1), the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall grant an identification number to the applicant and notify the applicant thereof.
- (3) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall grant an identification number to a person who does not apply for

his/her own identification number in accordance with paragraph (1) and shall notify the person thereof.

- (4) A person who has his/her own identification number granted under paragraph (2) or (3) shall enter the identification number in the documents specified by Ordinance of the Ministry of Trade, Industry and Energy, when he/she carries out a design-related procedure. In such cases, the entry of his/her domicile (or the place of business, if such person is a corporation) in such documents may be omitted, notwithstanding provisions of this Act or any order issued under this Act.
- (5) The provisions of paragraphs (1) through (4) shall apply to an agent for a person who carries out a design-related procedure.
- (6) Matters concerning the application for granting an identification number and the grant and notification of an identification number and other matters necessary for identification numbers shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

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

- (1) A person who initiates a design-related procedure may convert an application for design registration and other documents, which he/she intends to submit to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal in accordance with this Act, into electronic documents by the method prescribed by Ordinance of the Ministry of Trade, Industry and Energy and submit them via an information and communications network or may submit them as stored in an electronic recording medium, such as a portable storage device or an optical disk.
- (2) Electronic documents submitted in accordance with paragraph (1) shall be as valid as paper documents submitted in accordance with this Act.
- (3) An electronic document submitted via an information and communications network in accordance with paragraph (1) shall be deemed received with the contents recorded in a file stored in the electronic information processing system that the Korean Intellectual Property Office or the Intellectual Property Tribunal uses for the receipt of documents at the time the person who submits the document can confirm the filing number via the information and communications network.
- (4) The kinds of documents that may be submitted in the form of electronic document under paragraph (1), the method of submission, and other matters necessary for the submission of

documents in the form of electronic document shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

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

- (1) A person who intends to carry out a design-related procedure shall file a report on the use of electronic documents with the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal and shall affix his/her digital signature on electronic documents submitted to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal so that the person who submits the document can be identified.
- (2) An electronic document submitted in accordance with Article 30 shall be deemed submitted by the person whose digital signature under paragraph (1) is affixed thereon.
- (3) Matters necessary for the procedure for reporting the use of electronic documents under paragraph (1), the method of affixing a digital signature, etc. shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

**Article 32 (Notification, etc. via Information and Communication Networks)**

- (1) If the Commissioner of the Korean Intellectual Property Office, the President of the Intellectual Property Tribunal, a presiding judge, an administrative patent judge, a presiding examiner appointed under Article 70 (3) (hereinafter referred to as “presiding examiner”), or an examiner intends to give a notice to, or serve a document (hereinafter referred to as “notification or service of documents”) on, a person who has filed a report on the use of electronic documents in accordance with Article 31 (1), he/may use an information and communications network.
- (2) The notification or service of documents via an information and communications network under paragraph (1) shall be as valid as notification or service in writing.
- (3) The notification or service of a document shall be deemed delivered with the contents recorded in a file stored in the electronic information processing system that the Korean Intellectual Property Office or the Intellectual Property Tribunal uses for dispatching at the time the person to whom such notification or service is addressed finds the document via the electronic information processing system used by the person.
- (4) Matters necessary for the kinds and methods of notification and service via an electronic information processing system under paragraph (1) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

## CHAPTER II REQUIREMENTS AND APPLICATION FOR DESIGN REGISTRATION

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

- (1) A design that may be used for an industrial purpose is eligible for design registration, except in any of the following cases:
1. A design publicly known or worked in the Republic of Korea or a foreign country before an application for design registration is filed;
  2. A design described in a printed publication distributed in the Republic of Korea or a foreign country or made available for public use via telecommunications lines before an application for design registration is filed;
  3. A design similar to any of the designs specified in subparagraph 1 or 2.
- (2) Notwithstanding paragraph (1), a design (excluding the designs specified in any subparagraph of paragraph (1)) that could have been easily created by a person who has ordinary skills in the art to which the design pertains by applying any of the following methods before an application for design registration is filed shall not be eligible for design registration:
1. A design specified in paragraph (1) 1 or 2 or a combination of such designs;
  2. A shape, pattern, or color or a combination thereof, widely known in the Republic of Korea or in a foreign country.
- (3) Notwithstanding paragraph (1), a design for which an application for design registration is filed is not eligible for design registration, if the design is identical with or similar to a part of a design claimed in another application for design registration (limited to an application filed before the date on which the relevant application for design registration is filed), which has been published in the Design Gazette under Article 52, 56, or 90 (3) after the application for the registration of the relevant design was filed, or expressed in a drawing, a photograph, or a sample accompanying such application: Provided, That the foregoing shall not apply where the applicant for the registration of the relevant design and the applicant for the registration of another design are one and the same person.

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

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

1. A design identical with or similar to the national flag or emblem, a military flag, a decoration, an order of merit, or a badge of the Republic of Korea, a medal of any public institution, the

national flag or emblem of a foreign country, or the wording or mark of an international organization;

2. A design the meaning or any content of which offends against general morality and good customs of ordinary people or is likely to disturb public order;
3. A Design that is likely to be mistaken as related to an article associated with any other person's business;
4. A design made only of a shape indispensable to secure a function of the relevant article.

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

- (1) Notwithstanding Articles 33 (1) and 46 (1) and (2), the owner of a design right or the applicant for the registration of a design may have designs similar only to his/her registered design or the design claimed in the application pending for design registration (hereinafter referred to as “basic design”) registered as related designs (hereinafter referred to as “related designs”), only if he/she files an application for the registration of such related designs within one year from the filing date of the application for the registration of the basic design.
- (2) A design similar only to a design registered as a related design or to a design claimed in an application pending for design registration as a related design under paragraph (1) is not eligible for design registration.
- (3) If an exclusive license under Article 97 (hereinafter referred to as “exclusive license”) has been granted for the design right to a basic design, no related design for the basic design is eligible for design registration, notwithstanding paragraph (1).

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

- (1) If a design of the person who has the right to register the design falls under Article 33 (1) 1 or 2 on a certain day, it shall be deemed that the design does not fall under paragraph (1) 1 or 2 of the aforesaid Article in applying paragraph (1) 1 or 2 of the aforesaid Article to the design claimed in an application filed by him/her for design registration within six months from the day: Provided, That the foregoing shall not apply to a design claimed in an application published or a registered design publicly announced in the Republic of Korea or in a foreign country under a treaty or an Act.
- (2) In any of the following cases, a person who intends to be eligible for the application of the body of paragraph (1) shall submit a document stating his/her intention to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal, along

with documents proving his/her eligibility:

1. When a person files an application for design registration under Article 37. In such cases, documents proving relevant facts shall be submitted within 30 days from the filing date of the application for design registration;
2. When a person submits a letter of opinion on the notice of the ground for rejection under Article 63 (1);
3. When a person submits a written answer to a petition for objection to partially-examined design registration under Article 68 (3);
4. When a person submits a written answer to a petition for an administrative patent trial under Article 134 (1) (limited to an administrative patent trial on the invalidation of registration of a design).

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

(1) A person who intends to have a design registered shall file an application for design registration, stating the following matters, with the Commissioner of the Korean Intellectual Property Office:

*<Amended by Act No. 11962, Jul. 30, 2013>*

1. The name and domicile of the applicant for design registration (or the name and place of business, if the applicant is a corporation);
2. The name and domicile or place of business of the agent, if the applicant for design registration is represented by an agent (the name and the place of business of the patent firm or the patent firm (limited liability), and the name of the patent attorney in charge, if the agent is a patent firm or a patent firm (limited liability));
3. The product or the classification of products in relation to which the design is to be used under Article 40 (2) (hereinafter referred to as “classification of products”);
4. Whether the application is filed for the registration of an independent design or for the registration of a related design (hereafter referred to as “application for the registration of a related design”);
5. The design registration number or the design registration application number of the basic design (applicable only where it is intended to have related designs registered under Article 35 (1));
6. The name and domicile of the person who has created the design;
7. Whether an application is filed for the registration of multiple designs under Article 41;

8. The number of designs and the serial number of each design (applicable only where an application is filed for the registration of multiple designs under Article 41);
  9. Matters specified in Article 51 (3) (applicable only where a priority claim is made).
- (2) An application for design registration under paragraph (1) shall be accompanied by a drawing describing the following matters with respect to each design:
1. The product or the classification of products in relation to which the design is to be used;
  2. The description of the design and the features of the creation;
  3. The serial number of each design (applicable only where an application is filed for the registration of multiple designs under Article 41).
- (3) An applicant for design registration may submit a photograph or sample of the design in lieu of the drawing under paragraph (2).
- (4) Designs eligible for an application for partially-examined design registration shall be limited to those for the products specified by Ordinance of the Ministry of Trade, Industry and Energy, from among the categories of products. Applications for design registration for eligible products shall be limited to those subject to partially-examined design registration.
- (5) Except as otherwise provided for in paragraphs (1) through (4), matters necessary for filing an application for design registration shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

**Article 38 (Determination of Filing Date of Application for Design Registration, etc.)**

- (1) The date on which an application for design registration is delivered to the Commissioner of the Korean Intellectual Property Office shall be deemed the filing date of the application for design registration: Provided, That the foregoing shall not apply to any of the following cases:
1. Where an application for design registration does not clearly manifest the intention to have a design registered;
  2. Where the name or title of the applicant for design registration is omitted or is not clearly stated in an application for design registration and thus the applicant for design registration is unidentifiable;
  3. Where no drawing, photograph, or sample has been submitted or the description in a drawing is not clear nor readable;
  4. Where an application for design registration is not written in Korean language.
- (2) If an application for design registration falls under any subparagraph of paragraph (1), the



Commissioner of the Korean Intellectual Property Office shall order the person who intends to have the design registered to make an amendment within a reasonably specified period.

- (3) Upon receipt of an order to make an amendment under paragraph (2), a person who intends to amend an application for design registration shall submit a document concerning the amendment of procedure (hereafter referred to as “written amendment of procedure” in this Article).
- (4) If a person who has been ordered to make an amendment under paragraph (2) amends the relevant application for design registration within the specified period, the Commissioner of the Korean Intellectual Property Office shall deem that the application is filed on the date the written amendment of procedure is delivered to the Commissioner of the Korean Intellectual Property Office: Provided, That, if it is required to amend only some of designs claimed in an application filed for the registration of multiple designs under Article 41, the date on which the written amendment of procedure for such designs is delivered to the Commissioner of the Korean Intellectual Property Office shall be deemed the filing date of the application for the registration of all multiple designs.
- (5) If a person who has been ordered to make an amendment under paragraph (2) fails to make the amendment within the specified period, the Commissioner of the Korean Intellectual Property Office may reject the application for design registration, deeming it illegitimate. The foregoing shall also apply where a person fails to amend only some designs, out of designs claimed in an application for the registration of multiple designs under Article 41.

#### **Article 39 (Joint Application)**

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

#### **Article 40 (One Registration Application for One Design)**

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

#### **Article 41 (Application for Registration of Multiple Designs)**

Notwithstanding Article 40 (1), a person who intends to file an application for design registration may file one application for the registration of not more than 100 designs for products classified into one and the same category (hereinafter referred to as “application for the registration of

multiple designs”) according to the classification of products prescribed by Ordinance of the Ministry of Trade, Industry and Energy. In such cases, each design shall be separately represented.

**Article 42 (Design for One Set of Products)**

- (1) Where two or more products are used together as one set of products, a design for the set of products may be registered as one design, if the design for the set of products has unity as a whole.
- (2) The classification of a set of products under paragraph (1) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

**Article 43 (Confidential Designs)**

- (1) An applicant for design registration may request that the design be kept confidential for a prescribed period not exceeding three years from the registration date of the grant of the design right. It may be also requested to keep confidential all or some of designs claimed in an application for the registration of multiple designs.
- (2) An applicant for design registration may make the request under paragraph (1) during the period between the filing date of the application for design registration and the date on which he/she pays the initial design registration fee: Provided, That such request may be made by the time when the Commissioner of the Korean Intellectual Property Office registers the grant of the design right under any subparagraph of Article 90 (2), if an applicant is exempted from the registration fee under Article 86 (1) 1 or 2.
- (3) An applicant for design registration or the owner of a design right may request to reduce or extend the period designated by him/her under paragraph (1). In such cases, the period as extended shall not exceed three years from the registration date of the grant of the design right.
- (4) In any of the following cases, the Commissioner of the Korean Intellectual Property Office shall accept a request to permit a person to inspect a confidential design:
  1. Where a person with consent from the owner of the relevant design right requests to permit an inspection;
  2. Where a party to an examination, a petition to object to partially-examined design registration, an administrative patent trial or retrial, or a lawsuit on a design identical with or similar to a confidential design or an intervenor in any of such proceedings requests to permit an inspection;
  3. Where a person who presents prima facie evidence for the fact that he/she has been warned of

infringement on a design right;

4. Where a court or the Intellectual Property Tribunal requests to permit an inspection.

(5) A person who inspects a confidential design under paragraph (4) shall not acquire information about the design by photographing or photocopying it without permission or shall not divulge the information known to him/her.

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

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

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

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

If a decision to revoke the registration of a design or an administrative judgment to invalidate the registration of a design becomes final and conclusive on the ground that the registrant is ineligible, the application filed by the legitimate right holder for the registration of the design subsequent to the application filed by the ineligible person for design registration shall be deemed to have been filed at the time the application for the revoked or invalidated registration of the design was filed: Provided, That the foregoing shall not apply where the legitimate right holder files an application for design registration after 30 days from the date on which the decision to revoke registration or the judgment to invalidate registration becomes final and conclusive.

**Article 46 (Earlier Application)**

(1) If two or more applications are filed on different dates for the registration of an identical or

similar design, only the applicant who files an application first may have his/her design registered.

- (2) If two or more applications are filed on the same date for the registration of an identical or similar design, only one applicant whom the applicants for design registration agree to select from among them may have his/her design registered. If the applicants for design registration fail to reach an agreement or it is impossible for them to make an agreement, none of the applicants may have his/her design registered.
- (3) If an application for design registration is invalidated, withdrawn, or abandoned or if a decision or an administrative judgment to reject an application for design registration under Article 62 becomes final and conclusive, the application for design registration shall be deemed to have never been filed, for the purpose of applying paragraph (1) or (2): Provided, That the foregoing shall not apply where a case falls under the latter part of paragraph (2) and a decision or an administrative judgment to reject an application for design registration under Article 62 becomes final and conclusive.
- (4) An application files by an ineligible person for design registration shall be deemed to have never been filed, for the purpose of applying paragraph (1) or (2).
- (5) In cases of paragraph (2), the Commissioner of the Korean Intellectual Property Office shall order the applicants to report to him/her on the results of their agreement within a specified period, and it shall be deemed that the applicants fail to reach an agreement under paragraph (2), if they fail to report the results thereof within the period.

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

In any of the following cases, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall order a person who initiates a design-related procedure to amend the procedure within a specified period.

1. If the person violates Article 4 (1) or 7;
2. If the person breaches any formality specified by this Act or by an order issued under this Act;
3. If the person does not pay a fee that shall be paid under Article 85.

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

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

remains unchanged.

- (2) An applicant for design registration may make an amendment to change an application for the registration of related designs to applications for the registration of an independent design or vice versa.
- (3) An applicant for design registration may make an amendment to change an application for partially-examined design registration to an application for examined design registration or vice versa.
- (4) Amendments under the provisions of paragraphs (1) through (3) may be made at the time specified in any of the following subparagraphs:
  1. Before the notice of a decision to reject an application for design registration under Article 62 or a decision to accept the registration of a design under Article 65 (hereinafter referred to as “decision on whether to accept design registration”) is dispatched;
  2. When a petition for re-examination under Article 64 is filed;
  3. Within 30 days from the filing date of a petition for an administrative patent trial on a decision to reject an application for design registration under Article 120.
- (5) If an amendment made under the provisions of paragraphs (1) through (3) is found later, after the grant of the relevant design right was registered, as a modification to the gist of the initial application for design registration, the application for design registration shall be deemed to have been filed at the time the amendment was filed.

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

- (1) If an amendment filed pursuant to Article 48 is found to change the gist of the relevant application for design registration, the examiner shall make a decision to dismiss the amendment without prejudice.
- (2) If an examiner makes a decision to dismiss an application for the registration of a design under paragraph (1), he/she shall not make a decision on whether to accept the registration of the design (referring to some of designs, if a decision to dismiss an application is made with regard to some designs claimed in an application filed for the registration of multiple designs) as claimed in the application until before the lapse of 30 days from the date on which a certified copy of the decision is served on the applicant for design registration.
- (3) If an applicant for design registration files a petition for an administrative patent trial in accordance with Article 119 on a decision to dismiss the relevant application under paragraph

(1), the examiner shall suspend the examination of the application for the registration of the design (referring to some of designs, if a petition is filed against a decision to dismiss an application with regard to some designs claimed in an application filed for the registration of multiple designs) until the judgment rendered at the administrative patent trial becomes final and conclusive.

(4) A decision to dismiss an application under paragraph (1) shall be made in writing and shall contain rationale therefor.

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

(1) Any of the following persons may divide part of an application filed for design registration into one or more new applications for design registration and may file the applications additionally:

1. A person who has filed one application for the registration of two or more designs in violation of Article 40;
2. A person who has filed an application for the registration of multiple designs.

(2) An application for design registration that is divided in accordance with paragraph (1) (hereinafter referred to as “divided application”) shall be deemed to have been filed at the time the initial application for design registration was filed: Provided, That the foregoing shall not apply to cases to which Article 36 (2) 1 or 51 (3) or (4) shall apply.

(3) The division of an application for design registration under paragraph (1) is permissible during the period in which amendments under Article 48 (4) are allowed.

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

(1) For the purpose of applying Article 33 or 46 to cases where a national of a member State to a treaty that recognizes the right of priority of a national of the Republic of Korea in filing an application for design registration files an application for the registration of a design in the Republic of Korea after filing an application for the registration of an identical design in the member State or another member State and claims the right of priority, the date on which an application for design registration is filed in the member State or another member State shall be deemed the date on which another application for design registration is filed in the Republic of Korea. The foregoing shall also apply to cases where a national of the Republic of Korea files an application for the registration of a design in the Republic of Korea after filing an application for the registration of an identical design in a member State to a treaty that recognizes the right of priority of a national of the Republic of Korea in filing an application for design registration.

- (2) A person who intends to claim the right of priority under paragraph (1) shall not claim the right of priority, unless he/she files an application for design registration within six months from the filing date of the initial application on which the priority claim shall be based.
- (3) A person who intends to claim the right of priority under paragraph (1) shall state the intention, the name of the State in which the initial application was filed, the filing date of the initial application filed for design registration.
- (4) A person who claims the right of priority under paragraph (3) shall submit a document stating the filing date of the application for design registration, recognized by the government of the State in which he/she filed an application first, and a certified copy of the drawing of the design to the Commissioner of the Korean Intellectual Property Office within three months.
- (5) If a person who claims the right of priority under paragraph (3) does not submit the documents specified in the aforesaid paragraph within the period specified in paragraph (4), the priority claim shall become invalid.

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

- (1) An applicant for design registration may request to publish his/her application, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy. In cases of an application for the registration of multiple designs, the applicant may request to publish all or some of the designs claimed in the application.
- (2) Upon receipt of a request to publish an application for design registration under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall publish the application in the Design Gazette under Article 212 (hereinafter referred to as the "Design Gazette"): Provided, That the Commissioner of the Korean Intellectual Property Office may decide not to publish an application for design registration, if the design claimed in the application falls under subparagraph 2 of Article 34.
- (3) No request to publish an application for design registration may be filed after the certified copy of the decision on whether to accept the first application filed for design registration prior to the relevant application for design registration is delivered.

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

- (1) An applicant for the registration of a design may warn, in writing, a person who worked the design claimed in the application pending or any similar design for business, after the publication of the application under Article 52, that the application for the registration of the

design concerned has been published.

- (2) An applicant for the registration of a design may claim compensation, equivalent to the amount that he/she would usually charge for working the design or a similar design, against a person who has worked the design claimed in the application pending or a similar design for business, after the person was warned thereof under paragraph (1) or became aware of the publication of the application for the design registration under Article 52, for the period from the time he/she was warned thereof or he/she became aware of the publication of the application under Article 52 to the time when the grant of the relevant design right is registered.
- (3) The right to claim compensation under paragraph (2) shall not be exercised until after the grant of a design right to the design claimed in the application for design registration is registered.
- (4) The exercise of the right to claim compensation under paragraph (2) shall not affect the exercise of the relevant design right.
- (5) Articles 114 and 118 of this Act and Articles 760 and 766 of the Civil Act shall apply to the exercise of the right to claim compensation under paragraph (2). In such cases, “the date on which the injured party or his/her legal representative becomes aware of the damage or the identity of the wrongdoer” in Article 766 (1) of the Civil Act shall be construed as “the date on which the grant of the relevant design right is registered”.
- (6) If any of the following events occurs after the publication of the application under Article 52, it shall be deemed that the right to claim compensation under paragraph (2) has never arisen:
  1. If the application for design registration is abandoned, invalidated, or withdrawn;
  2. If a decision made under Article 62 to reject the application for design registration becomes final and conclusive;
  3. If a decision made under Article 73 (3) to revoke the registration of the design becomes final and conclusive;
  4. If an administrative judgment rendered under Article 121 at an administrative patent trial to invalidate the registration of the design becomes final and conclusive (excluding the cases of Article 121 (1) 4).

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

- (1) The right to have a design registered is transferable: Provided, That the right to have a basic design registered and the right to have related designs registered shall be transferred together.
- (2) The right to have a design registered shall not be subject to a pledge.



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

**Article 55 (Furnishing of Information)**

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

**Article 56 (Publication of Rejected Application in Design Gazette)**

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

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

- (1) A person who obtains the right to have a design registered by succession before an application is filed for the registration of the design shall not assert any claim or defense, based on the right, against a third party, unless he/she files an application for the registration of the design.
- (2) If two or more persons have obtained the right to have a design registered by succession from one and the same person and two or more applications are filed for the registration of the design on the same date, succession shall take effect only with respect to the person whom the applicants for the registration of the design agree to select from among them.
- (3) If succession to the right to have a design registered takes place after an application for the registration of the design is filed, the succession shall not take effect, unless a report is filed on the change of the applicant of design registration, except for conveyance by inheritance or general succession.
- (4) If a person succeeds to the right to have a design registered by inheritance or general succession, the successor shall report to the Commissioner of the Korean Intellectual Property Office on the details thereof without delay.
- (5) If two or more persons have obtained the right to have a design registered by succession from one and the same person and two or more reports are filed on the change of the applicant of

design registration on the same date, such report shall take effect only with respect to the person whom the reporting persons agree to select from among them.

(6) Article 46 (5) shall apply mutatis mutandis to the cases of paragraphs (2) and (5).

## CHAPTER III EXAMINATION

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

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

(2) Necessary matters concerning the qualification of examiners shall be prescribed by Presidential Decree.

### **Article 59 (Designation of Specialized Organizations, etc.)**

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

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

(3) Necessary matters concerning the criteria for the designation of specialized organizations, the request to search prior designs, etc. under paragraph (1) shall be prescribed by Presidential Decree.

### **Article 60 (Revocation of Designation of Specialized Organizations, etc.)**

(1) If a specialized organization designated under Article 59 (1) falls under subparagraph 1, the Commissioner of the Korean Intellectual Property Office shall revoke the designation, or he/she may revoke the designation of a specialized organization or order a specialized organization to completely or partially suspend its business operation for a specified period of not more than six months, if the specialized organization falls under subparagraph 2:

1. If a specialized organization obtains the designation by fraud or other misconduct;

2. If a specialized organization ceases to meet the criteria for designation under Article 59 (3).
- (2) If the Commissioner of the Korean Intellectual Property Office intends to revoke the designation of a specialized organization under paragraph (1), he/she shall hold a public hearing.
- (3) Necessary matters concerning the detailed criteria and procedure for the dispositions under paragraph (1) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

**Article 61 (Expedited Examination)**

- (1) In any of the following cases, the Commissioner of the Korean Intellectual Property Office may direct an examiner to preferentially examine an application for design registration first among other applications:
  1. Where it is found that any person, other than the applicant, is working, for business, the design claimed in an application for design registration after the publication of the application under Article 52;
  2. Where it is deemed necessary to urgently process an application for design registration specified by Presidential Decree.
- (2) When an application for the registration of multiple designs is to be preferentially examined under paragraph (1), the Commissioner of the Korean Intellectual Property Office may direct an examiner to preferentially examine only some designs that fall under any subparagraph of paragraph (1) first.

**Article 62 (Decisions to Reject Application for Design Registration)**

- (1) An examiner shall decide to reject an application for design registration in any of the following cases:
  1. If an applicant has no right to have a design registered under the body of Article 3 (1) or is ineligible for design registration under the proviso to the aforesaid paragraph;
  2. If an applicant is ineligible for design registration under any provision of Articles 27, 33 through 35, 37 (4), 39 through 42, and 46 (1) and (2);
  3. If an application contravenes a treaty.
- (2) An examiner shall decide to reject an application for partially-examined design registration in any of the following cases:
  1. If an applicant has no right to have a design registered under the body of Article 3 (1) or is ineligible for design registration under the proviso to the aforesaid paragraph;
  2. If an applicant is ineligible for design registration under any provision of Articles 27, 33

(limited to the part above subparagraphs of paragraph (1) and paragraph (2) 2), 34, 37 (4), and 39 through 42;

3. If an application contravenes a treaty.

(3) An examiner shall decide to reject an application for partially-examined registration of a related design under Article 35, if the application falls under any subparagraph of paragraph (2) or any of the following subparagraphs:

1. If a related design already registered or claimed in an application for design registration is indicated as the basic design;
2. If the design right to the basic design ceases to exist;
3. If the application for the registration of the basic design has been invalidated, withdrawn, or abandoned, or a decision to reject the application for the registration of the basic design becomes final and conclusive;
4. If the applicant for the registration of the related design is not the design right holder of the basic design nor the applicant for the registration of the basic design;
5. If the related design is not similar to the basic design;
6. If the application for the registration of the related design is filed after more than one year from the filing date of the application for the registration of the basic design;
7. If the related design is ineligible for design registration under Article 35 (3).

(4) Notwithstanding paragraph (2), an examiner may decide to reject an application for partially-examined design registration, based on information and evidence provided under Article 55.

(5) If there is a ground to reject only some of multiple designs when an examiner intends to decide to reject an application for the registration of multiple designs under the provisions of paragraphs (1) through (3), the examiner may decide to reject the application only with respect to such ineligible designs, out of all multiple designs.

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

(1) When an examiner intends to decide to reject an application for design registration under Article 62, he/she shall notify the applicant of the ground for rejection (referring to a ground specified in any provision of Article 62 (1) through (3); hereinafter referred to as "ground for rejection") and shall give the applicant an opportunity to submit a written argument.

(2) If an examiner finds a ground to reject an application for the registration of multiple designs with respect to only some designs out of them, he/she shall describe the serial number of each

ineligible design, the products in relation to which each ineligible design is to be used, and the ground for rejection in detail.

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

- (1) Upon receipt of the certified copy of a decision to reject an application for design registration, the applicant for design registration may amend the application in accordance with the provisions of Article 48 (1) through (3) and may file a petition for the re-examination of the application within 30 days (referring to the extended period, if the period under Article 120 is extended pursuant to Article 17 (1)) from the date on which the certified copy of the decision is delivered to him/her: Provided, That the foregoing shall not apply where a petition for an administrative patent trial under Article 120 is filed.
- (2) An applicant for design registration may submit a written argument, along with a petition for re-examination under paragraph (1).
- (3) If a petition that meets the requirements under the body of paragraph (1) is filed for re-examination, the decision previously made to reject the relevant application for design registration shall be deemed revoked.
- (4) No petition for re-examination under paragraph (1) may be withdrawn.

#### **Article 65 (Decisions to Accept Application for Design Registration)**

If an examiner finds no ground for rejecting an application for design registration, he/she shall decide to accept the application for design registration. If an examiner finds no ground for rejecting some designs out of multiple designs claimed in an application for the registration of multiple designs, he/she shall decide to accept the application for design registration with respect to such eligible designs.

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

- (1) If an examiner finds an obvious error in the contents of an application or a drawing when he/she intends to decide to accept an application for design registration, he/she may *ex officio* amend the error (hereinafter referred to as “*ex officio* amendment”).
- (2) When an examiner *ex officio* amends an error, he/she shall notify the applicant for design registration of the *ex officio* amendment, along with the certified copy of the decision served under Article 67 (2) to accept the application for design registration.
- (3) If an *ex officio* amendment is entirely or partially unacceptable, the applicant for design registration shall submit a written argument on the *ex officio* amendment before he/she pays the

design registration fee in accordance with Article 79 (1).

- (4) If an applicant for design registration submits a written argument in accordance with paragraph (3), the relevant *ex officio* amendment shall be entirely or partially deemed to have never been made.
- (5) If an *ex officio* amendment is entirely or partially deemed to have never been made under paragraph (4), the examiner shall revoke the decision to accept the application for design registration and shall examine the application all over again.

**Article 67 (Method of Deciding Whether to Accept Application for Design Registration)**

- (1) A decision on whether to accept an application for design registration shall be made in writing and shall contain rationale therefor.
- (2) When a decision is made to accept an application for design registration, the Commissioner of the Korean Intellectual Property Office shall serve the applicant with a certified copy of the decision.

**Article 68 (Petition to Object to Partially-Examined Design Registration)**

- (1) Any person may file a petition to object to partially-examined design registration with the Commissioner of the Korean Intellectual Property Office on any of the following grounds during the period from the date on which the grant of the relevant design right is registered until three months after the date on which the partially-examined design registration is publicly announced. If a case involves the registration of designs claimed in an application for the registration of multiple designs, a petition to object to partially-examined design registration shall be filed with respect to each design separately:
  1. Where the registrant has no right to have the design registered under the body of Article 3 (1) or is ineligible for design registration under the proviso to the aforesaid paragraph;
  2. Where the registration contravenes Article 27, 33, 34, 35 (2) or (3), 39, or 46 (1) or (2);
  3. Where the registration contravenes a treaty.
- (2) A person who objects to partially-examined design registration (hereinafter referred to as “petitioner for objection”) shall file a petition to object to partially-examined design registration, describing the following matters, with the Commissioner of the Korean Intellectual Property Office, along with necessary evidence: <Amended by Act No. 11962, Jul. 30, 2013>
  1. The name and domicile of the petitioner for objection (the name and place of business of the petitioner for objection, if the petitioner is a corporation);

2. The name and domicile or place of business of the agent, if the petitioner for objection is represented by an agent (the name and the place of business of the patent firm or the patent firm (limited liability), and the name of the patent attorney in charge, if the agent is a patent firm or a patent firm (limited liability));
3. The description of the registered design subject to the petition to object to partially-examined design registration;
4. The purposes of the petition to object to partially-examined design registration;
5. The grounds for the petition to object to partially-examined design registration and the description of necessary evidence.

(3) Upon receipt of a petition to object to partially-examined design registration, the presiding examiner shall serve the owner of the design right to the registered design subject to the petition to object to partially-examined design registration with a copy of the petition to object to partially-examined design registration and shall give the owner of the design right an opportunity to submit a written answer within a specified period.

(4) Article 121 (4) shall apply mutatis mutandis to petitions to object to partially-examined design registration.

#### **Article 69 (Amendment of Grounds, etc. for Petition to Object to Partially-Examined Design Registration)**

A petitioner for objection may amend the grounds described in the petition to object to partially-examined design registration within 30 days from the filing date of the petition.

#### **Article 70 (Board of Examiners for Examination and Decision-Making)**

(1) A board comprised of three examiners shall examine and make a decision on a petition filed to object to partially-examined design registration.

(2) The Commissioner of the Korean Intellectual Property Office shall select examiners who shall comprise a board of examiners for each petition filed to object to partially-examined design registration.

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

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

#### **Article 71 (*Ex Officio* Examination in Examining Petition to Object Partially-Examined Design**

### **Registration)**

- (1) In examining a petition to object to partially-examined design registration, the grounds on which neither the owner of the design right nor the petitioner for objection does not assert may be also examined. In such cases, the owner of the design right and the petitioner for objection shall be given opportunities to make arguments thereon.
- (2) In examining a petition to object to partially-examined design registration, a registered design to which the petitioner for objection has not objected shall not be subject to examination.

### **Article 72 (Consolidation or Severance of Petitions to Object to Partially-Examined Design Registration)**

The board of examiners may consolidate two or more petitions to object to partially-examined design registration or sever one petition into two or more petitions to examine and make decisions on the petitions jointly or separately.

### **Article 73 (Decision on Petition to Object to Partially-Examined Design Registration)**

- (1) A board of examiners shall make a decision on a petition to object to partially-examined design registration after the end of the period specified in Article 68 (3) or 69.
- (2) Notwithstanding Article 68 (3), a presiding examiner may render a decision to dismiss, without prejudice, a petition to object to partially-examined design registration after the end of the period specified in Article 69, if the petitioner for objection fails to present the ground of the petition and evidence thereon.
- (3) If a board of examiners finds that a petition to object to partially-examined design registration has a reasonable ground, it shall make a decision to revoke the registration of the design concerned (hereinafter referred to as “decision to revoke design registration”).
- (4) If a decision to revoke design registration becomes final and conclusive, the design right shall be deemed to have never existed.
- (5) If a board of examiners finds that a petition to object to partially-examined design registration is groundless, it shall make a decision to dismiss the petition (hereinafter referred to as “decision to dismiss the petition”).
- (6) No appeal shall be made against a decision to dismiss, without prejudice or on the merits, a petition to object to partially-examined design registration.

### **Article 74 (Method of Making Decision on Petition to Object to Partially-Examined Design Registration)**



(1) A decision on a petition to object to partially-examined design registration shall be made in writing, specifying the following matters, and the examiners who makes the decision shall affix their signatures or seals thereon: *<Amended by Act No. 11962, Jul. 30, 2013>*

1. The case number of the petition to object to partially-examined design registration;
2. Names and domiciles of the owner of the design right concerned and the petitioner (the name and the place of business of the corporation, if either party is a corporation);
3. Names and domiciles or the places of business of agents, if the owner of the design right concerned and the petitioner are represented by agents respectively (the name and the place of business of the patent firm or the patent firm (limited liability), and the name of the patent attorney in charge, if an agent is a patent firm or a patent firm (limited liability));
4. The description of the design relevant to the decision;
5. The conclusion of, and the rationale for, the decision;
6. The date of decision.

(2) When a decision is made on a petition to object to partially-examined design registration, the presiding examiner shall serve the petitioner and the owner of the design right concerned with a certified copy of the decision respectively.

**Article 75 (Withdrawal of Petition to Object to Partially-Examined Design Registration)**

- (1) No petition to object to partially-examined design registration may be withdrawn after the petitioner is served with a notice to make arguments under the latter part of Article 71 (1) or a certified copy of a decision made under Article 74 (2).
- (2) If a petition to object to partially-examined design registration is withdrawn, the petition for objection shall be deemed to have never existed.

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

The provisions of Article 133 (excluding subparagraph 6 thereof) shall apply mutatis mutandis to the examination of applications for design registration. In such cases, the term “trial” shall be construed as “examination”, and the term “judges” as “examiners”.

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

- (1) If an examiner deems it necessary for the examination of an application for design registration, he/she may suspend the proceedings for examination until an administrative judgment becomes final and conclusive or until proceedings of a lawsuit are closed.
- (2) If a court deems it necessary, it may suspend proceedings of a lawsuit until a decision made on

an application for design registration becomes final and conclusive.

(3) No protest may be made against the suspension under paragraph 1 or 2.

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

The provisions of Articles 142 (7), 145, 153 (3) through (6), and 154 shall apply mutatis mutandis to the examination and decision-making on petitions to object to partially-examined design registration.

**CHAPTER IV REGISTRATION FEES, DESIGN REGISTRATION, ETC.**

**Article 79 (Design Registration Fees)**

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

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

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

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

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

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

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

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

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

### **Article 82 (Late Payment of Registration Fees, etc.)**

- (1) A person who intends to have the grant of a design right registered or the owner of a design right may pay a registration fee within six months (hereinafter referred to as “period for late payment”) even after the due date specified in Article 79 (3) for the payment of the registration fee.
- (2) A person who pays a registration fee later than the due date in accordance with paragraph (1) shall pay the amount specified by Ordinance of the Ministry of Trade, Industry and Energy, which shall not exceed double the registration fee that the person was otherwise obliged to pay.
- (3) If a person who intends to have the grant of a design right registered fails to pay the registration fee within the period for late payment (referring to cases where a deficiency is not fully paid within the period for the payment of a deficiency, if the period for the payment of a deficiency under Article 83 (2) has not elapsed even after the end of the period for late payment), the application for design registration shall be deemed to have been abandoned, and the design right owned by the person shall be deemed to have been extinguished retroactively on the day immediately following the end of the period for which a registration fee was paid in accordance with Article 79 (1) or (2).

### **Article 83 (Payment of Deficiency in Registration Fees)**

- (1) If a person who intends to have the grant of a design right registered or the owner of a design right has not paid part of a registration fee within the period specified in Article 79 (3) or 82 (1), the Commissioner of the Korean Intellectual Property Office shall order the person to pay the deficiency in the registration fee.
- (2) Upon receipt of an order to pay a deficiency under paragraph (1), a person may pay the deficiency in the registration fee within one month from the date on which he/she receives the order.
- (3) A person who pays a deficiency in a registration fee in accordance with paragraph (2) shall pay the amount specified by Ordinance of the Ministry of Trade, Industry and Energy, which shall not exceed double the amount he/she was otherwise obliged to pay.

### **Article 84 (Restoration, etc. of Application for Design Registration and Design Right by Late Payment of Registration Fee or Payment of Deficiency in Registration Fee)**

- (1) If a person who intends to have the grant of a design right registered or the owner of a design right fails to pay a registration fee within the period for late payment or a deficiency in a

registration fee within the period for the payment of a deficiency, due to an event or a cause for which he/she is not liable, he/she may pay the registration fee or the deficiency within two months from the date on which such event or cause terminates: Provided, That the foregoing shall not apply where one year has passed since the end of the period for late payment or the end of the period for the payment of a deficiency, whichever is later.

- (2) Notwithstanding Article 82 (3), a person who pays a registration fee or a deficiency in a registration fee in accordance with paragraph (1) shall be deemed not to have abandoned the relevant application for design registration, and the relevant design right shall be deemed to have continued to exist.
- (3) If the owner of a design right fails to pay a registration fee within the period for late payment or fails to pay a deficiency in a registration fee within the period for the payment of the deficiency, and the design right to the registered design concerned is extinguished while working, the owner of the design right may pay three times the registration fee within three months from the end of the period for late payment or the end of the period for the payment of the deficiency to apply for the restoration of the extinguished right. In such cases, the relevant design right shall be deemed to have continued to exist.
- (4) The effects of an application for design registration or a design right under paragraph (2) or (3) shall not extend to the working of the relevant design or a design similar thereto by another person during a period (hereinafter referred to as "period of limited effect") from the date immediately after the end of the period for late payment of the registration fee until the date on which the registration fee or a deficiency is fully paid.
- (5) A person who works, or makes preparations to work, a design claimed in an application pending for design registration or a registered design under paragraph (2) or (3), or a similar design, for business in good faith, within the Republic of Korea during the period in which its validity is restricted shall be granted a non-exclusive license for the design that the person works or makes preparations to work within the scope of business objectives.
- (6) A person to whom a non-exclusive license is granted under paragraph (5) shall pay a reasonable consideration therefor to the owner or exclusive licensee of the relevant design right.

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

- (1) A person who initiates a design-related procedure shall pay official fees.
- (2) The official fees under paragraph (1), the methods and term of payment of the fees, and other

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

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

- (1) Notwithstanding Articles 79 and 85, the Commissioner of the Korean Intellectual Property Office shall fully exempt the following cases from registration fees and other official fees:
1. Registration fees and other official fees otherwise payable for an application for the registration of a design that belongs to the State or for a design right owned by the State;
  2. Official fees for a trial litigated by an examiner to seek invalidation under Article 121 (1).
- (2) Notwithstanding Articles 79 and 85, the Commissioner of the Korean Intellectual Property Office may fully or partially exempt a person eligible for assistance under Article 5 of the National Basic Living Security Act or a person specified by Ordinance of the Ministry of Trade, Industry and Energy from registration fees and other official fees specified by Ordinance of the Ministry of Trade, Industry and Energy for an application filed by the person for design registration or a design right arising from an application filed by the person for design registration. *<Amended by Act No. 12288, Jan. 21, 2014>*
- (3) A person who intends to be fully or partially exempted from registration fees and other official fees under paragraph (2) shall submit the documents specified by Ordinance of the Ministry of Trade, Industry and Energy to the Commissioner of the Korean Intellectual Property Office.

**Article 87 (Refund of Registration Fees, etc.)**

- (1) In any of the following cases, the registration fees and other official fees already paid shall be refunded at the request of the person who paid them:
1. Registration fees and other official fees erroneously paid;
  2. A portion for the years subsequent to the year in which a decision to revoke the registration of a design or an administrative judgment that invalidates the registration of a design becomes final and conclusive, out of registration fees already paid;
  3. Fees for filing an application for design registration and for filing a petition for priority claim, out of fees already paid, where an application for design registration is withdrawn or abandoned within one month after filing it: Provided, That the foregoing shall not apply to an application for design registration in any of the following cases:
    - (a) A divisional application or an application for design registration on which a divisional application is based;

(b) An application for design registration, filed for the expedited examination under Article 61 (1);

(c) An application for design registration, concerning which the examiner notified the ground for rejection under Article 63 or made a decision to accept design registration under Article 65.

(2) If registration fees and other official fees already paid fall under any subparagraph of paragraph (1), the Commissioner of the Korean Intellectual Property Office shall notify the person who paid the registration fees and other official fees thereof.

(3) No claim for the refund of registration fees and other official fees under paragraph (1) shall be valid after the lapse of three years from the date on which the claimant is served with the notice under paragraph (2).

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

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

1. The grant, assignment, extinguishment, or restoration of a design right, or a limitation on the disposal of a design right;
2. The grant, maintenance, transfer, modification, or extinguishment of an exclusive or non-exclusive license or a limitation on the disposal of an exclusive or non-exclusive license;
3. The grant, transfer, modification, or extinguishment of a pledge on a design right or on an exclusive or non-exclusive license or a limitation on the disposal of a pledge on a design right or on an exclusive or non-exclusive license.

(2) The Design Register under paragraph (1) may be entirely or partially kept in electronic recording media.

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

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

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

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

## CHAPTER V DESIGN RIGHT

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

- (1) A design right arises when the grant of the right is registered.
- (2) In any of the following cases, the Commissioner of the Korean Intellectual Property Office shall register the grant of the relevant design right:
1. When the registration fee is paid in accordance with Article 79 (1);
  2. When the late payment of a registration fee is made in accordance with Article 82 (1);
  3. When a deficiency in the registration fee is paid in accordance with Article 83 (2);
  4. When the registration fee or a deficiency in the registration fee is paid in accordance with Article 84 (1);
  5. When an applicant is exempted from the registration fee under Article 86 (1) 1 or (2).
- (3) When a design right is registered under paragraph (2), the Commissioner of the Korean Intellectual Property Office shall publish the details specified by Presidential Decree, such as the name and domicile of the owner of the design right and the design registration number, in the Design Gazette to publicly announce the registration.

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

- (1) A design right arises on the date on which the grant of the right is registered under Article 90 (1) and continues to exist until 20<sup>th</sup> anniversary of the filing date of the relevant application of design registration: Provided, That a design right to a related design registered under Article 35 expires at the end of the duration of the design right to its basic design.
- (2) If the grant of a design right claimed in an application filed by a legitimate right holder for design registration is registered under Article 44 or 45, the duration of the design right under paragraph (1) shall begin on the day immediately after the filing date of an application filed by an ineligible person for design registration.

### **Article 92 (Effect of Design Right)**

The owner of a design right shall have the exclusive right to work the registered design or any

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

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

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

**Article 94 (Scope to which Effect of Design Right is Not Extended)**

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

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

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

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

**Article 95 (Relationship with Another Person's Registered Designs, etc.)**

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

(2) If a design similar to a registered design is a product made by applying another person's



registered design or a design similar thereto, patented invention, registered utility model or registered trademark claimed in an application filed earlier than the filing date of the application for the registration of the design concerned, or if a design similar to a registered design subject to such design right conflicts with another person's patent right, utility model right, or trademark right under an application filed prior to the filing date of the application for registration of the design concerned, the owner of the design right to the registered design concerned, the exclusive licensee or a non-exclusive licensee for the registered design concerned shall not work the registered design for business without permission from the owner of the relevant design right, patent right, utility model right or trademark right or without complying with Article 123.

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

#### **Article 96 (Assignment and Joint Ownership of Design Right)**

- (1) A design right is assignable: Provided, That the design right to a basic design and the design right to related designs shall be assigned in a package to one and the same person.
- (2) Where a design right is jointly owned, any co-owner shall not assign his/her share or grant a pledge on his/her share to any person without consent of other co-owners.
- (3) Where a design right is jointly owned, any co-owner may work the registered design or any similar design alone without consent of other co-owners, except as otherwise agreed expressly by a contract.
- (4) Where a design right is jointly owned, no co-owner may grant or permit an exclusive or non-exclusive license for the design right to any person without consent of other co-owners.
- (5) The design right to multiple registered designs may be divided into multiple design rights that are individually assignable.
- (6) If it is intended to assign the design right to two or more designs related to a basic design, where the design right to the basic design has been revoked, renounced, or extinguished by an administrative judgment of invalidation, the design right to such related designs shall be assigned in a package to one and the same person.

### **Article 97 (Exclusive License)**

- (1) The owner of a design right may grant an exclusive license for a design right to another person:  
Provided, That the exclusive license for the design rights to a basic design and designs related thereto shall be granted to one and the same person in a package.
- (2) An exclusive licensee shall have the right to exclusively work the registered design or any similar design for business within the scope specified in the relevant license agreement.
- (3) No exclusive licensee may assign his/her exclusive license to another person without consent of the owner of the design right, unless he/she assigns the license along with the business to which the design is applied or the license is conveyed by inheritance or general succession.
- (4) No exclusive licensee may grant a pledge on, or a non-exclusive license for, his/her exclusive license to any person without consent of the owner of the design right.
- (5) The provisions of Article 96 (2) through (4) shall apply mutatis mutandis to an exclusive license.
- (6) If it is intended to grant an exclusive license for two or more designs related to a basic design, where the design right to the basic design has been revoked, renounced, or extinguished by an administrative judgment of invalidation, the exclusive license for such related designs shall be granted in a package to one and the same person.

### **Article 98 (Effect of Registration of Design Right and Exclusive License)**

- (1) Any of the following acts shall not take effect unless it is registered:
  1. The assignment (excluding conveyance by inheritance or general succession) or extinguishment of a design right by renunciation or a limitation on the disposal of a design right;
  2. The grant, assignment (excluding conveyance by inheritance or general succession), modification, or extinguishment (excluding extinguishment by confusion) of an exclusive license or a limitation on the disposal of an exclusive license;
  3. The grant, assignment (excluding conveyance by inheritance or general succession), modification, or extinguishment (excluding extinguishment by confusion) of a pledge on a design right or on an exclusive licence or a limitation on the disposal of a pledge on a design right or an exclusive licence.
- (2) The conveyance of a design right, an exclusive license, or a pledge by inheritance or general succession under paragraph (1) shall be reported to the Commissioner of the Korean Intellectual Property Office without delay.

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

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

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

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

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

A person who created a design identical with a design claimed in an application filed for the registration of the design or learned such design from the person who created it at the time the grant of the design right to another person was registered, without knowledge of the application, and worked, or made preparations to work, the registered design or any similar design for business for business within the Republic of Korea (excluding the persons who meet the requirements under

Article 100) shall be granted a non-exclusive license for the design right to the design that the person worked or made preparations to work within the scope of business objectives, only if the person meets all the following requirements:

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

**Article 102 (Non-Exclusive License Based on Working Prior to Registration of Claim for Judgment of Invalidation)**

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

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

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

1. A person who had the relevant non-exclusive or exclusive license registered;

2. A person whose non-exclusive license falls under Article 104 (2).

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

**Article 103 (Non-Exclusive License After Expiration of Duration of Design Right, etc.)**

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

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

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

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

**Article 104 (Effect of Registration of Non-Exclusive License)**

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

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

(3) Any person shall not assert his/her claim or defense, based on the assignment, modification, or

extinguishment of a nonexclusive license, a limitation on the disposal of a nonexclusive license, the grant, assignment, modification, or extinguishment of a pledge, or a limitation on the disposal of a pledge, against a third party, unless such an act or event is registered.

**Article 105 (Renunciation of Design Right)**

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

**Article 106 (Limitations on Renunciation of Design Right, etc.)**

- (1) The owner of a design right shall not renounce the design right without consent of the exclusive licensee, pledgee, or non-exclusive licensee under any provision of Articles 97 (4) and 99 (1) of this Act or Article 10 (1) of the Invention Promotion Act.
- (2) No exclusive licensee shall renounce his/her exclusive license without consent of the pledgee or non-exclusive licensee under Article 97 (4).
- (3) No non-exclusive licensee shall renounce his/her non-exclusive license without consent of the pledgee.

**Article 107 (Effect of Renunciation)**

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

**Article 108 (Pledge)**

Where a pledge is granted on a design right or an exclusive or non-exclusive license, the pledgee shall not work the registered design, except as otherwise stipulated by agreement.

**Article 109 (Subrogation of Pledge)**

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

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

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

right.

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

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

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

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

## CHAPTER VI PROTECTION OF OWNERS OF DESIGN RIGHTS

**Article 113 (Right to Seek Injunction against Infringement, etc.)**

- (1) The owner of a design right or an exclusive licensee may file a complaint to seek injunction for, or prevention of, infringement against a person who infringes or is likely to infringe his/her rights.
- (2) The owner of a design right or an exclusive licensee, who requested to keep the relevant design confidential under Article 43 (1), may not file a complaint under paragraph (1), unless he/she gives a warning first by presenting a document certified by the Commissioner of the Korean Intellectual Property Office on the following matters regarding the design, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy:
  1. The name and domicile (or the name and the principal place of business, if the claimant is a corporation) of the owner of the design right or the exclusive licensee (applicable only where an exclusive licensee files a claim);
  2. The serial number and date of the application for design registration;
  3. The design registration number and the date of registration;
  4. Details of drawings, photographs, or samples accompanying the application of design registration.
- (3) When the owner of a design right or an exclusive licensee files a complaint under paragraph (1), he/she may seek the destruction of articles that constitute infringement, the removal of facilities provided for infringement, and other actions necessary for the prevention of infringement.

**Article 114 (Acts Deemed Infringement)**

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

**Article 115 (Estimation of Damages)**

- (1) Where the owner of a design right or an exclusive licensee claims compensation for the loss inflicted upon him/her against a person who willfully or negligently committed an infringement on the design right or exclusive license and the infringing person transferred the products that constituted the infringement to third parties, the amount of the loss that the claimant has sustained may be calculated by multiplying the quantity of the products so transferred by the profit per unit of the products that the owner of the design right or the exclusive licensee could have sold, but for the infringement.
- (2) The amount of damages under paragraph (1) shall not exceed the amount calculated by multiplying the quantity of products that the owner of the design right or exclusive licensee could have produced, less the quantity of products actually sold, by the profit per unit: Provided, That the quantity of products that the owner of the design right or exclusive licensee could not sold due to any cause or event other than the infringement shall be subtracted therefrom, if such cause or event, in addition to the infringement, prevented the owner of the design right or exclusive licensee could have produced from selling the products.
- (3) Where the owner of a design right or an exclusive licensee claims compensation for the loss inflicted by a person who willfully or negligently infringed the design right or exclusive license, the profits that the infringing person gained by infringement, if any, shall be presumed to be equivalent to the loss that the owner of the design right or exclusive licensee has sustained.
- (4) Where the owner of a design right or an exclusive licensee claims compensation for the loss inflicted by a person who willfully or negligently infringed the design right or exclusive license, the owner of the design right or the exclusive licensee may claim the amount that he/she would usually receive for the working of the registered design as the loss that he/she sustained.
- (5) Notwithstanding paragraph (4), the amount by which the damages exceed the amount specified in the aforesaid paragraph may be also claimed as damages. In such cases, the court may take into consideration the fact that there was no willfulness or gross negligence on the part of the person who infringed the design right or exclusive license in determining damages.



(6) If the court finds in a lawsuit for infringement on a design right or exclusive license that the loss has been incurred by infringement but it is extremely hard to find the facts necessary for proving the damages in light of the nature of relevant facts, it may award reasonable damages based on the purport of entire arguments and the results of examination of evidence, notwithstanding the provisions of paragraphs (1) through (5).

**Article 116 (Presumption of Negligence)**

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

(2) The provisions of paragraph (1) shall apply mutatis mutandis where the owner of a design right to a design registered through partial examination or an exclusive or non-exclusive licensee for such a registered design or any similar design infringes another person's design right or exclusive license.

**Article 117 (Restoration of Reputation of Owner of Design Right, etc.)**

At the request of the owner of a design right or an exclusive licensee, the court may order the person who degraded the business reputation of the owner of the design right or exclusive licensee by willfully or negligently infringing the design right or exclusive license, to take necessary measures to restore the business reputation of the owner or exclusive licensee in lieu of damages or in addition thereto.

**Article 118 (Submission of Documents)**

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

**CHAPTER VII TRIAL**

**Article 119 (Trial on Decision to Dismiss Amendment Without Prejudice)**

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

## **Article 120 (Trial on Decision to Reject Application for Design Registration or to Revoke Design Registration)**

A person who protests against a decision to reject an application for design registration or a decision to revoke the registration of a design may file a petition within 30 days from the date on which the person is served with a certified copy of the decision.

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

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

1. Where the registrant has no right to register the design under the body of Article 3 (1) or is not eligible for the registration of the design under the proviso to the aforesaid paragraph;
2. Where the registration contravenes Article 27, 33, 34, 35 (2) or (3), 39, or 46 (1) or (2);
3. Where the registration contravenes a treaty;
4. Where the owner of the design right ceases to be eligible for the design right under Article 27 or the registration of the design at issue is found to contravene a treaty, after the design is registered.

(2) A petition for an administrative patent trial under paragraph (1) may be filed even after the relevant design right is extinguished.

(3) If an administrative judgment that invalidates the registration of a design becomes final and conclusive, the design right shall be deemed to have never existed: Provided, That a design right shall be deemed to cease to exist when the registration of a design falls under paragraph (1) 1, if a trial judgement that invalidates the relevant design registration under the aforesaid subparagraph becomes final and conclusive.

(4) Upon receipt of a petition for an administrative patent trial under paragraph (1), the presiding judge shall notify the receipt of the petition to the exclusive licensee for the relevant design right or any person who has a registered right to the design.

## **Article 122 (Trial to Confirm Scope of Design Right)**

The owner of a design right, an exclusive licensee, or any interested party may file a petition for an administrative patent trial to have the scope of the design right confirmed in order to ascertain the extent of protection of the registered design. If a case involves the registration of designs claimed in

an application for the registration of multiple designs under Article 41, such petition shall be filed for each design separately.

**Article 123 (Trial for Granting Non-Exclusive License)**

- (1) If the owner of a design right, or an exclusive or non-exclusive licensee intends to obtain a license to work another person's registered design that falls under Article 95 (1) or (2) or a design similar thereto but the person refuses to grant a license without valid cause or it is impossible to obtain such license from the person, the owner of the design right or the exclusive or non-exclusive licensee may file a petition for an administrative patent trial, seeking the grant of a non-exclusive license to the extent necessary to work the registered design or a design similar thereto.
- (2) If a person who granted a non-exclusive license in accordance with the judgment made at an administrative patent trial under paragraph (1) needs to work the registered design of the person who has the non-exclusive license granted or any design similar thereto but the non-exclusive licensee does not grant a license for working the design or it is impossible to obtain the license, he/she may file a petition for an administrative patent trial, seeking the grant of a non-exclusive license to the extent necessary to work the registered design or a design similar thereto.
- (3) A non-exclusive licensee under paragraphs (1) and (2) shall pay consideration therefor to the patentee, the owner of the utility model right, the owner of the design right, or the exclusive licensee: Provided, That if it is impossible to pay consideration due to any cause or event for which he/she is not liable, he/she shall deposit the consideration in the competent court.
- (4) No non-exclusive licensee under paragraph (3) shall work a patented invention, a registered utility model, or a registered design or any design similar thereto without paying a consideration therefor or depositing the consideration in the competent court.

**Article 124 (Application Mutatis Mutandis of Provisions regarding Examination to Trial on Decision to Reject Application for Design Registration)**

- (1) Articles 48 (1) through (3), 48 (4) 1, 49, 63, and 65 shall apply mutatis mutandis to an administrative patent trial on the decision to reject an application for design registration. In such cases, "before the notice of a decision to reject an application for design registration under Article 62 or a decision to accept the registration of a design under Article 65 (hereinafter referred to as "decision on whether to accept design registration") is dispatched" in Article 48 (4) 1 shall be construed as "by the deadline for the submission of a written argument on the notice

of the ground for rejection”, “if an applicant for design registration files a petition for an administrative patent trial in accordance with Article 119” in Article 49 (3) as “a person files a lawsuit in accordance with Article 166 (1)”, and “until the judgment rendered at the trial becomes final and conclusive” in the aforesaid paragraph as “until the judgment rendered by the court becomes final and conclusive”.

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

#### **Article 125 (Joinder of Petitions for Trial, etc.)**

- (1) Where persons who jointly own a design right or a right to have a design registered intend to file a petition for an administrative patent trial on the jointly owned right, all co-owners shall jointly file such petition.
- (2) Notwithstanding paragraph (1), if the persons who intend to file a petition for an administrative patent trial, seeking the invalidation of the registration of a design under Article 121 (1) or the confirmation of the scope of a right under Article 122 with respect to one and the same design right are two or more, they may severally or jointly file a petition for an administrative patent trial.
- (3) When a person files a petition for an administrative patent trial against owners of a jointly owned design right, all co-owners shall be named as respondents.
- (4) If a ground for the suspension or interruption of proceedings of an administrative patent trial is applicable to one of petitioners under paragraph (1) or (2) or one of respondents under paragraph (3), the ground shall be applicable to all of them.

#### **Article 126 (Formalities of Petition for Trial)**

- (1) A person who intends to file a petition for an administrative patent trial for the invalidation of the registration of a design, the confirmation of the scope of a right, or the grant of a non-exclusive license under Articles 121 through 123 shall file the petition, describing the following matters, with the President of the Intellectual Property Tribunal: *<Amended by Act No. 11962, Jul. 30, 2013>*
1. The names and domiciles of the parties (or the name and the place of business, if either party is a corporation);
  2. The name and domicile or place of business of the agent, if either party is represented by an

agent (the name and the place of business of the patent firm or the patent firm (limited liability), and the name of the patent attorney in charge, if the agent is a patent firm or a patent firm (limited liability));

3. The indication of the trial case;
4. Claims and the cause of the petition.

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

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

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

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

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

**Article 127 (Formalities for Petition for Trial on Decision to Reject Application for Design Registration, etc.)**

(1) A person who intends to file a petition for an administrative patent trial on a decision to dismiss an amendment, a decision to reject an application for design registration, or a decision to revoke

the registration of a design shall file the petition, describing the following matters, with the President of the Intellectual Property Tribunal and, upon receipt of a petition for an administrative patent trial on a decision to revoke the registration of a design under Article 120, the President of the Intellectual Property Tribunal shall notify the receipt of the petition to the petitioner for objection: *<Amended by Act No. 11962, Jul. 30, 2013>*

1. The name and domicile of the petitioner (or the name and the place of business, if the petitioner is a corporation);
  2. The name and domicile or place of business of the agent, if the petitioner is represented by an agent (the name and the place of business of the patent firm or the patent firm (limited liability), and the name of the patent attorney in charge, if the agent is a patent firm or a patent firm (limited liability));
  3. The date and number of application (the registration date and registration number of the design, if the petitioner protests against a decision to revoke design registration);
  4. The products or the classification of products in relation to which the design is to be used;
  5. The date of the decision to reject the application for design registration, the date of the decision to revoke design registration, or the date of the decision to dismiss the amendment without prejudice;
  6. The indication of the trial case;
  7. Claims and the cause of the petition.
- (2) No amendment to a petition filed under paragraph (1) for an administrative patent trial shall be permitted to amend the gist of the petition: Provided, That the foregoing shall not apply to either of the following cases:
1. Where an amendment (including an addition) is made to correct the indication of the petitioner under paragraph (1) 1;
  2. Where the cause of the petition under paragraph (1) 7 is amended.

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

- (1) In any of the following cases, the presiding judge shall order the petitioner to amend the petition with a specified period:
1. If the petition for an administrative patent trial contravenes Article 126 (1), (3), or (4) or 127 (1);
  2. If the proceedings of an administrative patent trial fall under any of the following items:

- (a) If the proceedings of an administrative patent trial contravene Article 4 (1) or 7;
  - (b) If the petitioner does not pay any fee payable under Article 85;
  - (c) If the proceedings of an administrative patent trial contravene the formalities prescribed by this Act or by an order issued under this Act.
- (2) If a person who was ordered to amend a petition under paragraph (1) fails to amend it within the specified period, the presiding judge shall dismiss the petition for an administrative patent trial without prejudice.
- (3) A decision under paragraph (2) shall be made in writing and shall contain rationale therefor.

**Article 129 (Judgment to Dismiss Petition for Trial with Incurable Defects)**

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

**Article 130 (Administrative Patent Judges)**

- (1) Upon receipt of a petition for an administrative patent trial, the President of the Intellectual Property Tribunal shall allocate the case to administrative patent judges for a trial.
- (2) The requirements for qualification of administrative patent judges shall be prescribed by Presidential Decree.
- (3) Administrative patent judges shall be independent in performing their duty to examine a case on trial.

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

- (1) The President of the Intellectual Property Tribunal shall designate administrative patent judges who shall form a board under Article 133 for each trial case.
- (2) If any of the administrative patent judges designated under paragraph (1) has a problem in getting involved in an administrative patent trial, the President of the Intellectual Property Tribunal may designate another administrative patent judge to replace him/her.

**Article 132 (Designation of Presiding Administrative Patent Judge)**

- (1) The President of the Intellectual Property Tribunal shall select one of the administrative patent judges designated under Article 131 (1) as the presiding judge.
- (2) The presiding judge shall administer all affairs relating to the case on trial.

**Article 133 (Board for Trial)**

- (1) An administrative patent trial shall be conducted by a board comprised of three or five

administrative patent judges.

(2) The board under paragraph (1) shall make a decision by a majority vote.

(3) Consultations among administrative patent judges shall not be open to the public.

**Article 134 (Submission of Written Answer, etc.)**

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

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

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

**Article 135 (Exclusion of Administrative Patent Judges)**

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

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

**Article 136 (Request for Exclusion)**

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



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

- (1) If a party or an intervenor has a ground to believe that it is hard to expect impartiality in a trial from an administrative patent judge, he/she may challenge the administrative patent judge.
- (2) No party or intervenor may challenge an administrative patent judge after he/she makes a statement, oral or in writing, to the administrative patent judge concerning the case on trial: Provided, That the foregoing shall not apply where a party or an intervenor did not know that there is a cause of challenge or the cause of challenge arises thereafter.

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

- (1) A person who intends to move to exclude or challenge an administrative patent judge under Article 136 or 137 shall file a written motion, describing the cause thereof, with the President of the Intellectual Property Tribunal: Provided, that such motion may be verbally filed in an oral hearing.
- (2) *Prima facie* evidence shall be presented for the cause of exclusion or challenge within three days from the filing date of the petition.

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

- (1) A decision on a motion for excluding or challenging an administrative patent judge shall be made in a trial;
- (2) The administrative patent judge against whom a motion for exclusion or challenge is filed shall not participate in the trial on the exclusion or challenge: Provided, That the administrative patent judge may make arguments.
- (3) A decision under paragraph (1) shall be made in writing with the rationale therefor.
- (4) No appeal shall be permitted against a decision made under paragraph (1).

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

If a motion for exclusion or challenge is filed, trial proceedings shall be suspended until a decision is made on the motion: Provided, That the foregoing shall not apply where an urgent action is required.

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

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

#### **Article 142 (Hearings, etc.)**

- (1) A hearing in trial proceedings shall be either oral or written: Provided, That a case shall be tried in oral hearings if either party requests oral hearings, unless it is found that a decision can be made only in written hearings.
- (2) An oral hearing shall be open to the public: Provided, That the foregoing shall not apply where public order or morality is likely to be disturbed.
- (3) When the presiding judge intends to hold an oral hearing under paragraph (1), he/she shall determine the date and place of hearing and serve the parties and intervenors with a written notice thereof: Provided, That the foregoing shall not apply where such notice is given to the parties and intervenors present at a hearing for the relevant case.
- (4) When the presiding judge presides over an oral hearing under paragraph (1), he/she shall have an official assigned by the President of the Intellectual Property Tribunal make a proceeding report on the hearing and other necessary facts relevant to each hearing.
- (5) The presiding judge and the official who makes a proceeding report under paragraph (4) shall print their names and affix their seals on the proceeding report.
- (6) The provisions of Articles 153, 154, and 156 through 160 of the Civil Procedure Act shall apply mutatis mutandis to the proceeding reports under paragraph (4).
- (7) Articles 143, 259, 299, and 367 of the Civil Procedure Act shall apply mutatis mutandis to administrative patent trials.
- (8) The presiding judge shall maintain order in the trial tribunal.

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

- (1) A person who has a right to file a petition for an administrative patent trial under Article 125 (2) may intervene in the trial before the closing of hearings.
- (2) An intervenor under paragraph (1) may continue trial proceedings even after the party for whose favor the intervenor enters the proceedings voluntarily withdraws his/her petition for the trial.
- (3) A person who has an interest in the result of an administrative patent trial may intervene in the trial proceedings to assist either party before the closing of hearings.
- (4) An intervenor under paragraph (3) may take part in all trial proceedings.
- (5) If an intervenor has cause to suspend or discontinue trial proceedings, such suspension or discontinuance shall be effective also to the party for whose favor the intervenor entered the proceedings.

#### **Article 144 (Petition for Intervention and Decision thereon)**

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

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

- (1) Evidence may be examined or preserved, upon request by a party, intervenor, or interested party or *ex officio*, in trial proceedings.
- (2) The provisions concerning the examination and preservation of evidence in Part II, Chapter III of the Civil Procedure Act shall apply mutatis mutandis to the examination and preservation of evidence under paragraph (1): Provided, That an administrative patent judge shall not make a decision to impose a fine for negligence, issue an order to take a person into custody, or require a person to deposit guarantee money.
- (3) A request to preserve evidence shall be filed with the President of the Intellectual Property Tribunal, if it is filed before filing a petition for an administrative patent trial, or with the presiding judge, if it is filed while the trial is pending.
- (4) Upon receipt of a request for the preservation of evidence under paragraph (1) before a petition for an administrative patent trial is filed, the President of the Intellectual Property Tribunal shall assign the examination of the request for the preservation of evidence to an administrative patent judge.
- (5) When the presiding judge *ex officio* examines or preserves evidence under paragraph (1), he/she shall serve the parties and intervenors and interested parties with a statement of the results thereof and shall give them an opportunity to present their arguments thereon within a specified period.

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

The presiding judge may proceed with a trial, regardless of whether a party or intervenor neglects a

procedure by the statutory deadline or by a specified deadline or fails to make an appearance on a date of hearing under Article 142 (3).

**Article 147 (Ex Officio Examination)**

- (1) A cause of action that neither a party nor an intervenor requests to examine may also be examined in trial proceedings. In such cases, the parties and intervenors shall be given an opportunity to present arguments thereon within a specified period.
- (2) No claim but the claims asserted by a petitioner in his/her petition may be examined in trial proceedings.

**Article 148 (Joinder or Severance of Hearings or Judgments)**

An administrative patent judge may join hearings or judgments for two or more trials in which both parties or either party is identical or sever hearings for one trial.

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

- (1) A petition for an administrative patent trial may be voluntarily withdrawn before an administrative judgment becomes final and conclusive: Provided, That withdrawal after a written answer is submitted in accordance with Article 134 (1) is subject to the adverse party's consent thereto.
- (2) A petition withdrawn in accordance with paragraph (1) shall be deemed to have never been filed.

**Article 150 (Administrative Judgment)**

- (1) Except as otherwise provided for in any Act, an administrative patent trial shall be closed with an administrative judgment.
- (2) an administrative judgment under paragraph (1) shall be made in writing with the description of the following matters, on which administrative patent judges participating in the judgment shall print their names and affix their seals: *<Amended by Act No. 11962, Jul. 30, 2013>*
  1. The trial number;
  2. Names and domiciles of parties and intervenors (names and the places of business of corporations, if parties are corporations);
  3. The name and domicile or place of business of agents, if parties are represented by agents (the name and the place of business of the patent firm or the patent firm (limited liability), and the name of the patent attorney in charge, if an agent is a patent firm or a patent firm (limited liability));

4. The indication of the case on trial;
  5. The holding of the judgment (including the scope and duration of the relevant non-exclusive license and the consideration therefor, in the case of a trial under Article 123);
  6. Rationale for the judgment (including claims and the cause of action);
  7. The date of judgment.
- (3) When a case becomes mature enough to make an administrative judgment, the presiding judge shall notify the parties and intervenors of the closing of hearings.
  - (4) If the presiding judge deems it necessary, he/she may reopen a case for hearings upon request from a party or intervenor or *ex officio*, even after he/she gives the notice of the closing of hearings under paragraph (3).
  - (5) An administrative judgment shall be rendered within 20 days from the date on which the notice of the closing of hearings is given under paragraph (3).
  - (6) When an administrative judgment or decision is rendered, the presiding judge shall serve the parties, intervenors, and persons whose petition filed to intervene in the trial was rejected with a copy of the judgment or decision respectively.

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

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

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

- (1) A presiding judge may suspend trial proceedings until a decision on a petition filed to object to partially-examined design registration in connection with the case on the administrative patent trial or an administrative judgment rendered in any other administrative patent trial becomes final and conclusive or proceedings of a lawsuit filed in connection with the case are completed.
- (2) A court may suspend its proceedings of a lawsuit until an administrative judgment rendered at an administrative patent trial becomes final and conclusive, if it is necessary for the proceedings of the lawsuit.
- (3) Upon receipt of a lawsuit filed with regard to infringement on a design right or an exclusive license, a court shall notify the President of the Intellectual Property Tribunal of the claims asserted in the lawsuit. A notice shall be also given when the proceedings of such a lawsuit are

closed.

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

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

- (1) The allocation of the cost of an administrative patent trial under Article 121 (1) or 122 shall be articulated in the judgment, if an administrative judgment is rendered at the closing of the trial, or in the decision, if a decision is rendered in lieu of an administrative judgment at the closing of the trial.
- (2) Articles 98 through 103, 107 (1) and (2), 108, 111, 112, and 116 of the Civil Procedure Act shall apply mutatis mutandis to the cost of an administrative patent trial under paragraph (1).
- (3) The cost of an administrative patent trial under Article 119, 120, or 123 shall be borne by the petitioner for the trial or the petitioner for objection.
- (4) Article 102 of the Civil Procedure Act shall apply mutatis mutandis to the cost that shall be borne by a petitioner for an administrative patent trial or a petitioner for objection under paragraph (3).
- (5) The amount of cost of an administrative patent trial shall be determined by the President of the Intellectual Property Tribunal, upon request from a party, after the relevant judgment or decision becomes final and conclusive.
- (6) Relevant provisions of the Costs of Civil Procedure Act shall apply to the scope, amount, and payment of the cost of an administrative patent trial and the payment of the cost required for procedural motions in an administrative patent trial, unless such provisions contravene the nature of the cost.
- (7) Fees that a party has paid or shall pay to a patent attorney who has represented the party for an administrative patent trial shall be deemed the cost of the trial up to the amount specified by the President of the Intellectual Property Tribunal. Even where a party has been represented by two or more patent attorneys for an administrative patent trial, the party shall be deemed to have been represented by one patent attorney for the purpose of this paragraph.

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

A decision rendered by the President of the Intellectual Property Tribunal on the amount of cost of an administrative patent trial or by administrative patent judges on consideration shall be as effective as an enforceable title of execution. In such cases, the enforceable writ shall be issued by a public official of the Korean Intellectual Property Office.

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

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

#### **Article 156 (Effects of Proceedings of Examination or Petition for Objection to Partially-Examined Design Registration)**

Proceedings precedently carried out for examination or with respect to a petition filed to object to partially-examined design registration shall remain effective to the trial on the decision to reject the registration of the relevant design or the decision to revoke the registration of the relevant design.

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

- (1) When an administrative patent judge upholds claims asserted in a petition filed for an administrative patent trial under Article 119 or 120, he/she shall render an administrative judgment to cancel the relevant decision to dismiss an amendment without prejudice, reject an application for design registration, or revoke design registration.
- (2) When a decision to dismiss an amendment without prejudice, reject an application for design registration, or revoke design registration is cancelled in an administrative patent trial, an administrative judgment that the case shall be subjected to examination may be rendered.
- (3) The rationale that underlies cancellation by an administrative judgment rendered under paragraph (1) or (2) shall bind examiners as regards the relevant case.

### **CHAPTER VIII RETRIAL AND LITIGATION**

#### **Article 158 (Petition for Retrial)**

- (1) Either party may file a petition for an administrative patent retrial on an administrative judgment that has become final and conclusive.
- (2) Articles 451 and 453 of the Civil Procedure Act shall apply mutatis mutandis to the retrials under paragraph (1).

#### **Article 159 (Petition to Protest against Decision Obtained by Fraud)**

- (1) If the parties to an administrative patent trial conspired to obtain an administrative judgment by fraud with intent to infringe a third party's right or interest, the third party may file a petition for a retrial on the judgment that has become final and conclusive.
- (2) In a petition filed for a retrial under paragraph (1), the parties to the relevant administrative patent trial shall be named as joint respondents.

**Article 160 (Time Limits for Petition for Retrial)**

- (1) A petition for an administrative patent retrial shall be filed within 30 days from the date on which the petitioner becomes aware of the cause of action for the retrial after the relevant judgment became final and conclusive.
- (2) Where a petition for an administrative patent retrial is filed on the ground of a defect in power of attorney, the period under paragraph (1) shall be counted from the day immediately after the date on which the petitioner or his/her legal representative becomes aware that a judgement was rendered upon receipt of a certified copy of the judgment.
- (3) No petition for an administrative patent retrial may be filed three years from the date the relevant judgment becomes final and conclusive.
- (4) If the cause of action for an administrative patent retrial arises after the relevant judgment becomes final and conclusive, the period under paragraph (3) shall be counted from the day immediately after the date on which the cause of action arises.
- (5) Paragraphs (1) and (3) shall not apply where a petition for an administrative patent retrial is filed on the ground that the relevant judgment conflicts with another judgment that has become final and conclusive.

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

- (1) In any of the following cases, the effect of a design right shall not be extended to the goods imported or domestically produced or acquired in good faith after the relevant judgment became final and conclusive but before a petition filed for an administrative patent retrial is registered:
  1. Where an invalidated design right (including a design right that has been finally and conclusively revoked in a trial on the decision to revoke design registration) is restored in the retrial;
  2. Where an administrative judgment that a product was not within the scope of a design right became final and conclusive but another judgment that reverses the former judgment subsequently becomes final and conclusive;



3. Where the grant of a design right is registered according to an administrative patent retrial on the application for design registration, which was rejected by an administrative judgment.
- (2) The effect of a design right in any case of paragraph (1) shall not be extended to any of the following acts:
1. Working the relevant design in good faith after the relevant judgment became final and conclusive but before the petition filed for a retrial is registered;
  2. Producing, transferring, renting, exporting, or importing the goods used only for the production of the products related to the registered design or offering to transfer or rent such goods, in good faith, after the relevant judgment became final and conclusive but before the petition filed for a retrial is registered.

**Article 162 (Non-Exclusive License for Prior User of Design Right Restored by Retrial)**

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

**Article 163 (Non-Exclusive License for Former Right Holder Deprived of Non-Exclusive License by Retrial)**

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

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

The provisions concerning trial proceedings shall apply mutatis mutandis to an administrative patent retrial, unless such provisions contravene its nature.

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

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

### **Article 166 (Lawsuits against Judgment, etc.)**

- (1) The Patent Court of Korea shall have exclusive jurisdiction over lawsuits against an administrative judgment rendered by administrative patent judges, lawsuits against a decision to dismiss a petition without prejudice under Article 49 (1), lawsuits against a decision to dismiss a petition for an administrative patent trial or retrial without prejudice, to which the aforesaid provisions shall apply mutatis mutandis pursuant to Article 124 (1) (including cases to which the aforesaid provisions shall apply mutatis mutandis pursuant to Article 164).
- (2) A lawsuit under paragraph (1) may be filed only by a party, an intervenor, or a person whose petition filed to intervene in the relevant administrative patent trial or retrial was rejected.
- (3) A lawsuit under paragraph (1) shall be filed within 30 days from the date on which a certified copy of the relevant judgment or decision rendered in an administrative patent trial is served.
- (4) The period under paragraph (3) shall be a peremptory period.
- (5) A presiding administrative patent judge may *ex officio* add a period to the peremptory period under paragraph (3) for the benefit of a person who has his/her domicile or abode in a remote or hardly accessible area.
- (6) A lawsuit on a subject matter of an administrative patent trial may be filed only against an administrative judgment.
- (7) A lawsuit under paragraph (1) may not be filed independent of an administrative judgment on the consideration under Article 150 (2) 5 or an administrative judgment or a decision on the cost of trial under Article 153 (1).
- (8) A judgment rendered by paragraph (1) may be appealed to the Supreme Court.

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

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

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

- (1) Upon receipt of a lawsuit filed against an administrative judgment, a lawsuit against a decision

to dismiss a petition without prejudice under Article 49 (1), which shall apply mutatis mutandis pursuant to Article 124 (1) (including cases to which the aforesaid provisions shall apply mutatis mutandis pursuant to Article 164), or an appeal filed under Article 166 (8), the competent court shall notify the Commissioner of the Korean Intellectual Property Office of the lawsuit or appeal without delay.

- (2) When the proceedings of a lawsuit filed under the proviso to Article 167 are completed, the competent court shall dispatch the authenticated copy of the judgment rendered by the court at each level on the case to the Commissioner of the Korean Intellectual Property Office without delay.

**Article 169 (Cancellation of Administrative Judgement or Decision)**

- (1) If a court upholds claims asserted in a lawsuit filed under Article 166 (1), it shall render a judgment to cancel the relevant administrative judgment or decision.
- (2) When a judgement to cancel an administrative judgment or decision under paragraph (1) becomes final and conclusive, administrative patent judges shall hold hearings again to render another administrative judgment or decision.
- (3) The rationale that underlies cancellation by a judgment rendered under paragraph (1) shall bind the Intellectual Property Tribunal as regards the relevant case.

**Article 170 (Lawsuit against Administrative Judgment or Decision on Consideration)**

- (1) A person who is dissatisfied with an administrative judgment or decision rendered on consideration under Article 123 (3) may file a lawsuit with a court.
- (2) A lawsuit under paragraph (1) shall be filed within 30 days from the date on which a certified copy of the relevant administrative judgment or decision is served.
- (3) The period under paragraph (2) shall be a peremptory period.

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

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

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

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

**CHAPTER IX INTERNATIONAL APPLICATION UNDER THE HAGUE**

# AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS

## SECTION 1 International Application via Korean Intellectual Property Office

### **Article 173 (International Application)**

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

*[Enforcement Date: Not Determined Yet] Article 173*

### **Article 174 (Persons Entitled to International Application)**

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

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

*[Enforcement Date: Not Determined Yet] Article 174*

### **Article 175 (Procedure for International Application)**

- (1) A person who intends to file an international application via the Korean Intellectual Property Office shall submit a written international application prepared in the manner prescribed by Ordinance of the Ministry of Trade, Industry and Energy and the documents required for the application (referring documents required by specific Contracting Parties to the Hague Agreement) with the Commissioner of the Korean Intellectual Property Office.
- (2) An international application shall describe the following matters or shall be accompanied by a statement describing such matters:
  1. Claims asserted in the international application under Article 1 (vii) of the Hague Agreement;

2. The name and domicile of the person who intends to file an International Application via the Korean Intellectual Property Office (referring to the name and place of business of the applicant, if the applicant is a corporation). If two or more persons intend to jointly file an international application but their domiciles are different from one another and they are not represented by an agent, an address for contact shall be additionally specified;
  3. Matters specified in Article 174;
  4. The States in which it is intended to have the relevant design protected (including intergovernmental organizations under Article 1 (xii) of the Hague Agreement; hereinafter referred to as “designated Contracting Parties”);
  5. Drawings (including photographs; the same shall apply hereinafter);
  6. The product or the classification of products in relation to which the design is to be used;
  7. The payment method for the fees under Article 5 (1) (vi) of the Hague Agreement;
  8. Other matters specified by Ordinance of the Ministry of Trade, Industry and Energy.
- (3) If a person who intends to file an international application via the Korean Intellectual Property Office intends to make a request for deferment of publication under Article 5 (5) of the Hague Agreement, he/she may submit a sample specified by Ordinance of the Ministry of Trade, Industry and Energy in lieu of drawings, along with the international application.
- (4) A person who intends to file an international application via the Korean Intellectual Property Office shall include the description of the following matters in the international application, if a designated Contracting Party requires such description:
1. The name and domicile of the creator of the design;
  2. Notes about drawings or characteristic features of the design;
  3. The scope of claims under the design right.

*[Enforcement Date: Not Determined Yet] Article 175*

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

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

*[Enforcement Date: Not Determined Yet] Article 176*

**Article 177 (Examination of Contents, etc.)**

- (1) The Commissioner of the Korean Intellectual Property Office shall put the arrival date of an international application on the international application, dispatch the international application to the International Bureau under Article 1 (xxviii) of the Hague Agreement (hereinafter referred to as “the International Bureau”), and send a copy of the international application to the person who filed the international application via the Korean Intellectual Property Office (hereafter referred to as “international applicant” in this Article).
- (2) Notwithstanding paragraph (1), the Commissioner of the Korean Intellectual Property Office shall submit documents necessary for the supplementation of contents of an international application (hereafter referred to as “documents for replacement” in this Chapter) within a reasonable time specified by him/her in any of the following cases:
  1. Where the international application is not written in the language designated by Ordinance of the Ministry of Trade, Industry and Energy;
  2. Where the claims of the international application are not clearly stated;
  3. Where it is impossible to identify the international applicant because the name of the person who filed the international application via the Korean Intellectual Property Office is omitted or is not clearly stated;
  4. Where an address for contacting the international applicant (referring to his/her agent, if his/her agent executes the procedure for the design);
  5. Where the international application is not accompanied by drawings or samples;
  6. Where no designated State is indicated.
- (3) If a person who was ordered to submit documents for replacement under paragraph (2) submits such documents within the specified period, the relevant application shall be deemed to be delivered on the date the documents for replacement are delivered to the Commissioner of the Korean Intellectual Property Office.

*[Enforcement Date: Not Determined Yet] Article 177*

#### **Article 178 (Payment of Delivery Charge)**

- (1) A person who intends to file an international application via the Korean Intellectual Property Office shall pay the amount of money required for dispatching the international application and other documents necessary for the application to the International Bureau (herein after referred to as “delivery charge”) to the Commissioner of the Korean Intellectual Property Office.
- (2) The delivery charge, the method and deadline for the payment of the delivery charge, and other

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

- (3) If a person who intends to file an international application via the Korean Intellectual Property Office fails to pay the delivery charge, the Commissioner of the Korean Intellectual Property Office shall order the person to pay it within a reasonable period specified by him/her.
- (4) If a person who was ordered to pay the delivery charge under paragraph (3) fails to pay it within the specified period, the Commissioner of the Korean Intellectual Property Office may declare the relevant procedure as invalid.

*[Enforcement Date: Not Determined Yet] Article 178*

## SECTION 2 Application for International Design Registration

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

- (1) An application for the international registration under Article 1 (vi) of the Hague Agreement (hereinafter referred to as “application for international design registration”) shall be deemed an application filed for the design registration under this Act, if the application designates the Republic of Korea as a designated State.
- (2) The date of the international registration under Article 1 (vi) of the Hague Agreement shall be deemed the filing date of the application for the design registration under this Act.
- (3) The name and address of an international registrant (referring to the name and place of business of the corporation, if the registrant is a corporation), the drawings, the product or the classification of products in relation to which the design is to be used, the name and address of the creator of the design, and the description of the design, which are recorded in the International Register under Article 1 (viii) of the Hague Agreement, shall be deemed the name and address of an applicant for design registration (referring to the name and place of business of the corporation, if the applicant is a corporation), the drawings, the product or the classification of products in relation to which the design is to be used, the name and address of the creator of the design, and the description of the design under this Act.

*[Enforcement Date: Not Determined Yet] Article 179*

### **Article 180 (Special Provisions concerning Requirements for Design Registration)**

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

Design Gazette under Article 56 or 90 (3)”.  
[Enforcement Date: Not Determined Yet] Article 180

**Article 181 (Special Provisions concerning Application for Design Registration)**

- (1) In applying this Act to an application for international design registration, the publication of the international registration shall be deemed the filing of an application for design registration under Article 37 (1).
- (2) In applying this Act to an application for international design registration, the matters and drawings recorded in the International Register shall be deemed the contents of an application for design registration and relevant drawings under Article 37 (1) and (2).
- (3) The provisions concerning the brief description of the creation in Article 37 (2) 2 and Article 37 (3) shall not apply to an application for international design registration.

[Enforcement Date: Not Determined Yet] Article 181

**Article 182 (Special Provisions concerning Filing Date of Application)**

The provisions of Article 38 shall not apply to an application for international design registration.

[Enforcement Date: Not Determined Yet] Article 182

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

- (1) If the international registration terminates, in whole or in part, according to the recording of any change, such as the renunciation under Article 16 (1) (iv) of the Hague Agreement or any limitation under Article 16 (1) (v) of said Agreement, the relevant application for international design registration shall be deemed to be voluntarily withdrawn, in whole or in part, to the extent of the termination, and the relevant design right internationally registered (referring to the design right the grant of which the applicant for the international design registration has registered in the Republic of Korea under Article 198 (2); the same shall apply hereinafter) shall be deemed to be renounced in whole or in part.
- (2) The withdrawal or renunciation under paragraph (1) shall take effect on the date the relevant change in the international registration is recorded in the International Register.

[Enforcement Date: Not Determined Yet] Article 183

**Article 184 (Special Provisions concerning Confidential Designs)**

The provisions of Article 43 shall not apply to an application for international design registration.



*[Enforcement Date: Not Determined Yet] Article 184*

**Article 185 (Inspection of Application for International Design Registration subject to Request for Deferment of Publication of International Registration)**

- (1) In either of the following cases, the Commissioner of the Korean Intellectual Property Office shall accept a request to permit the inspection of a confidential copy of an application for international design registration regarding which a request for the deferment of publication of the international registration is filed under Article 11 of the Hague Agreement:
1. Where a party to a dispute requests to permit him/her to inspect the relevant application for international design registration for the purposes of administrative or judicial proceedings concerning the entitlement of the person who filed the application for international design registration (hereafter referred to as “applicant for the international design registration” in this Section);
  2. Where a person who has obtained consent from the international registrant recorded in the International Register requests to permit the inspection.
- (2) A person who inspects a confidential copy under paragraph (1) shall not divulge or misappropriate the information acquired or known to him/her by photographing or photocopying the inspected contents without authorization.

*[Enforcement Date: Not Determined Yet] Article 185*

**Article 186 (Special Provisions concerning Amendment of Application)**

- (1) In applying Article 48 (1) to an application for international design registration, “any description in a drawing or any photograph or sample” in the aforesaid provisions shall be construed as “any description in a drawing”.
- (2) Article 48 (3) shall not apply to an application for international design registration;
- (3) In applying Article 48 (4) to an application for international design registration, “the provisions of paragraphs (1) through (3)” in the aforesaid provisions shall be construed as “paragraphs (1) and (2)”, and “a decision to reject an application for design registration under Article 62” as “a decision to reject an application for design registration under Article 62 from the date on which the international registration is published under Article 10 (3) of the Hague Agreement”.
- (4) In applying Article 48 (5) to an application for international design registration, “the provisions of paragraphs (1) through (3)” in the aforesaid provisions shall be construed as “paragraphs (1) and (2)”

*[Enforcement Date: Not Determined Yet] Article 186*

**Article 187 (Special Provisions concerning Divided Application)**

- (1) In applying Article 50 (1) to an application for international design registration, “part of an application filed for design registration” in the aforesaid provisions shall be construed as “part of an application filed for design registration only upon receipt of a notice of the grounds for rejection under Article 63”.
- (2) In applying Article 50 (3) to an application for international design registration, “Article 48 (4)” in the aforesaid provisions shall be construed as “Article 186 (3)”.

*[Enforcement Date: Not Determined Yet] Article 187*

**Article 188 (Special Provision concerning Priority Claim under Treaty)**

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

*[Enforcement Date: Not Determined Yet] Article 188*

**Article 189 (Special Provisions concerning Publication of Application)**

The provisions of Article 52 shall not apply to an application for international design registration.

*[Enforcement Date: Not Determined Yet] Article 189*

**Article 190 (Special Provisions concerning Effect of Publication of Application)**

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

*[Enforcement Date: Not Determined Yet] Article 190*

**Article 191 (Special Provisions concerning Succession to Right to Have Design Registered)**

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

on the change of the registrant”.

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

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

*[Enforcement Date: Not Determined Yet] Article 191*

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

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

*[Enforcement Date: Not Determined Yet] Article 192*

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

The cases specified in Article 62 (1) 2 as those in which an applicant is not entitled to design registration under Article 37 (4) shall not be applicable to an application for international design registration.

*[Enforcement Date: Not Determined Yet] Article 193*

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

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

*[Enforcement Date: Not Determined Yet] Article 194*

**Article 195 (Special Provisions concerning Ex Officio Amendment)**

The provisions of Article 66 shall not apply to an application for international design registration.

*[Enforcement Date: Not Determined Yet] Article 195*

**Article 196 (Special Provisions concerning Registration Fees and Other Fees)**

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

(2) Matters concerning the prescribed designation fees and individual designation fees under

paragraph (1) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

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

*[Enforcement Date: Not Determined Yet] Article 196*

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

In applying Article 87 to an application for international design registration, paragraph (1) 3 of said Article shall not apply to the application for international design registration.

*[Enforcement Date: Not Determined Yet] Article 197*

**Article 198 (Special Provisions concerning Registration of Grant of Design Right)**

- (1) Article 90 (2) shall not apply to an application for international design registration.
- (2) When a decision is made to register a design under Article 65 in regard to an application for international design registration, the Commissioner of the Korean Intellectual Property Office shall register the grant of the design right.

*[Enforcement Date: Not Determined Yet] Article 198*

**Article 199 (Special Provisions concerning Duration of Design Right)**

- (1) An internationally registered design right shall arise on the date the grant of the design right is registered in the Republic of Korea under Article 198 (2) and shall remain effective until the fifth anniversary of the date of international registration under Article 10 (2) of the Hague Agreement (hereinafter referred to as “the date of international registration”): Provided, That a design right the grant of which is registered in the Republic of Korea under Article 198 (2) according to a decision rendered after the fifth anniversary of the date of international registration (hereafter referred to as “expiry date of international registration”) to register the design right shall arise on the registration date of the grant of the right and shall remain effective until the fifth anniversary of the expiry date of international registration.
- (2) The duration of an internationally registered design right under paragraph (1) may be renewed for additional terms of five years consecutively under Article 17 (2) of the Hague Agreement.

*[Enforcement Date: Not Determined Yet] Article 199*

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

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

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

*[Enforcement Date: Not Determined Yet] Article 200*

**Article 201 (Special Provisions concerning Effect of Registration of Design Right)**

- (1) The assignment of an internationally registered design right, the extinguishment of an internationally registered design right by renunciation, or the renewal of the duration of an internationally registered design right shall take effect when such an event is recorded in the International Register: Provided, That the foregoing shall not apply where the Commissioner of the Korean Intellectual Property Office notifies the International Bureau that the assignment of an internationally registered design right does not take effect because the assignment contravenes the proviso to Article 96 (1) or Article 96 (2).
- (2) In applying Article 98 (1) 1 to an internationally registered design right, “the assignment (excluding conveyance by inheritance or general succession) or extinguishment of a design right by renunciation or a limitation on the disposal of a design right” in the aforesaid provisions shall construed as “a limitation on the disposal of a design right”.
- (3) In applying Article 98 (2) to an internationally registered design right, “a design right, an exclusive license” in the aforesaid provisions shall be construed as “an exclusive license”.

*[Enforcement Date: Not Determined Yet] Article 201*

**Article 202 (Special Provisions concerning Renunciation of Design Right)**

- (1) Article 106 (1) shall not apply to an internationally registered design right.
- (2) In applying Article 107 to an internationally registered design right, “a design right, an exclusive license” in the aforesaid provisions shall be construed as “an exclusive license”.

*[Enforcement Date: Not Determined Yet] Article 202*

**Article 203 (Effect of Correction of International Register, etc.)**

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

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

*[Enforcement Date: Not Determined Yet] Article 203*

**Article 204 (Special Provisions concerning Right to Seek Injunction against Infringement, etc.)**

The provisions of Article 113 (2) shall not apply to an internationally registered design right.

*[Enforcement Date: Not Determined Yet] Article 204*

**Article 205 (Special Provisions concerning Inspection of Documents, etc.)**

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

*[Enforcement Date: Not Determined Yet] Article 205*

## CHAPTER X SUPPLEMENTARY PROVISIONS

**Article 206 (Inspection of Documents, etc.)**

- (1) A person may request the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal to certify an application for design registration or of an administrative trial or retrial, issue a certified transcript or abstract of a document, or permit him/her to inspect or photocopy the Design Register or any other document, as he/she needs.
- (2) Upon receipt of a request under paragraph (1), the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may determine not to permit the certification, inspection, or photocopying of the documents relating to an application for design registration in which case the application has not been published under Article 52 and the grant of the design right has not be registered yet, and the documents that are likely to disturb public order or morality.

**Article 207 (Prohibition of Taking-Out or Disclosure of Documents Relating to Application, Examination, Trial, etc.)**

- (1) Except in any of the following cases, an application for design registration, the documents relating to the examination of such application, a petition for objection to partially-examined

design registration, documents relating to an administrative patent trial or retrial, or the Design Register shall not be taken outside:

1. Where an application for design registration or documents relating to the examination of such application are taken outside for searching for prior designs under Article 59 (1) or (2);
  2. Where an application for design registration, documents relating to the examination of such application, a petition for objection to partially-examined design registration, documents relating to an administrative patent trial or retrial, or the Design Register is taken outside for the entrustment of digitization of design documents under Article 208 (2);
  3. Where an application for design registration, documents relating to the examination of such application, a petition for objection to partially-examined design registration, documents relating to an administrative patent trial or retrial, or the Design Register is taken outside for the online remote service under Article 32 (2) of the Electronic Government Act.
- (2) Neither a testimony as an expert witness or as a witness nor an answer to an inquiry may be given with regard to an application for design registration, the examination on such application, a case pending for an administrative patent trial or retrial, a decision or an administrative judgment on whether to register a design, or a decision on any other matter.

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

- (1) In order to efficiently carry out design-related procedures, the Commissioner of the Korean Intellectual Property Office may perform services for digitizing applications for design registration, documents relating to the examination of such applications, petitions for objection to partially-examined design registration, or documents relating to administrative patent trials or retrials, or the Design Register or similar services (hereinafter referred to as “services for the digitization of design documents”) by using electronic information processing systems and applied technology for electronic information processing systems.
- (2) The Commissioner of the Korean Intellectual Property Office may entrust the services for the digitization of design documents to corporations equipped with facilities and human resources prescribed by Ordinance of the Ministry of Trade, Industry and Energy.
- (3) A person who works or worked as an executive or employee for a person to whom the services for the digitization of design documents are entrusted under paragraph (2) (hereinafter referred to as “agency for digitizing design documents”) shall not divulge or misappropriate confidential information about the design claimed in an application for design registration and known to

him/her in the course of performance of his/her duties.

- (4) The Commissioner of the Korean Intellectual Property Office may digitize applications for design registration not filed in the form of electronic document under Article 30 (1) and other documents specified by Ordinance of the Ministry of Trade, Industry and Energy in accordance with paragraph (1) and store such applications and documents in the files in the electronic information processing systems used by the Korean Intellectual Property Office and the Intellectual Property Tribunal.
- (5) The contents stored in a file in accordance with paragraph (4) shall be deemed the same as the contents written in relevant paper documents.
- (6) The methods for the digitization of design documents and other matters necessary for the services for the digitization of design documents shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.
- (7) If an agency for digitizing design documents fails to meet the standards prescribed by Ordinance of the Ministry of Trade, Industry and Energy for facilities and human resources under paragraph (2), the Commissioner of the Korean Intellectual Property Office may order the agency to take measures for rectification or may revoke entrustment, if an agency for digitizing design documents does not comply with an order to take measures for rectification. An agency for digitizing design documents shall be given an opportunity to vindicate itself before issuing such an order.

**Article 209 (Service of Documents)**

Necessary matters concerning the procedure for serving documents specified in this Act shall be prescribed by Presidential Decree.

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

- (1) If it is impossible to serve a document on a person because of incorrect information about the address or place of business of the person, the service on the person shall be made by public notice.
- (2) Service by public notice shall be made by publishing the statement that the relevant document is available for delivery to the person on whom it is to be served at any time in the Design Gazette.
- (3) The initial service by public notice shall take effect two weeks after the date of publication in the Design Gazette: Provided, That subsequent service by public notice to the same party shall take effect on the day immediately after the date of publication in the Design Gazette.



#### **Article 211 (Service on Overseas Residents)**

- (1) The documents that shall be served on an overseas resident shall be delivered to his/her design administrator, if the overseas resident has a design administrator.
- (2) The documents that shall be served on an overseas resident may be dispatched to the overseas resident by registered airmail, if the overseas resident has no design administrator.
- (3) If documents are dispatched by registered airmail under paragraph (2), such documents shall be deemed to be served on the mailing date of the documents.

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

- (1) The Korean Intellectual Property Office shall publish the Design Gazette.
- (2) The Design Gazette may be published by an electronic medium, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy.
- (3) If the Design Gazette is published by an electronic medium, the Commissioner of the Korean Intellectual Property Office shall notify the issuance of the Design Gazette, its main contents, and matters concerning service by public notice through information and communications networks.
- (4) Information that shall be published in the Design Gazette shall be prescribed by Presidential Decree.

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

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

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

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

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

No person shall commit any of the following acts:

1. Putting a mark indicating design registration or application pending for design registration or any mark that can be easily mistaken as such mark on a product with no registered design or with no application for design registration or the container or packaging materials of such product;

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

#### **Article 216 (Restriction on Appeal)**

- (1) No appeal may be filed under any other Act against a decision to dismiss an amendment without prejudice, a decision on whether to accept an application for design registration, a decision or an administrative judgment to cancel the registration of a design, or a decision to dismiss a petition for an administrative patent trial or retrial without prejudice, and no appeal may be filed under any other Act against any disposition against which no appeal is permitted under this Act.
- (2) An appeal against any disposition other than the dispositions specified in paragraph (1) shall be governed by the Administrative Appeals Act or the Administrative Litigation Act.

#### **Article 217 (Order to Keep Confidential)**

- (1) If a party to a lawsuit on infringement on a design right or an exclusive license established a *prima facie* case for either of the following grounds with respect to his/her own trade secret (referring to the trade secret defined under subparagraph 2 of Article 2 of the Unfair Competition Prevention and Trade Secret Protection Act; the same shall apply hereinafter), the court may order, by decision upon the party's request, the adverse party (the representative of the corporation, if the adverse party is a corporation), the person representing the party for the lawsuit, and other persons who become aware of the trade secret in the course of the lawsuit to refrain from using the trade secret for any purpose other than the continuation of the lawsuit or disclose the trade secret to any person other than those to whom the afore-mentioned order is issued under this paragraph: Provided, That the foregoing shall not apply where the adverse party (the representative of the corporation, if the adverse party is a corporation), the person representing the party for the lawsuit, or any other person who becomes aware of the trade secret in the course of the lawsuit has already acquired the trade secret by any means other than the reading of briefs or the examination of evidence as referred to in subparagraph 1:
  1. The trade secret is contained in a brief that has been already submitted or shall be submitted or in the evidence that has been already examined or shall be examined;

2. It is necessary to limit the use or disclosure of the trade secret to prevent the requesting party's business from being harmed by the possible use or disclosure of the trade secret referred to in subparagraph 1 for any purpose other than the proceedings of the lawsuit.
- (2) A request for the order under paragraph 11) (hereinafter referred to as "order of confidentiality") shall be filed in writing, describing the following matters therein:
  1. The persons to whom the order of confidentiality shall be issued;
  2. Facts sufficient to identify the trade secret to be protected by the order of confidentiality;
  3. Facts relevant to the ground specified in either subparagraph of paragraph (1).
- (3) A court that decides to issue an order of confidentiality shall serve the written decision on the persons who shall comply with the order of confidentiality.
- (4) An order of confidentiality shall take effect at the time the written decision under paragraph (3) is served on the persons who shall comply with the order of confidentiality.
- (5) An immediate complaint may be filed against a decision to dismiss, on the merits or without prejudice, a request to issue an order of confidentiality.

**Article 218 (Revocation of Order of Confidentiality)**

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

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

- (1) If a decision under Article 163 (1) of the Civil Procedure Act was rendered with respect to trial records concerning a lawsuit in relation to which an order of confidentiality was issued (excluding lawsuits in which an order of confidentiality has been revoked) and the party who filed a request to permit the inspection of the confidential records defined under aforesaid paragraph is not a person who had been subjected to the order of confidentiality in the relevant lawsuit, the court official of Grade IV, V, VI, or VII in charge (hereinafter referred to as “court official”) shall notify the party who filed the request under Article 163 (1) of the Civil Procedure Act (excluding the person who filed the request for the permission for inspection; the same shall also apply in paragraph (3)) of the fact that the request for permission for inspection was filed immediately after the request.
- (2) In cases of paragraph (1), no court official shall permit a person who filed a request for the permission for the inspection of confidential records under paragraph (1) to inspect such confidential records before two weeks elapse from the filing date of the request under paragraph (1) (or before the date on which the decision on the request to issue an order of confidentiality to the person who filed the request under paragraph (1) becomes final and conclusive, if the request for the order of confidentiality was filed before the date).
- (3) Paragraph (2) shall not apply where a person who filed a request for the permission for inspection under paragraph (1) is permitted to inspect confidential records under paragraph (1) with consent of all the parties who filed a request under Article 163 (1) of the Civil Procedure Act.

## **CHAPTER XI PENAL PROVISIONS**

### **Article 220 (Infringement)**

- (1) Any person who infringes a design right or an exclusive license shall be punished by imprisonment for not more than seven years or by a fine not exceeding 100 million won.
- (2) No person shall be prosecuted for the crime under paragraph (1) without a criminal complaint filed by the injured party.

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

- (1) Any witness, expert witness, or interpreter who gives a false statement under oath under this Act in his/her testimony, expert opinion, or interpretation before the Intellectual Property

Tribunal shall be punished by imprisonment for not more than five years or by a fine not exceeding 10 million won.

- (2) If a person who committed the crime under paragraph (1) surrenders himself/herself to justice before the decision on whether to accept an application for design registration or the decision or administrative judgment on a petition for objection to partially-examined design registration becomes final and conclusive with respect to the relevant case, the sentence upon him/her may be abated or remitted.

**Article 222 (Fraudulent Indication)**

Any person who violates Article 215 shall be punished by imprisonment for not more than three years or by a fine not exceeding 20 million won.

**Article 223 (Fraud)**

Any person who obtains design registration or an administrative judgment by fraud or other misconduct shall be punished by imprisonment for not more than three years or by a fine not exceeding 20 million won.

**Article 224 (Breach of Order of Confidentiality)**

- (1) Any person who breaches an order of confidentiality issued under Article 217 (1), inside or outside the Republic of Korea, without valid cause shall be punished by imprisonment for not more than five years or by a fine not exceeding 50 million won.
- (2) No person shall be prosecuted for the crime under paragraph (1) without a criminal complaint filed by the person who requested to issue the order of confidentiality.

**Article 225 (Divulgence of Confidential Information, etc.)**

- (1) Any person who divulges or misappropriates confidential information known to him/her about a design claimed in an application pending for design registration (including designs claimed in an application pending for international design registration, for which a request for deferment has been filed under Article 11 of the Hague Agreement) in the course of performance of his/her duties, while working for the Korean Intellectual Property Office or the Intellectual Property Tribunal as an employee, shall be punished by imprisonment for not more than five years or by a fine not exceeding 50 million won.
- (2) Any person who divulges confidential information known to him/her about a confidential design under Article 43 (1) in the course of performance of his/her duties, while working for the Korean Intellectual Property Office or the Intellectual Property Tribunal as an employee, shall

be punished by imprisonment for not more than five years or by a fine not exceeding 50 million won.

(3) Any person who divulges information acquired or known to him/her about a confidential design by photographing or photocopying it without permission in violation of Article 43 (5), while inspecting the confidential information under Article 43 (4), (excluding the persons specified in Article 43 (4) 4) shall be punished by imprisonment for not more than two years or by a fine not exceeding 20 million won.

(4) Any person who divulges information acquired or known to him/her about a confidential copy by photographing or photocopying it without permission in violation of Article 185 (2), while inspecting the confidential copy under Article 185 (1), shall be punished by imprisonment for not more than two years or by a fine not exceeding 20 million won.

**Article 226 (Legal Fiction of Deeming Executives and Employees of Specialized Organizations, etc. as Public Officials)**

Any person who works or worked for a specialized organization under Article 59 (1) or an agency for the digitization of design documents under Article 208 as an executive or employee shall be deemed as a person who works or worked for the Korean Intellectual Property Office or the Intellectual Property Tribunal as an employee for the purpose of applying Article 225 to the person.

**Article 227 (Joint Penal Provisions)**

If the representative of a corporation or an agent, employee, or servant who works for a corporation or for an individual commits an offense in violation of Article 220 (1), 222, or 223 in connection with the business of the corporation or individual, not only such offender be punished accordingly, but the corporation also shall be punished by the fine prescribed in either of the following subparagraph and the individual by the fine prescribed in the relevant Article: Provided, That the foregoing shall not apply where the corporation or individual has not neglected due care and supervision over the relevant business to prevent such offense:

1. For a violation of Article 220 (1): A fine not exceeding 300 million won;
2. For a violation of Article 222 or 223: A fine not exceeding 60 million won.

**Article 228 (Confiscation, etc.)**

(1) Any article made by an act that constitutes the infringement under Article 220 (1) or any article obtained by such infringement shall be confiscated or ordered to be delivered to the injured party upon the injured party's request.

(2) If an injured party accepts an article delivered under paragraph (1), he/she may claim damages only for the portion that exceeds the value of the article out of the total amount of his/her damages.

#### **Article 229 (Fines for Negligence)**

(1) Any of the following persons shall be punished by a fine for negligence not exceeding 500,000 won:

1. A person who gives a false statement before the Intellectual Property Tribunal under oath taken under Article 299 (2) or 367 of the Civil Procedure Act, which shall apply mutatis mutandis pursuant to Article 145;
2. A person who was ordered by the Intellectual Property Tribunal to submit or present a document or any other article in connection with the examination or preservation of evidence but does not comply with the order without valid cause;
3. A person who was summoned by the Intellectual Property Tribunal to make an appearance as a witness, expert witness, or interpreter but does not comply with the summons or refuses to take oath, make statements, give a testimony or expert opinion, or serve as an interpreter without valid cause.

(2) Fines for negligence under paragraph (1) shall be imposed and collected by the Commissioner of the Korean Intellectual Property Office, as prescribed by Presidential Decree.

ADDENDA <Act No. 11848, May 28, 2013>

#### **Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2014: Provided, That the amended provisions of Article 4 above and Article 11 of the Addenda shall enter into force on July 1, 2013, and the amended provisions of Chapter IX (Articles 173 through 205) shall enter into force on the date the Republic of Korea becomes bound by the Hague Agreement.

#### **Article 2 (General Applicability)**

This Act shall apply to the applications filed for design registration after this Act enters into force.

#### **Article 3 (Applicability to Exceptions to Expanded Prior Applications)**

The amended proviso to Article 33 (3) shall apply to applications filed for design registration after this Act enters into force.

#### **Article 4 (Applicability to Application for Registration of Related Designs)**

(1) The amended provisions of Article 35 (1) shall also apply to the designs claimed as related

designs in an application filed for design registration within one year after this Act enters into force, among the designs registered before this Act enters into force or the designs similar only to a design claimed in an application filed for design registration before this Act enters into force.

(2) The amended provisions of Article 35 (3) shall also apply to the designs claimed as related designs in an application filed for design registration after this Act enters into force, among the designs similar only to a design for which an exclusive license was granted before this Act enters into force.

**Article 5 (Applicability to Amendment in Response to Petition for Administrative Patent Trial)**

The amended provisions of Article 48 (4) 3 shall also apply where a decision is made after this Act enters into force to reject an application filed for design registration before this Act enters into force.

**Article 6 (Applicability to Suspension of Examination Following Decision to Dismiss Amendment to Application for Registration of Multiple Designs)**

The amended provisions of Article 49 (3) shall also apply where a decision is made after this Act enters into force to dismiss an amendment without prejudice with regard to some of the designs claimed in an application filed for the registration of multiple designs before this Act enters into force.

**Article 7 (Applicability to *Ex Officio* Amendment)**

The amended provisions of Article 66 shall also apply where a decision is made after this Act enters into force to accept an application filed for design registration before this Act enters into force.

**Article 8 (Applicability to Petitions for Objection to Partially-Examined Design Registration of Multiple Designs)**

The amended provisions of Article 68 shall apply to the applications filed for design registration after this Act enters into force.

**Article 9 (Applicability to Late Payment, Refund, etc. of Registration Fees)**

The amended provisions of Articles 84 (1) and 87 (1) 3 shall apply to the applications filed for design registration after this Act enters into force.

**Article 10 (Applicability to Duration of Design Right)**

The amended provisions of Article 91 shall apply to the design right to a design applied for and registered after this Act enters into force.

**Article 11 (Applicability to Renunciation of Registered Multiple Designs)**

**Duration of Design Right)**



The amended provisions of Article 105 shall also apply to the design right to multiple designs registered before this Act enters into force.

**Article 12 (Applicability to Trial on Invalidation of Design Registration)**

The amended provisions of Article 121 (1) shall apply to the applications filed for design registration after this Act enters into force.

**Article 13 (Applicability to Trial on Confirmation of Scope of Design Right)**

The amended provisions of Article 122 shall apply to the applications filed for design registration after this Act enters into force.

**Article 14 (Transitional Measures concerning Persons Declared Incompetent, etc.)**

The term “persons under adult guardianship and persons under limited guardianship” in the amended provisions of Article 4 (1) shall be deemed to include the persons upon whom the declaration of incompetence or quasi-incompetence remains effective under Article 2 of the Addenda to the partial amendment (Act No. 10429) to the Civil Act.

**Article 15 (Transitional Measures concerning Similar Designs)**

Notwithstanding the amended provisions of Articles 35, 37, 49, 54, 62, 91, 92, 96, 97, and 121 concerning related designs, the designs claimed in an application for design registration or registered as similar designs under former provisions before this Act enters into force shall be governed by former provisions.

**Article 16 (Transitional Measures concerning Denial of Application Abandoned or Decided to Reject Following Amendment to Former Act as Prior Application)**

The former provisions (referring to Article 16 (3) of the Design Protection Act before amended by the partial amendment (Act No. 8187)) shall apply where an application filed for design registration before July 1, 2007 is abandoned or a decision or judgment to reject such application becomes final and conclusive.

**Article 17 (Transitional Measures concerning Publication of Application Decided to Reject in Design Gazette Following Amendment to Former Act)**

The provisions of Article 23-6 (corresponding to the amended provisions of Article 56 of this Act) of the partial amendment (Act. No. 8187) to the Design Protection Act shall not apply where a decision rendered to reject an application filed for design registration before July 1, 2007 becomes final and conclusive.

**Article 18 (Transitional Measures concerning Non-Exclusive License of Prior Application)**

**Following Amendment to Former Act)**

The provisions of Article 50-2 (corresponding to the amended provisions of Article 101 of this Act) of the partial amendment (Act. No. 8187) to the Design Protection Act shall not apply to an application filed for design registration before July 1, 2007, even where such application meets the requirements for a non-exclusive license otherwise granted for prior application.

**Article 19 Omitted.**

**Article 20 (Relationship to Other Acts and Subordinate Statutes)**

A citation of any provision of the former Design Protection Act by any Act or subordinate statute in force at the time this Act enters into force shall be deemed a citation of the relevant provision of this Act in lieu of the former provision, if this Act contains such relevant provision.

ADDENDA <Act No. 11962, Jul. 30, 2013>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation: Provided, That Article 10 (5) of the Addenda shall enter into force on July 1, 2014. (Proviso Partially Omitted.)

**Articles 2 through 10 Omitted.**

ADDENDUM <Act No. 12288, Jan. 21, 2014>

This Act shall enter into force on the date of its promulgation: Provided, That the amended provisions of Article 86 (2) of the whole amendment (Act No. 11848) to the Design Protection Act shall enter into force on July 1, 2014.