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# **PATENT ACT**

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Wholly Amended by Act No. 4207, Jan. 13, 1990  
Amended by Act No. 4541, Mar. 6, 1993  
Act No. 4594, Dec. 10, 1993  
Act No. 4757, Mar. 24, 1994  
Act No. 4892, Jan. 5, 1995  
Act No. 5080, Dec. 29, 1995  
Act No. 5329, Apr. 10, 1997  
Act No. 5576, Sep. 23, 1998  
Act No. 6024, Sep. 7, 1999  
Act No. 6411, Feb. 3, 2001  
Act No. 6582, Dec. 31, 2001  
Act No. 6626, Jan. 26, 2002  
Act No. 6768, Dec. 11, 2002  
Act No. 7289, Dec. 31, 2004  
Act No. 7427, Mar. 31, 2005  
Act No. 7554, May31, 2005  
Act No. 7869, Mar. 3, 2006  
Act No. 7871, Mar. 3, 2006  
Act No. 8171, Jan. 3, 2007  
Act No. 8197, Jan. 3, 2007  
Act No. 8357, Apr. 11, 2007  
Act No. 8462, May17, 2007  
Act No. 8852, Mar. 29, 2008  
Act No. 9249, Dec. 26, 2008  
Act No. 9381, Jan. 30, 2009  
Act No. 9985, Jan. 27, 2010  
Act No. 10012, Feb. 4, 2010  
Act No. 10716, May 24, 2011  
Act No. 11117, Dec. 2, 2011

## CHAPTER I GENERAL PROVISIONS

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

The purpose of this Act is to encourage, protect and utilize inventions, thereby promoting the development of technology, and to contribute to the development of industry.

## **Article 2 (Definitions)**

The terms used in this Act shall be defined as follows: *<Amended by Act No. 5080, Dec. 29, 1995>*

1. The term "invention" means the highly advanced creation of technical ideas utilizing laws of nature;
2. The term "patented invention" means an invention for which a patent has been granted;
3. The term "working" means any of the following acts:
  - (a) In cases of an invention of a product, acts of manufacturing, using, assigning, leasing, importing, or offering for assigning or leasing (including displaying for the purpose of assignment or lease; hereinafter the same shall apply) the product;
  - (b) In cases of an invention of a process, acts of using the process;
  - (c) In cases of an invention of a process of manufacturing a product, acts of using, assigning, leasing, importing, or offering for assigning or leasing the product manufactured by the process, in addition to the acts mentioned in item (b).

## **Article 3 (Capacity of Minors, etc.)**

- (1) Minors, quasi-incompetents and incompetents shall not initiate the procedure for filing an application, requesting an examination, or any other patent-related procedure (hereinafter referred to as "patent-related procedure") unless represented by their legal representatives: Provided, That this shall not apply where a minor or a quasi-incompetent may perform a legal act independently.
- (2) The legal representative as referred to in paragraph (1) may, without the consent of the family council, act in any trial or retrial procedures initiated by another party. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 5329, Apr. 10, 1997; Act No. 7871, Mar. 3, 2006>*
- (3) Deleted. *<by Act No. 7871, Mar. 3, 2006>*

## **Article 4 (Associations, etc. which are not Juristic Persons)**

A representative or an administrator, who has been so designated by an association or a foundation which is not a juristic person, may request the examination of a patent application or appear as a plaintiff or defendant in a trial or a retrial in its association or foundation name. *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*

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

- (1) A person who has neither an address nor a place of business in the

Republic of Korea (hereinafter referred to as "overseas resident") may not, except in cases where an overseas resident (or a representative thereof if a juristic person) is sojourning in the Republic of Korea, initiate any patent-related procedure, nor appeal any decision taken by an administrative agency in accordance with this Act or any order thereunder, unless he/she is represented by an agent with respect to his/her patent, who has an address or a place of business in the Republic of Korea (hereinafter referred to as "patent administrator"). *<Amended by Act No. 6411, Feb. 3, 2001>*

(2) A patent administrator shall, within the scope of powers conferred on him/her, represent the principal in all procedures relating to a patent and in any appeal against a decision taken by an administrative agency in accordance with this Act or any order thereunder. *<Amended by Act No. 6411, Feb. 3, 2001>*

(3) and (4) Deleted. *<by Act No. 6411, Feb. 3, 2001>*

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

An agent who is instructed to initiate a patent-related procedure before the Korean Intellectual Property Office by a person who has an address or a place of business in the Republic of Korea shall not, unless expressly so empowered, convert, abandon or withdraw an application for a patent, withdraw an application to register an extension of the term of a patent right, abandon a patent right, withdraw a petition, withdraw a request, make or withdraw a priority claim under Article 55 (1), request a trial under Article 132-3, or appoint a sub-agent. *<Amended by Act No. 4594, Dec. 10, 1993; Act No. 4892, Jan. 5, 1995; Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*

#### **Article 7 (Proof of Authority of Representative)**

An agent (including a patent administrator; hereinafter the same shall apply) of a person who is initiating a patent-related procedure before the Korean Intellectual Property Office shall present written proof of his/her authority of representative. *<Amended by Act No. 6411, Feb. 3, 2001>*

#### **Article 7-2 (Ratification of Acts of Persons Lacking Capacity, etc.)**

Patent-related procedures, initiated by a person who lacks capacity, the power of legal representation or the authorization necessary to initiate any such procedures, shall have effect retroactively to the time when such procedures are performed if the procedures are ratified by the principal when he/she has gained capacity to proceed.

*[This Article Newly Inserted by Act No. 7871, Mar. 3, 2006]*

**Article 8 (Non-extinction of Authority of Representative)**

No authority of a representative delegated by a person initiating a patent-related procedure shall be extinguished upon the decease or loss of legal capacity of the principal, the extinction of a juristic person of the principal due to a merger, the termination of the duty of trust of the principal, the decease or loss of legal capacity of the legal representative, or the modification or extinction of his/her authority of representative.

**Article 9 (Independence of Representation)**

Where two or more representatives of a person initiating a patent-related procedure have been designated, each of them shall independently represent the principal before the Korean Intellectual Property Office or the Intellectual Property Tribunal. *<Amended by Act No. 4892, Jan. 5, 1995>*

**Article 10 (Replacement of Representative, etc.)**

- (1) When the Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge considers that a person initiating a patent-related procedure is not qualified to conduct such procedure without difficulties or make oral statements, etc., he/she may order the appointment of an representative to conduct the procedure. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (2) When the Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge considers that the representative of a person initiating a patent-related procedure is not qualified to conduct such procedure without difficulties or make oral statements, etc., he/she may order the replacement of the representative. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (3) The Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge may order the appointment of a patent attorney to conduct the procedure, in cases referred to in paragraph (1) or (2).
- (4) The Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge may invalidate any action taken before the Korean Intellectual Property Office or the Intellectual Property Tribunal by the person initiating the patent-related procedure referred to in paragraph (1) or by the representative referred to in paragraph (2) prior to the appointment or replacement of the representative under paragraph (1) or (2), respectively, after the issuance of an order under paragraph (1) or

(2). <Amended by Act No. 4892, Jan. 5, 1995>

**Article 11 (Representation of Two or More Persons)**

- (1) Where two or more persons jointly initiate a patent-related procedure, each of them shall represent the joint initiators except for actions falling under any of the following subparagraphs: Provided, That this shall not apply where those persons have appointed a common representative and have notified the Korean Intellectual Property Office or the Intellectual Property Tribunal thereof: <Amended by Act No. 4892, Jan. 5, 1995; Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>
1. Conversion, abandonment or withdrawal of a patent application or withdrawal of an application to register an extension of term of a patent right;
  2. Withdrawal of a petition, claim or withdrawal of a priority claim under Article 55 (1);
  3. Withdrawal of a request;
  4. Request for a trial under Article 132-3.
- (2) Where the common representative has been appointed and notified under the proviso to paragraph (1), written proof indicating that the representative has been appointed shall be presented.

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

Except as specially provided for in this Act, the provisions of Section 4 of Chapter II of Part I of the Civil Procedure Act shall apply mutatis mutandis to representatives under this Act. <Amended by Act No. 7871, Mar. 3, 2006>

**Article 13 (Venue of Overseas Residents)**

If an overseas resident has appointed a patent administrator with respect to his/her patent right or other rights relating to a patent, the domicile or place of business of the patent administrator shall be deemed that of the overseas resident. Where there is no such patent administrator, the location of the Korean Intellectual Property Office shall be deemed the seat of property under Article 11 of the Civil Procedure Act. <Amended by Act No. 6626, Jan. 26, 2002; Act No. 7871, Mar. 3, 2006>

**Article 14 (Calculation of Periods)**

The periods provided for in this Act or any orders thereunder shall be calculated as follows: <Amended by Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>

1. The first day of the period shall not be counted: Provided, That this shall not apply to cases where the period starts at midnight;

2. When the period is expressed in months or years, it shall be counted according to the calendar;
3. When the start of the period does not coincide with the beginning of a month or year, the period shall expire on the day preceding the date in the last month or year of the period corresponding to the date on which the period started: Provided, That where a month or year is used and there is no corresponding day in the last month, the period shall expire on the last day of that month;
4. If the last day of the period for executing a patent-related procedure falls on an official holiday (including the Workers' Day designated by the Designation of Workers' Day Act and Saturdays), the said period shall expire on the working day following such holiday.

**Article 15 (Extension, etc. of Periods)**

- (1) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may, upon request or ex officio, extend the period of request for trial referred to in Article 132-3 only once up to 30 days: Provided, That he/she may additionally extend the number and period of such request for the benefit of a person residing in an area with poor transportation. *<Amended by Act No. 9381, Jan. 30, 2009>*
- (2) When the Commissioner of the Korean Intellectual Property Office, the President of the Intellectual Property Tribunal, a presiding administrative patent judge or an examiner has designated a period for a patent-related procedure under this Act, he/she may extend or reduce such period upon request or may extend such period ex officio. In such cases, the Commissioner of the Korean Intellectual Property Office, etc. shall decide to extend or reduce such period so that any interest of an interested person for the relevant procedure is unduly violated. *<Amended by Act No. 8197, Jan. 3, 2007>*
- (3) When a presiding administrative patent judge or an examiner has designated a date for initiating a patent-related procedure under this Act, he/she may change the date upon request or ex officio.

**Article 16 (Invalidation of Procedure)**

- (1) When a person who has been ordered to make an amendment in accordance with Article 46 fails to do so within the designated period, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may invalidate the patent-related

procedure: where a person who has been ordered to make an amendment for not paying the fees for a request for examination under Article 82 (2) fails to pay the said fees within the designated period, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may invalidate the amendment to the specification attached to the patent application.

- (2) When a patent-related procedure has been invalidated under paragraph (1), if a failure to amend within the designated period is deemed to have been caused by reasons not imputable to a person ordered to amend, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may revoke a disposition of invalidation, at the request of a person ordered to amend, within 14 days from the date on which the reasons for the delay cease to exist: Provided, That this shall not apply where one year has elapsed after the designated period expires.
- (3) When the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal takes a disposition of invalidation under the main sentence of and proviso to paragraph (1) or revokes a disposition of invalidation under the main sentence of paragraph (2), he/she shall send a notification of such measure to a person who has been ordered to make an amendment. *<Newly Inserted by Act No. 8197, Jan. 3, 2007>*

*[This Article Wholly Amended by Act No. 6411, Feb. 3, 2001]*

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

If a person who initiated a patent-related procedure has failed to comply with the period for requesting a trial under Article 132-3 or the period for demanding a retrial under Article 180 (1) due to a cause not imputable to the person, he/she may subsequently complete the procedure that he/she failed to conduct within 14 days after the said reason ceases to exist: Provided, That this shall not apply where one year has elapsed after the said period expires. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001>*

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

The effects of a procedure taken in relation to a patent or other rights relating to a patent shall extend to the successor in title.

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

Where a patent right or other rights relating to a patent is transferred while a



patent-related procedure is pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal, the Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge may require the successor in title to continue the patent-related procedure.

*<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>*

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

If any patent-related procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal falls under any of the following subparagraphs, it shall be interrupted: Provided, That this shall not apply where there is a representative authorized to conduct the procedure: *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*

1. When the party involved is deceased;
2. When the juristic person involved ceases to exist by merger;
3. When the party involved loses the ability to conduct the procedure;
4. When the legal representative of the party involved is deceased or loses his/her authority;
5. When the commission of a trustee given by the trust of the party involved terminates;
6. When the representative as provided for in the proviso to Article 11 (1) is deceased or loses his/her qualification;
7. When the trustee in bankruptcy, etc. who acted on behalf of the party involved in his/her own name under a certain qualification loses his/her qualification or is deceased.

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

When a procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal has been interrupted pursuant to Article 20, any person who falls under any of the following subparagraphs shall resume the procedure: *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*

1. In cases of subparagraph 1 of Article 20, the deceased person's successor, administrator of inheritance, or any other person authorized to pursue the procedure under other Acts: Provided, That the deceased person's successor may not resume the procedure until his/her right to succession is subject to renunciation;
2. In cases of subparagraph 2 of Article 20, the juristic person established by a merger or survived a merger;

3. In cases of subparagraphs 3 and 4 of Article 20, the party whose ability to take necessary procedure has been restored or any person who becomes the legal representative of the party;
4. In cases of subparagraph 5 of Article 20, a new trustee;
5. In cases of subparagraph 6 of Article 20, a new representative or each party;
6. In cases of subparagraph 7 of Article 20, a new trustee in bankruptcy, etc. holding the same qualification.

**Article 22 (Request for Resumption)**

- (1) A request to resume a procedure interrupted under Article 20 may be made by an opposing party.
- (2) When a request to resume a procedure interrupted under Article 20 is made, the Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge shall notify the opposite party thereof.
- (3) If the Commissioner of the Korean Intellectual Property Office or the administrative patent judge deems that no grounds exist to accept a request to resume the procedure interrupted under Article 20, after examining the request ex officio, he/she shall dismiss the request by decision. *<Amended by Act No. 4892, Jan. 5, 1995>*
- (4) The Commissioner of the Korean Intellectual Property Office or the administrative patent judge shall decide, upon request to resume, whether to permit resumption of the interrupted procedure after a certified copy of the decision or trial decision was sent. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>*
- (5) If a person referred to in Article 21 fails to resume the interrupted procedure, the Commissioner of the Korean Intellectual Property Office or the administrative patent judge shall, ex officio, designate a period and order to resume such procedure within the period. *<Amended by Act No. 4892, Jan. 5, 1995>*
- (6) If the procedure has not been resumed within the designated period provided for in paragraph (5), it is considered that the procedure has been resumed on the day following the expiration of such designated period.
- (7) If the Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge deems that the procedure has been resumed in accordance with paragraph (6), he/she shall notify the parties involved thereof.

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

- (1) If the Commissioner of the Korean Intellectual Property Office or the administrative patent judge is unable to carry out his/her duties due to a natural disaster or other extenuating circumstances, the procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal shall be suspended until such impediments cease to exist. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>*
- (2) If a party involved is unable to pursue a procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal on account of impediments of indefinite duration, the Commissioner of the Korean Intellectual Property Office or the administrative patent judge may order its suspension by decision. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>*
- (3) The Commissioner of the Korean Intellectual Property Office or the administrative patent judge may cancel the decision issued under paragraph (2). *<Amended by Act No. 4892, Jan. 5, 1995>*
- (4) If a procedure is suspended under paragraphs (1) and (2), or a decision is canceled under paragraph (3), the Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge shall notify the parties involved thereof. *<Amended by Act No. 6411, Feb. 3, 2001>*

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

The interruption or suspension of a patent-related procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal shall suspend the running of a term and the entire term shall start to run again from the time of the notification of the continuation or resumption or pursuit of the procedure. *<Amended by Act No. 4594, Dec. 10, 1993>*

### **Article 25 (Capacity of Foreigners)**

Foreigners who have neither an address nor a place of business in the Republic of Korea shall not enjoy patent rights or other rights relating to a patent, except as provided for in any of the following subparagraphs:

1. Where their countries allow nationals of the Republic of Korea to enjoy patent rights or other rights relating to a patent under the same conditions as their own nationals;
2. Where their countries allow nationals of the Republic of Korea to enjoy patent rights or other rights relating to a patent under the same conditions as their own nationals in cases where the Republic of Korea allows their countries' nationals to enjoy patent rights or other rights

- relating to a patent;
3. Where they may enjoy patent rights or other rights relating to a patent according to a treaty or equivalents to a treaty (hereinafter referred to as "treaty").

**Article 26 Deleted.** <by Act No. 11117, Dec. 2, 2011>

**Article 27 Deleted.** <by Act No. 6411, Feb. 3, 2001>

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

- (1) Written applications, written requests or other documents (including articles; hereafter the same shall apply in this Article) submitted to the Korean Intellectual Property Office or the Intellectual Property Tribunal under this Act or any order thereunder, shall be effective as of the date on which they are delivered to the Korean Intellectual Property Office or the Intellectual Property Tribunal. <Amended by Act No. 4892, Jan. 5, 1995>
- (2) Where written applications, written requests or other documents under paragraph (1) are submitted by mail to the Korean Intellectual Property Office or the Intellectual Property Tribunal, they are deemed to be delivered to the Korean Intellectual Property Office or the Intellectual Property Tribunal on the date as stamped by the mail service if the stamped date is clear; however, if such stamped date is unclear they are deemed to be delivered on the date when the mail was submitted to a post office, which is proven by a receipt therefor. Provided, That this shall not apply where written applications for requesting registration of a patent right and other rights related thereto, and documents concerning an international application under Article 2 (vii) of the Patent Cooperation Treaty (hereinafter referred to as "international application") are submitted by mail. <Amended by Act No. 4892, Jan. 5, 1995; Act No. 5576, Sep. 23, 1998; Act No. 7871, Mar. 3, 2006>
- (3) Deleted. <by Act No. 5576, Sep. 23, 1998>
- (4) Matters concerning the submission of documents with regard to the delay of mail, loss of mail, or interruption of the mail service, other than paragraphs (1) and (2), shall be prescribed by Ordinance of the Ministry of Knowledge Economy. <Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>

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

- (1) A person prescribed by Ordinance of the Ministry of Knowledge Economy among persons who initiate patent-related procedures (excluding

any person to whom an identification number has already been granted under paragraph (2) or (3)), shall apply for identification number to the Korean Intellectual Property Office or the Intellectual Property Tribunal.

*<Amended by Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>*

- (2) Where any person files 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 and notify him/her thereof.
- (3) Where a person who initiates a patent-related procedure under paragraph (1) fails to apply for identification number, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall, ex officio, grant an identification number and notify him/her thereof.
- (4) If a person to whom an identification number has been granted under paragraph (2) or (3) initiates a patent-related procedure, he/she shall enter his/her identification number in any document prescribed by Ordinance of the Ministry of Knowledge Economy. In such cases, notwithstanding the provisions of this Act or any order thereunder, a domicile (a place of business if a juristic person) may not be entered in the said document.  
*<Amended by Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>*
- (5) Paragraphs (1) through (4) shall apply mutatis mutandis to a representative of a person who initiates a patent-related procedure.
- (6) An application for identification number, the grant and notification thereof or other necessary matters therefor shall be prescribed by Ordinance of the Ministry of Knowledge Economy. *<Amended by Act No. 8852, Feb. 29, 2008>*

*[This Article Newly Inserted by Act No. 5576, Sep. 23, 1998]*

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

- (1) A person who initiates a patent-related procedure may, pursuant to the means prescribed by Ordinance of the Ministry of Knowledge Economy, convert a written application for a patent or other documents to be presented to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal under this Act into electronic documents, and may present them by means of any information and communication networks or any electronic recording medium, such as a floppy disk or an optical disk. *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 8852, Feb. 29, 2008>*

- (2) Electronic documents presented under paragraph (1) shall have the same effect as other documents presented under this Act.
- (3) When a presenter thereof confirms a receipt number through an information and communication network, such electronic documents presented through an information and communication network under paragraph (1) shall be deemed to have been received as the details written in a file for receipt saved on a computer system operated by the Korean Intellectual Property Office or the Intellectual Property Tribunal. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (4) The kinds of documents capable of being presented by means of electronic documents under paragraph (1) and the means of such presentation or other necessary matters therefor shall be prescribed by Ordinance of the Ministry of Knowledge Economy. *<Amended by Act No. 8852, Feb. 29, 2008>*

*[This Article Newly Inserted by Act No. 5576, Sep. 23, 1998]*

**Article 28-4 (Report on Use of Electronic Documents and Electronic Signature)**

- (1) A person who intends to initiate a patent-related procedure by electronic documents shall first report the use thereof to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal, and shall affix his/her electronic signature so that the presenter may be discerned.
- (2) Electronic documents presented under Article 28-3 shall be deemed to have been filed by a person who affixes his/her electronic signature under paragraph (1).
- (3) Matters necessary for procedures of report on use of electronic documents and the methods of electronic signature under paragraph (1), shall be prescribed by Ordinance of the Ministry of Knowledge Economy. *<Amended by Act No. 8852, Feb. 29, 2008>*

*[This Article Newly Inserted by Act No. 5576, Sep. 23, 1998]*

**Article 28-5 (Notification, etc. through Information and Communication Networks)**

- (1) If the Commissioner of the Korean Intellectual Property Office, the President of the Intellectual Property Tribunal, a presiding administrative patent judge, an administrative patent judge, a presiding examiner, or an examiner intends to give notification and make transmission (hereinafter referred to as a "notification, etc.") of any pertinent documents to a person who reports the use of electronic documents under Article 28-4

- (1), he/she may do so through information and communication networks.  
<Amended by Act No. 6411, Feb. 3, 2001>
- (2) The notification, etc. of any pertinent documents given through information and communication networks under paragraph (1) shall have the same effect as that given in writing. <Amended by Act No. 6411, Feb. 3, 2001>
- (3) The notification, etc. of any pertinent documents under paragraph (1) shall, if it is written in a file of a computer system operated by a person who receives the said notification, etc., be deemed to reach as the details written in a file of a computer system for transmission operated by the Korean Intellectual Property Office or the Intellectual Property Tribunal.  
<Amended by Act No. 6411, Feb. 3, 2001>
- (4) Matters necessary for the classification and the means of notification, etc. given through information and communication networks under paragraph (1) shall be prescribed by Ordinance of the Ministry of Knowledge Economy. <Amended by Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>

*[This Article Newly Inserted by Act No. 5576, Sep. 23, 1998]*

## CHAPTER II REQUIREMENTS FOR PATENT REGISTRATION AND PATENT APPLICATION

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

- (1) Inventions having industrial applicability may be patentable unless they fall under any of the following subparagraphs: <Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>
1. Inventions publicly known or worked in the Republic of Korea or in a foreign country prior to the filing of the patent application;
  2. Inventions described in a publication distributed in the Republic of Korea or in a foreign country prior to the filing of the patent application or inventions made accessible to the public through telecommunication lines prescribed by Presidential Decree.
- (2) Notwithstanding paragraph (1), where an invention could easily be made prior to the filing of the patent application by a person having ordinary skill in the art to which the invention pertains, on the basis of an

invention referred to in any subparagraph of paragraph (1), no patent shall be granted for such invention. <Amended by Act No. 6411, Feb. 3, 2001>

(3) Notwithstanding paragraph (1), no patent shall be granted where the invention for which a patent application is filed is identical to an invention or device described in the specification or drawings initially attached to another patent application or a utility model registration application which is made prior to the date of filing the said patent application and laid open or published after grant for public inspection after the filing of the said patent application: Provided, That this shall not apply where an inventor of the relevant patent application and an inventor of another patent or utility model application are the same person or where an applicant of the patent application and an applicant of another patent or utility model application are the same person as at the time of filing. <Amended by Act No. 4594, Dec. 10, 1993; Act No. 5329, Apr. 10, 1997; Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>

(4) In applying paragraph (3), where another patent application or a utility model registration application falls under any of the following subparagraphs, "laid open" in paragraph (3) shall be construed as "laid open for public inspection or internationally published pursuant to Article 21 of the Patent Cooperation Treaty", and "invention or device described in the specification or drawings initially attached to another patent application or a utility model registration application" shall be construed as "invention or device described in the specification, claims or drawings submitted on the international filing date" if it is applied for in the Korean language, and shall be construed as an "invention or device described in the specification, claims or drawings submitted on the international filing date and the translated version of the said documents" if it is applied for in a foreign language: <Amended by Act No. 9381, Jan. 30, 2009>

1. Where another patent application is an international application which is deemed a patent application pursuant to Article 199 (1) (including an international application which becomes a patent application pursuant to Article 214 (4));

2. Where a utility model registration application is an international application which is deemed a utility model registration application pursuant to Article 34 (1) of the Utility Model Act (including an



international application which becomes a utility model registration application pursuant to Article 40 (4) of the same Act).

**Article 30 (Inventions not Deemed to be Publicly Known, etc.)**

(1) If a patentable invention falls under any of the following subparagraphs, in applying Article 29 (1) or (2) to the invention claimed in the patent application, on condition that the patent application therefor is filed within 12 months from the applicable date, the patent shall not be deemed to fall under any subparagraph of Article 29 (1): *<Amended by Act No. 4594, Dec. 10, 1993; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 11117, Dec. 2, 2011>*

1. When a person having the right to obtain a patent has caused his/her invention to fall under any subparagraph of Article 29 (1): Provided, That this shall exclude cases where the relevant application is laid open, or the registration of a patent for the relevant invention is published in the Republic of Korea or a foreign country pursuant to any treaty or Act;
2. When the invention falls under any subparagraph of Article 29 (1) against the intention of the person having the right to obtain a patent;
3. Deleted. *<by Act No. 7871, Mar. 3, 2006>*

(2) Any person intending to have paragraph (1) 1 applied shall file a patent application to that effect and then submit a document proving the relevant facts to the Commissioner of the Korean Intellectual Property Office within 30 days from the filing date of the patent application. *<Amended by Act No. 7871, Mar. 3, 2006>*

**Article 31 Deleted.** *<by Act No. 7871, Mar. 3, 2006>*

**Article 32 (Unpatentable Inventions)**

Inventions that are feared to have risks to contravene public order or morality or to injure public health shall not be patentable, notwithstanding Article 29 (1) and (2).

*[This Article Wholly Amended by Act No. 5080, Dec. 29, 1995]*

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

(1) Any person who makes a new invention or his/her successor shall be entitled to obtain a patent in accordance with this Act: Provided, That employees of the Korean Intellectual Property Office and the Intellectual Property Tribunal shall not obtain patents while in office, excluding cases of inheritance or bequest. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>*

- (2) If two or more persons jointly make an invention, the right to obtain a patent shall be jointly owned.

**Article 34 (Patent Application Filed by Unentitled Person and Protection of Lawful Holder of Right)**

If a patent cannot be granted because an application was filed by a person who is not the inventor or a successor to the right to obtain a patent (hereinafter referred to as "unentitled person") under the main sentence of Article 33 (1) falls under subparagraph 2 of Article 62, a subsequent application filed by a lawful holder of the right shall be deemed to have been filed on the date of filing of the initial application filed by the unentitled person: Provided, That this shall not apply where the subsequent application is filed by the lawful holder of the right more than 30 days after the date on which the application filed by the unentitled person was rejected.

*<Amended by Act No. 6411, Feb. 3, 2001>*

*[This Article Wholly Amended by Act No. 5329, Apr. 10, 1997]*

**Article 35 (Patent Granted to Unentitled Person and Protection of Lawful Holder of Right)**

If a trial decision invalidating a patent has become final and conclusive due to the lack of entitlement under the main sentence of Article 33 (1) as prescribed in Article 133 (1) 2, a subsequent application filed by the lawful holder of the right shall be deemed to have been filed at the time the invalidated patent application was filed: Provided, That this shall not apply where the subsequent application is filed more than two years after the publication date of the first application or more than 30 days after the decision of invalidation becomes final and conclusive.

*[This Article Wholly Amended by Act No. 7871, Mar. 3, 2006]*

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

- (1) Where two or more applications relating to the same invention are filed on different dates, only the applicant of the application having the earlier filing date may obtain a patent for the invention.
- (2) Where two or more applications relating to the same invention are filed on the same date, only the person agreed upon by all the applicants after consultation may obtain a patent for the invention. If no agreement is reached or no consultation is possible, none of the applicants shall obtain a patent for the invention.
- (3) Where a patent application has the same subject matter as a utility model registration application and the applications are filed on different dates,

paragraph (1) shall apply mutatis mutandis; whereas if they are filed on the same date, paragraph (2) shall apply mutatis mutandis. *<Amended by Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*

- (4) Where a patent application or utility model registration application is invalidated, withdrawn or abandoned, or a decision or trial decision to reject the application becomes final and conclusive, such application shall, in applying paragraphs (1) through (3), be deemed never to have been filed: Provided, That this shall not apply where a decision or trial decision to reject the patent application or utility model registration application becomes final and conclusive pursuant to the latter part of paragraph (2) (including cases where it applies mutatis mutandis under paragraph (3)). *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*
- (5) A patent application or utility model registration application filed by a person who is not the inventor, creator, or successor in title to the right to obtain a patent or utility model registration shall, in applying paragraphs (1) through (3), be deemed never to have been filed.
- (6) In cases of paragraph (2), the Commissioner of the Korean Intellectual Property Office shall order the applicants to report the results of the consultation within a designated period. If such report is not submitted within the designated period, the applicants shall be deemed not to have reached agreement under paragraph (2).

**Article 37 (Transfer, etc. of Right to Obtain Patent)**

- (1) The right to obtain a patent may be transferred.
- (2) The right to obtain a patent shall not be the subject of a pledge.
- (3) In cases of joint ownership of the right to obtain a patent, a joint owner shall not assign his/her share without the consent of all the joint owners.

**Article 38 (Succession to Right to Obtain Patent)**

- (1) The succession to the right to obtain a patent before the filing of the patent application shall not be effective against third persons unless the successor in title files the patent application.
- (2) Where two or more applications for a patent are filed on the same date with respect to the right to obtain a patent for the same invention derived by succession from the same person, the succession to the right to obtain the patent by any person, other than the one agreed upon by all the patent applicants, shall not be effective.

- (3) Paragraph (2) shall also apply where a patent application and a utility model registration application are filed on the same date, with respect to the right to obtain a patent and utility model registration for the same invention and device which has been derived by succession from the same person.
- (4) Succession to the right to obtain a patent after the filing of the patent application shall not be effective unless a notice of change of applicant is filed, except in cases of inheritance or other general succession. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (5) Upon inheritance or other general succession with respect to the right to obtain a patent, the successor in title shall notify the Commissioner of the Korean Intellectual Property Office of such purport without delay.
- (6) Where two or more notifications of change of applicant are made on the same date, with respect to the right to obtain a patent for the same invention that has been derived by succession from the same person, a notification made by any person, other than the one agreed upon after consultations among all the persons who made notifications, shall not be effective. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (7) Article 36 (6) shall apply mutatis mutandis to cases under paragraphs (2), (3) and (6). *<Amended by Act No. 4594, Dec. 10, 1993>*

**Article 39 Deleted.** *<by Act No. 7869, Mar. 3, 2006>*

**Article 40 Deleted.** *<by Act No. 7869, Mar. 3, 2006>*

**Article 41 (Inventions, etc. Necessary for National Defense)**

- (1) If necessary for the national defense, the Government may order an inventor, an applicant, or a representative not to file a patent application for an invention in foreign patent offices concerned or to keep such invention confidential: Provided, That if such persons obtain permission from the Government, they may file an application therefor in foreign patent offices.
- (2) If an invention filed with the Korean Intellectual Property Office is considered necessary for national defense, the Government may refuse to grant a patent and, for reasons of national defense, such as in time of war, uprising or other similar emergency, may expropriate the right to obtain a patent therefor. *<Amended by Act No. 5080, Dec. 29, 1995>*
- (3) The Government shall pay reasonable compensation for losses arising from the prohibition of a patent application from being filed in a foreign patent office or from the maintenance of confidentiality under paragraph (1).

*<Amended by Act No. 6411, Feb. 3, 2001>*

- (4) The Government shall pay reasonable compensation in the event that a patent is not granted, or the right to obtain a patent is expropriated under paragraph (2).
- (5) If there has been a violation of an order to prohibit an application from being filed for an invention in a foreign patent office or of an order to maintain confidentiality under paragraph (1), the right to obtain a patent therefor shall be deemed abandoned.
- (6) If there has been a violation of an order to maintain confidentiality under paragraph (1), the right to request the payment of compensation for the loss arising from maintaining confidentiality shall be deemed abandoned.
- (7) Matters relating to the procedure for prohibiting an application from being filed in a foreign country, proceedings for maintaining confidentiality under paragraph (1), or for expropriation or payment of compensation under paragraphs (2) through (4) and other necessary matters shall be prescribed by Presidential Decree.

**Article 42 (Patent Applications)**

- (1) Any person who intends to obtain a patent shall file a patent application stating the following with the Commissioner of the Korean Intellectual Property Office: *<Amended by Act No. 6411, Feb. 3, 2001>*
  1. The name and domicile of an applicant (if a juristic person, its title and place of business);
  2. The name and domicile, or place of business of a representative of the applicant, if any (the title, place of business and the name of the designated patent attorney if the representative is a patent corporation);
  3. Deleted; *<by Act No. 6411, Feb. 3, 2001>*
  4. The title of the invention;
  5. The name and the domicile of an inventor;
  6. Deleted. *<by Act No. 6411, Feb. 3, 2001>*
- (2) A patent application under paragraph (1) shall be accompanied by a specification stating the following and necessary drawings and abstracts:
  1. The title of an invention;
  2. Brief description of the drawings;
  3. Detailed description of the invention;
  4. The scope of claims.
- (3) Detailed descriptions of an invention under paragraph (2) 3 shall satisfy the following requirements: *<Amended by Act No. 10716, May 24, 2011>*

1. Descriptions of an invention shall be provided in accordance with the methods prescribed by Ordinance of the Ministry of Knowledge Economy in a clear and detailed manner to ensure that any person with ordinary knowledge in the technology sector to which the relevant invention belongs can easily make an invention;
  2. Technology used for the relevant innovation shall be stated.
- (4) The scope of claims under paragraph (2) 4 shall describe the matter for which protection is sought in one or more claims (hereinafter referred to as "claims") and the claims shall fall under any of the following subparagraphs: *<Amended by Act No. 8197, Jan. 3, 2007>*
1. The claims shall be supported by detailed description of the invention;
  2. The claims shall define the invention clearly and in detail;
  3. Deleted. *<by Act No. 8197, Jan. 3, 2007>*
- (5) When filing a patent application, any patent applicant may attach the specification not stating the scope of claims under paragraph (2) 4 to the patent application, notwithstanding paragraph (2). In such cases, the specification shall be amended so as to state the claims within the period classified under the following subparagraphs: *<Newly Inserted by Act No. 8197, Jan. 3, 2007>*
1. Until one and half years since the day falling under any subparagraph of Article 64 (1);
  2. Until three months since the day of receiving the notification of the purport of a request of examination of the patent application under the provisions of Article 60 (3) within the period set forth in subparagraph 1 (until one and a half years since the day falling under any subparagraph of Article 64 (1), if such notification was received after one year and three months from the day falling under any subparagraph of the same paragraph).
- (6) The scope of claims under paragraph (2) 4 shall state such matters regarded necessary to specify an invention as structures, methods, functions and materials or combination thereof to clarify what to be protected. *<Newly Inserted by Act No. 8197, Jan. 3, 2007>*
- (7) Where a patent applicant fails to amend the specification until the period set forth in each subparagraph of paragraph (5) has passed after filing an application, the application concerned shall be deemed withdrawn on the day after the period expires. *<Newly Inserted by Act No. 8197, Jan. 3, 2007>*
- (8) Matters necessary for a method enter the scope of claims under paragraph

(2) 4 shall be prescribed by Presidential Decree.

- (9) Details concerning the description of an abstract under paragraph (2) shall be prescribed by Ordinance of the Ministry of Knowledge Economy.  
<Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>

**Article 43 (Abstract)**

An abstract under Article 42 (2) shall not be interpreted to define the scope of invention for which protection is sought, but rather shall serve as a technical information document.

**Article 44 (Joint Applications)**

Where the right to obtain a patent is jointly owned under Article 33 (2), all the owners shall apply for the patent application jointly.

**Article 45 (Scope of One Patent Application)**

- (1) A patent application shall relate to one invention only: Provided, That a group of inventions so linked as to form a single general inventive concept may be the subject of one patent application.
- (2) The requirements for one patent application under paragraph (1) shall be prescribed by Presidential Decree.

**Article 46 (Amendment to Procedure)**

The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal shall order to amend a patent-related procedure, designating a period if the procedure falls under any of the following subparagraphs: <Amended by Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001; Act No. 6768, Dec. 11, 2002>

1. Where the procedure is in violation of Article 3 (1) or 6;
2. Where the procedure is in violation of the formalities specified in this Act or any order thereunder;
3. Where fees required in accordance with Article 82 have not been paid.

**Article 47 (Amendment to Patent Application)**

- (1) A patent applicant may amend the specification or drawings attached to a patent application within the period prescribed by each subparagraph of Article 42 (5) or before delivering a certified copy of a decision to grant a patent pursuant to Article 66: Provided, That after receiving a notice of grounds for rejection pursuant to Article 63 (1) (hereinafter referred to as "notice of grounds for rejection"), a patent applicant may amend the specification or drawings during the period prescribed in the following subparagraphs only (in cases under subparagraph 3, referring to that time):

*<Amended by Act No. 8197, Jan. 3, 2007; Act No. 9381, Jan. 30, 2009>*

1. Where an applicant receives a notice of grounds for rejection (excluding a notice of grounds for rejection with regard to a ground for rejection which has arisen according to the amendment following the notice of grounds for rejection) for the first time or receives a notice of grounds for rejection, other than that referred to in subparagraph 2, the period for presentation of a written opinion following the relevant notice of grounds for rejection;
  2. Where an applicant receives a notice of grounds for rejection with regard to a ground for rejection which has arisen according to the amendment following the notice of grounds for rejection, the period for presentation of a written opinion following the relevant notice of grounds for rejection;
  3. When an applicant requests a re-examination pursuant to Article 67-2.
- (2) An amendment to the specification or drawings under paragraph (1) shall be made within the scope of the features disclosed in the specification or drawings initially attached to the patent application.
- (3) An amendment to the scope of claims, from among amendments pursuant to paragraph (1) 2 and 3, may be made only where it falls under any of the following subparagraphs: *<Amended by Act No. 9381, Jan. 30, 2009>*
1. Where the scope of claims for a patent is reduced by limiting, deleting, adding claims;
  2. Where wrong description is corrected;
  3. Where ambiguous description is made clear;
  4. With regard to an amendment beyond the scope referred to in paragraph (2), where returning to the scope of claims made prior to the amendment, or amending the scope of claims pursuant to subparagraphs 1 through 3 in the course of returning to the said scope of claims.

(4) Deleted. *<by Act No. 9381, Jan. 30, 2009>*

*[This Article Wholly Amended by Act No. 6411, Feb. 3, 2001]*

**Article 48 Deleted.** *<by Act No. 6411, Feb. 3, 2001>*

**Article 49 Deleted.** *<by Act No. 7871, Mar. 3, 2006>*

**Article 50 Deleted.** *<by Act No. 5329, Apr. 10, 1997>*

**Article 51 (Dismissal of Amendment)**

- (1) Where an examiner deems that an amendment pursuant to Article 47 (1) 2 and 3 has violated paragraphs (2) and (3) of the same Article or that a



new ground for rejection has arisen following the amendment (excluding an amendment deleting claims pursuant to paragraph (3) 1 and 4 of the same Article), he/she shall dismiss such amendment by decision: Provided, That where a request for re-examination is made pursuant to Article 67-2, this shall not apply to an amendment made prior to such request.  
<Amended by Act No. 9381, Jan. 30, 2009>

- (2) The decision to reject an amendment under paragraph (1) shall be made in writing and shall state the reasons therefor.
- (3) No appeal shall be made against a ruling of dismissal under paragraph (1): Provided, That this shall not apply to a dispute concerning the ruling of dismissal (where a request for re-examination is filed pursuant to Article 67-2, a ruling of dismissal made before such request is filed shall be excluded) in a trial on the decision of refusal of a patent pursuant to Article 132-3. <Amended by Act No. 9381, Jan. 30, 2009>

[This Article Wholly Amended by Act No. 6411, Feb. 3, 2001]

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

- (1) An applicant who has filed one patent application comprising of two or more inventions may divide such application into two or more applications within the limit of such matters as stated in the specification or drawings which are initially attached to the patent application, in accordance with a period falling under any of the following subparagraphs: <Amended by Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 9381, Jan. 30, 2009>
  1. A period in which an amendment can be made pursuant to Article 47 (1);
  2. A period in which a request for trial can be made pursuant to Article 132-3 after the receipt of a certified copy of the ruling of dismissal of a patent.
- (2) A patent application divided under paragraph (1) (hereinafter referred to as "divisional application") shall be deemed to have been filed at the time of filing of the initial patent application: Provided, That in applying the provisions of the following subparagraphs to the said divisional application, such application shall be deemed to be made at the time when the divisional application was filed: <Amended by Act No. 4594, Dec. 10, 1993; Act No. 5576, Sep. 23, 1998; Act No. 7871, Mar. 3, 2006>
  1. In cases where Article 29 (3) of this Act or Article 4 (3) of the Utility Model Act is applicable when the divisional application falls

- under another patent application under Article 29 (3) of this Act or a patent application under Article 4 (3) of the Utility Model Act;
2. In cases where Article 30 (2) is applicable;
  3. In cases where Article 54 (3) is applicable;
  4. In cases where Article 55 (2) is applicable.
- (3) A person who files a divisional application under paragraph (1) shall indicate the purpose thereof and the patent application that forms the basis of the division in the divisional application. *<Newly Inserted by Act No. 6411, Feb. 3, 2001>*
- (4) In cases of a divisional application, any person claiming priority as prescribed in Article 54 shall file the documents as prescribed in paragraph (4) of the said Article with the Commissioner of the Korean Intellectual Property Office within three months after filing the divisional application, regardless of the period as prescribed in paragraph (5) of the said Article. *<Newly Inserted by Act No. 4594, Dec. 10, 1993; Act No. 6768, Dec. 11, 2002>*

**Article 53 (Converted Application)**

- (1) A person who has filed a utility model registration application may convert the utility model registration application into a patent application within the limit of such matters as stated in the specification or drawings which are initially attached to the utility model registration application: Provided, That this shall not apply where 30 days have passed since he/she has received a certified copy of the first decision to reject the utility model registration application.
- (2) When there is a patent application made by converting from a utility model registration application pursuant to paragraph (1) (hereinafter referred to as "converted application"), the converted application shall be deemed to have been filed on the filing date of the utility model registration application: Provided, That this shall not apply where the converted application falls under any of the following subparagraphs:
1. In cases where Article 29 (3) of this Act or Article 4 (3) of the Utility Model Act is applicable when the patent application falls under another patent application under Article 29 (3) of this Act or a patent application under Article 4 (3) of the Utility Model Act;
  2. In cases where Article 30 (2) is applicable;
  3. In cases where Article 54 (3) is applicable;
  4. In cases where Article 55 (2) is applicable.

- (3) A person who makes a patent application converted under paragraph (1) shall indicate in a converted application its purport and the utility model registration application which forms the basis of the converted application.
- (4) When there is a converted application, the utility model registration application shall be deemed to be withdrawn.
- (5) When the period provided for in Article 132-3 is extended pursuant to Article 15 (1) of this Act which applies mutatis mutandis under Article 3 of the Utility Model Act, the period of 30 days referred to in the proviso to paragraph (1) shall be deemed to be extended accordingly.
- (6) In cases of any converted application, any person who claims a priority as prescribed in Article 54 shall, notwithstanding the period fixed in paragraph (5) of the said Article, submit such documents as prescribed in paragraph (4) of the said Article to the Commissioner of the Korean Intellectual Property Office within three months after he/she makes such converted application.

*[This Article Wholly Amended by Act No. 7871, Mar. 3, 2006]*

**Article 54 (Priority Claim Under Treaty)**

- (1) If a national of a country party which recognizes under a treaty a priority right to a patent application filed by a national of the Republic of Korea claims the priority right to a patent application in the Republic of Korea on the basis of the initial application for the same invention in his/her country or other country parties, the filing date of the initial application in the foreign country shall be deemed to be the filing date in the Republic of Korea for the purposes of Articles 29 and 36. This shall also apply where a national of the Republic of Korea has filed a patent application in a country which recognizes under a treaty a priority right to patent applications filed by nationals of the Republic of Korea, and claims the priority right to a patent application in the Republic of Korea on the basis of the initial application for the same invention in said country.
- (2) No person intending to claim a priority right in accordance with paragraph (1) may claim the priority right unless the person files a patent application claiming the priority right within one year from the filing date of the initial application.
- (3) A person intending to claim a priority right in accordance with paragraph (1) shall specify its purport, the name of the country in which the initial application was filed and the filing date of such application in the patent application which he/she files in the Republic of Korea.

- (4) A person who has claimed a priority right under paragraph (3) shall submit to the Commissioner of the Korean Intellectual Property Office the documents prescribed in subparagraph 1 or the written statement prescribed in subparagraph 2: Provided, That the written statement referred to in subparagraph 2 shall be submitted only where the country is prescribed by Ordinance of the Ministry of Knowledge Economy: *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>*
1. A written statement with the filing date of the application and a copy of the specification and drawings certified by the government of the country where the initial application was filed;
  2. A written statement with the file number of the application in the country where the initial application was filed.
- (5) Documents or written statements under paragraph (4) shall be submitted within one year and four months from the earliest among the dates prescribed in the following subparagraphs: *<Newly Inserted by Act No. 6411, Feb. 3, 2001>*
1. The date on which the application was first filed in a country that is a party to a treaty;
  2. The filing date of the application which is to be the basis for the priority claim where a patent application contains other priority claims in accordance with Article 55 (1);
  3. The filing date of the application that is to be the basis for the priority claim where a patent application contains other priority claims in accordance with paragraph (3).
- (6) Where a person who has claimed a priority right under paragraph (3) fails to submit the document prescribed in paragraph (4) within the period set under paragraph (5), the priority claim shall lose its effect. *<Amended by Act No. 6768, Dec. 11, 2002>*
- (7) A person who is eligible to claim the priority right under paragraph (1) and is in compliance with the requirements of paragraph (2) may amend or supplement the said priority claims within one year and four months from the earliest date prescribed under paragraph (5). *<Newly Inserted by Act No. 6411, Feb. 3, 2001>*

**Article 55 (Priority Claim Based on Patent Application, etc.)**

- (1) Any person who intends to obtain a patent may claim the priority right for an invention for which a patent application has been made on the basis of an invention described in the specification or drawings initially

attached to an application filed in advance (hereinafter referred to as "earlier application") as a patent application or a utility model registration application, for which he/she has the right to obtain a patent or utility model registration: Provided, That this shall not apply to any of the following subparagraphs:

1. Where the patent application concerned is filed one year after the filing date of an earlier application;
  2. Where an earlier application is a divisional application under Article 52 (2) (including such cases as applied mutatis mutandis under Article 11 of the Utility Model Act), or an amended application pursuant to Article 53 of this Act or Article 10 of the Utility Model Act;
  3. Where an earlier application has been abandoned, invalidated, or withdrawn at the time of filing the patent application;
  4. Where a decision or trial decision to grant or refuse a patent or a utility model registration for an earlier application has become final and conclusive at the time of filing the patent application.
- (2) Any person intending to claim the a priority right under paragraph (1) shall, when applying for a patent, indicate the purport and an earlier application on the patent application.
- (3) For the purposes of Article 29 (1) and (2), the main sentence of Article 29 (3), Articles 30 (1), 36 (1) through (3), 96 (1) 3, 98, 103, 105 (1) and (2), 129 and 136 (4) of this Act (including such cases as applied mutatis mutandis under Article 133-2 (4)), Articles 7 (3) and (4) and 25 of the Utility Model Act, Articles 45 and 52 (3) of the Design Protection Act to an invention which is the same as the invention described in the specification or drawings initially attached to an earlier application which is the basis of the relevant priority claim, from among inventions for which a patent application has been filed with a priority claim pursuant to paragraph (1), such patent application shall be deemed to have been filed when the earlier application was filed.
- (4) The main sentence of Article 29 (3) of this Act or the main sentence of Article 4 (3) of the Utility Model Act shall apply to an invention which is the same as the invention described in the specification or drawings initially attached to an earlier application which is the basis of the relevant priority claim, from among inventions for which a patent application has been filed with a priority claim pursuant to paragraph (1) by deeming that an earlier application which is the basis of the relevant

priority claim has been laid open when the patent application has been laid open or the patent has been registered and publicly announced.

- (5) If an earlier application falls under any of the following subparagraphs, paragraphs (3) and (4) shall not apply to an invention described in the specification or drawings when a patent application which is the basis of the priority claim is filed with respect to the earlier application from among inventions described in the specification or drawings initially attached to the earlier application:
1. Where an earlier application is the one with a priority claim pursuant to paragraph (1);
  2. Where an earlier application is the one with a priority claim pursuant to Article 4-D (1) of the Paris Treaty for Protection of Industrial Property Rights.
- (6) In applying paragraph (4), where the earlier application falls under any of the following subparagraphs, "invention or device described in the specification, claims or drawings submitted on the international filing date and the translated version of the said documents" in Article 29 (4) shall be construed as "invention or device described in the specification, claims or drawings submitted on the international filing date":
1. Where an earlier application is an international application (including an international application which becomes a patent application pursuant to Article 214 (4)) which is regarded as a patent application pursuant to Article 199 (1);
  2. Where an earlier application is an international application (including an international application which becomes a utility model registration application pursuant to Article 40 (4) of the Utility Model Act) which is regarded as a utility model registration application pursuant to Article 34 (1) of the same Act.
- (7) Any person who has claimed a priority right, satisfying the requirements pursuant to paragraph (1), may amend or supplement the priority claim within one year and four months from the filing date of an earlier application (the earliest filing date in cases where there exist no less than two earlier applications).

*[This Article Wholly Amended by Act No. 9381, Jan. 30, 2009]*

**Article 56 (Withdrawal, etc. of Earlier Application)**

- (1) An earlier application which is the basis of a priority claim pursuant to Article 55 (1) shall be deemed to have been withdrawn at the time of

expiration of one year and three months from the filing date of the earlier application: Provided, That this shall not apply where that earlier application falls under any of the following subparagraphs: *<Amended by Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 9381, Jan. 30, 2009>*

1. Where the earlier application has been abandoned, invalidated or withdrawn;
  2. Where a decision or a trial decision to grant or refuse a patent or a utility model registration has become final and conclusive;
  3. Where priority claims based on the earlier application concerned have been withdrawn;
  4. Deleted. *<by Act No. 7871, Mar. 3, 2006>*
- (2) No applicant of a patent application containing a priority claim under Article 55 (1) may withdraw the priority claim after the expiration of one year and three months from the filing date of an earlier application.
- (3) Where a patent application containing a priority claim under Article 55 (1) is withdrawn within one year and three months from the filing date of an earlier application, the priority claim shall be deemed withdrawn simultaneously therewith.

## CHAPTER III EXAMINATION

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

- (1) The Commissioner of the Korean Intellectual Property Office shall direct examiners to examine patent applications. *<Amended by Act No. 7871, Mar. 3, 2006>*
- (2) The qualifications for examiners shall be prescribed by Presidential Decree.

### **Article 58 (Search, etc. for Prior Art)**

- (1) If it is deemed necessary for the examination of a patent application (including an international investigation and international preliminary examination for an international application), the Commissioner of the Korean Intellectual Property Office may designate a specialized institution and assign duties of searching prior art, conducting a patent classification under the International Patent Classification and others determined by Presidential Decree to such institution. *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 9381, Jan. 30, 2009>*

- (2) If it is deemed necessary for the process of examination, the Commissioner of the Korean Intellectual Property Office may request the cooperation of, or seek advice from, a Government agency, an organization specialized in the technology concerned or an expert having profound knowledge and experience in patent matters. In such cases, he/she may pay them allowances or expenses for such cooperation or advice within the budgetary limits of the Korean Intellectual Property Office.
- (3) Necessary matters concerning the designation of a specialized institution, such as standards for designation, and the implementation procedures for searching prior art or conducting a patent classification, etc. under paragraph (1), shall be prescribed by Presidential Decree. *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*

**Article 58-2 (Cancellation of Designation of Specialized Institutions)**

- (1) Where a specialized institution referred to in Article 58 (1) falls under subparagraph 1, the Commissioner of the Korean Intellectual Property Office shall cancel such designation, and where a specialized institution falls under subparagraph 2, he/she may cancel such designation or order suspension of its business operations by fixing the period of up to six months:
  1. Where the organization has obtained designation by false or illegal means;
  2. Where the organization does not conform to the standard for designation under Article 58 (3).
- (2) Where the Commissioner of the Korean Intellectual Property Office intends to cancel the designation of a specialized institution in accordance with paragraph (1), he/she shall conduct a public hearing.
- (3) Necessary matters for the standards and procedures for the designation cancelation or suspension of business operations of specialized institutions under paragraph (1) shall be prescribed by Ordinance of the Ministry of Knowledge Economy. *<Amended by Act No. 8852, Feb. 29, 2008>*

*[This Article Wholly Amended by Act No. 8197, Jan. 3, 2007]*

**Article 59 (Request for Examination of Patent Application)**

- (1) A patent application shall be examined only upon the filing of a request for examination.
- (2) When a patent application has been filed, any person may request the Commissioner of the Korean Intellectual Property Office to examine the



patent application within five years from the filing date thereof: Provided, That an applicant for a patent may request for examination of a patent application, only if the specification stating the scope of claims is attached. <Amended by Act No. 8197, Jan. 3, 2007>

- (3) With respect to a divisional application under Article 52 (2), or a converted application under Article 53 (2), a request for examination may be made even after the expiration of the period prescribed in paragraph (2) within 30 days from the filing date of the divisional application or the converted application. <Amended by Act No. 5576, Sep. 23, 1998; Act No. 7871, Mar. 3, 2006>
- (4) No request for examination of an application shall be withdrawn.
- (5) If a request for examination has not been made within the period prescribed in paragraph (2) or (3), the patent application concerned shall be deemed to have been withdrawn.

#### **Article 60 (Procedure for Request for Examination)**

- (1) Any person intending to request examination of an application shall submit a written request for examination of an application to the Commissioner of the Korean Intellectual Property Office, stating the following: <Amended by Act No. 6768, Dec. 11, 2002>
  1. The name and the domicile of the person making the request (in cases of a juristic person, its title and the location of its place of business);
  2. Deleted; <by Act No. 6768, Dec. 11, 2002>
  3. The identification of the patent application for which the request for examination is made.
- (2) The Commissioner of the Korean Intellectual Property Office shall, where a request for examination has been made prior to the publication of an application, publish such fact in the Patent Gazette at the time the application is laid open. Where a request for examination has been made after the application is laid open, the Commissioner shall publish such fact in the Patent Gazette without delay.
- (3) Where a request for examination of an application has been made by a person, other than the applicant, the Commissioner of the Korean Intellectual Property Office shall notify the applicant of such fact.

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

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

1. Where a person, other than the applicant, is commercially and industrially working the invention claimed in a patent application after the laying-open of the application;
2. Where the Commissioner of the Korean Intellectual Property Office deems it necessary to urgently process a patent application prescribed by Presidential Decree.

*[This Article Wholly Amended by Act No. 6411, Feb. 3, 2001]*

#### **Article 62 (Decision to Reject Patent Application)**

Any examiner shall make a decision to reject a patent application where the invention falls under any of the following subparagraphs (hereinafter referred to as "grounds for rejection"): *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 8197, Jan. 3, 2007>*

1. Where the invention is not patentable under Article 25, 29, 32, 36 (1) through (3), or 44;
2. Where the application is filed by a person who does not have the right to obtain a patent therefor under the main sentence of Article 33 (1) or where the invention is not patentable under the proviso to the said Article 33 (1);
3. Where it is in violation of a treaty;
4. Where it has not satisfied the requirements prescribed under Article 42 (3), (4) and (8) or 45;
5. Where the application is amended beyond the scope under Article 47 (2);
6. Where the application is a divisional application filed beyond the scope under Article 52 (1);
7. Where the application is a converted application beyond the scope under Article 53 (1).

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

- (1) Where an examiner intends to render a decision to reject a patent application under Article 62, he/she shall notify the applicant of the grounds therefor and provide the applicant an opportunity to present his/her written opinions within a fixed period: Provided, That this shall not apply where the examiner intends to reject an amendment pursuant to Article 51 (1). *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 9381, Jan. 30, 2009>*
- (2) Where an examiner notifies the grounds to reject under the main sentence of paragraph (1) with regard to a patent application with two or more

claims in its scope of patent application, he/she shall clearly state in the notice the claims refused and specifically describe the grounds for rejection of such claims. <Newly Inserted by Act No. 8197, Jan. 3, 2007; Act No. 9381, Jan. 30, 2009>

#### **Article 63-2 (Furnishing of Information concerning Patent Applications)**

Any person may, at the time a patent application is filed, furnish the Commissioner of the Korean Intellectual Property Office with information together with evidence, to the effect that the invention concerned is unpatentable, because it falls under grounds for rejection: Provided, That this shall not apply where the requirements prescribed in Articles 42 (3) 2 and (8) and 45 are not complied therewith. <Amended by Act No. 8197, Jan. 3, 2007; Act No. 10716, May 24, 2011>

[This Article Newly Inserted by Act No. 7871, Mar. 3, 2006]

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

(1) Under Ordinance of the Ministry of Knowledge Economy, the Commissioner of the Korean Intellectual Property Office shall lay open a patent application in the Patent Gazette at the time one year and six months have elapsed since any of the following dates or before one year and six months have elapsed since a filing date of a patent application, upon request from the applicant: Provided, That in cases of a patent application which is accompanied by the specification not stating the scope of claims in accordance with the former sentence other than each subparagraph of Article 42 (5) and a patent whose registration has already been published in accordance with Article 87 (3), they shall not be subject to the laying-open of the application: <Amended by Act No. 5080, Dec. 29, 1995; Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001; Act No. 8197, Jan. 3, 2007; Act No. 8852, Feb. 29, 2008>

1. Where a patent application contains a priority claim under Article 54 (1), the filing date being the basis for claiming a priority right shall apply;
2. Where a patent application contains a priority claim under Article 55 (1), the filing date of the earlier application shall apply;
3. The earliest filing date among the filing dates of two or more applications that are the basis for claiming a priority right in a patent application under Article 54 (1) or 55 (1);
4. Where a patent application does not fall under any of subparagraphs 1 through 3, the filing date of the patent application shall apply.

- (2) Deleted. <by Act No. 7871, Mar. 3, 2006>
- (3) Article 87 (4) shall apply mutatis mutandis to the laying-open of applications under paragraph (1). <Amended by Act No. 5329, Apr. 10, 1997>
- (4) Matters to be published in the Patent Gazette with respect to the laying-open of applications under paragraph (1) shall be prescribed by Presidential Decree.

**Article 65 (Effects of Laying-Open of Application)**

- (1) After an application is laid open, an applicant may warn a person who has commercially or industrially worked the filed invention, in writing indicating that a patent application for the invention has been filed.
- (2) An applicant may demand a person who has commercially or industrially worked the filed invention after being warned as provided for in paragraph (1) or knowing that an application for the invention has been laid open, to pay compensation in an amount equivalent to what he/she would have normally received for the working of the invention from the date of warning or the time when he/she knew that the patent application of the invention had been laid open to the time of the registration of the patent right. <Amended by Act No. 5329, Apr. 10, 1997>
- (3) The right to demand compensation as provided for in paragraph (2) shall be exercised only after the registration of the patent right. <Amended by Act No. 5329, Apr. 10, 1997>
- (4) The exercise of the right to demand compensation under paragraph (2) shall not preclude the exercise of the patent right. <Amended by Act No. 5329, Apr. 10, 1997>
- (5) Articles 127, 129 and 132 of this Act, or Articles 760 and 766 of the Civil Act shall apply mutatis mutandis to the exercise of the rights to demand compensation under paragraph (2). In such cases, "date on which the injured party or his/her legal representative became aware of such damage and of the identity of the person who caused it" in Article 766 (1) of the Civil Act shall be construed as "date of registration of the patent right involved." <Amended by Act No. 5329, Apr. 10, 1997; Act No. 7871, Mar. 3, 2006>
- (6) When a patent application is abandoned, invalidated or withdrawn after the laying-open of the application, and when a decision to reject a patent application or a decision to invalidate a patent under Article 133 (excluding cases as prescribed in Article 133 (1) 4) have become final and conclusive, the right under paragraph (2) shall be deemed never to

have existed. <Newly Inserted by Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>

*[This Article Wholly Amended by Act No. 5080, Dec. 29, 1995]*

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

Where an examiner does not find any grounds to reject a patent application, he/she shall render a decision to grant a patent. <Amended by Act No. 6411, Feb. 3, 2001>

*[This Article Wholly Amended by Act No. 5329, Apr. 10, 1997]*

#### **Article 66-2 (Ex Officio Amendment, etc.)**

- (1) Where an examiner finds any clear clerical error in the specification, drawings or abstract attached to a patent application when he/she makes a decision to grant a patent, he/she may amend such error ex officio (hereinafter referred to as "ex officio amendment").
- (2) In order for an examiner to amend ex officio in accordance with paragraph (1), he/she shall notify the applicant of such ex officio amendment while delivering a certified copy of the decision to grant a patent in accordance with Article 67 (2).
- (3) If a patent applicant cannot accept the whole or part of an ex officio amendment, he/she shall present his/her written opinion on such ex officio amendment to the Commissioner of the Korean Intellectual Property Office by the time he/she pays a patent fee pursuant to Article 79 (1).
- (4) Where a patent applicant has presented a written application pursuant to paragraph (3), the whole or part of the relevant ex officio amendment shall be deemed never to have existed.
- (5) Where an ex officio amendment has been made for any matter which is not a clear clerical error, such ex officio amendment shall be deemed never to have existed.

*[This Article Newly Inserted by Act No. 9381, Jan. 30, 2009]*

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

- (1) A decision to either grant or reject a patent (hereinafter referred to as "decision of patentability") shall be made in writing and shall state the grounds therefor. <Amended by Act No. 6411, Feb. 3, 2001>
- (2) Where a decision of patentability has been rendered, the Commissioner of the Korean Intellectual Property Office shall serve a certified copy of the decision on the patent applicant. <Amended by Act No. 6411, Feb. 3, 2001>

*[This Article Wholly Amended by Act No. 5329, Apr. 10, 1997]*

#### **Article 67-2 (Request for Re-examination)**

- (1) A patent applicant may, within 30 days (where a period under Article 132-3 has been extended pursuant to Article 15 (1), referring to such extended period) from the date of receipt of a certified copy of the decision to reject the patent application, request a re-examination (hereinafter referred to as "re-examination") on the relevant patent application after amendment to the specification or drawings attached to the patent application: Provided, that this shall not apply where there exists a decision to reject a patent following the re-examination or a request for trial pursuant to Article 132-3.
- (2) Where a request for re-examination is made in accordance with paragraph (1), a decision to reject a patent application previously made for the relevant patent application shall be deemed to have been withdrawn.
- (3) No request for re-examination pursuant to paragraph (1) shall be withdrawn.

*[This Article Newly Inserted by Act No. 9381, Jan. 30, 2009]*

**Article 68 (Mutatis Mutandis Application of Provisions concerning Trial to Examination)**

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

*[This Article Wholly Amended by Act No. 5329, Apr. 10, 1997]*

**Article 69 Deleted.** <by Act No. 7871, Mar. 3, 2006>

**Article 70 Deleted.** <by Act No. 7871, Mar. 3, 2006>

**Article 71 Deleted.** <by Act No. 7871, Mar. 3, 2006>

**Article 72 Deleted.** <by Act No. 7871, Mar. 3, 2006>

**Article 73 Deleted.** <by Act No. 7871, Mar. 3, 2006>

**Article 74 Deleted.** <by Act No. 7871, Mar. 3, 2006>

**Article 75 Deleted.** <by Act No. 7871, Mar. 3, 2006>

**Article 76 Deleted.** <by Act No. 7871, Mar. 3, 2006>

**Article 77 Deleted.** <by Act No. 7871, Mar. 3, 2006>

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

- (1) The examination procedure of a patent application may, if necessary, be suspended until a trial decision thereon becomes final and conclusive or litigation procedures concerned have been complete. <Amended by Act No. 7871, Mar. 3, 2006>
- (2) The court may, if necessary, suspend litigation procedures until a decision on a patent application becomes final and conclusive. <Amended by Act No. 7871, Mar. 3, 2006>

- (3) No appeal shall be made against the suspension under paragraphs (1) and (2).

*[This Article Wholly Amended by Act No. 5329, Apr. 10, 1997]*

**Article 78-2 Deleted.** *<by Act No. 7871, Mar. 3, 2006>*

## CHAPTER IV PATENT FEES AND PATENT REGISTRATIONS, ETC.

### **Article 79 (Patent Fees)**

- (1) Any person who intends to obtain the registration of establishment of a patent right in accordance with Article 87 (1) shall pay patent fees for three years from the date when he/she intends to obtain the registration of establishment of the patent right (hereinafter referred to as "registration date of establishment"), and a patentee shall pay, on a yearly basis, a patent fee for one year from the following year based on the date falling under the registration date of establishment of the relevant right.
- (2) Notwithstanding paragraph (1), a patentee may pay patent fees for several or entire years according to the order of years of payment in a lump sum.
- (3) Patent fees, method and term of payment thereof pursuant to paragraphs (1) and (2), and other necessary matters shall be prescribed by Ordinance of the Ministry of Knowledge Economy.

*[This Article Wholly Amended by Act No. 9381, Jan. 30, 2009]*

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

- (1) Regardless of the intent of a person liable to pay patent fees, any interested party may pay the patent fees.
- (2) An interested party who has paid patent fees in accordance with paragraph (1) may demand reimbursement of his/her expenses to the extent that the person liable to pay the patent fees is currently making a profit.

### **Article 81 (Late Payment, etc. of Patent Fees)**

- (1) A patentee or a person intending to register a patent right may make late payment of the patent fees within six months following the expiration of the payment period prescribed under Article 79 (3). *<Amended by Act No. 9381, Jan. 30, 2009>*
- (2) In cases of late payment of patent fees pursuant to paragraph (1), an amount prescribed by Ordinance of the Ministry of Knowledge Economy

shall be paid within the extent of double the amount of patent fees payable. <Amended by Act No. 9381, Jan. 30, 2009>

- (3) In cases of failing to pay patent fees (where the remaining payment period provided for in Article 81-2 (2) does not expire in spite of the expiration of the extended payment period, referring to such cases as failing to pay the remaining portion of the payment fees within such remaining payment period) within the extended period provided for in paragraph (1), the patent application by a person intending to register a patent right shall be deemed to have been abandoned and the patent right of a patentee shall be deemed to have terminated retroactively on the next day of the expiry date of the period equivalent to patent fees paid pursuant to Article 79 (1) and (2). <Amended by Act No. 6768, Dec. 11, 2002; Act No. 9381, Jan. 30, 2009>

#### **Article 81-2 (Remainder Payment)**

- (1) Where a patentee or a person intending to register a patent right fails to pay some of the patent fees within the period fixed under Article 79 (3) or 81 (1), the Commissioner of the Korean Intellectual Property Office shall order him/her to pay the remaining portion of the patent fees. <Amended by Act No. 9381, Jan. 30, 2009>
- (2) A person ordered to pay the remaining portion under paragraph (1) may pay the remaining portion of the patent fees within one month after the order is received.
- (3) A person who pays the remaining portion of the patent fees under paragraph (2) shall pay an amount prescribed by Ordinance of the Ministry of Knowledge Economy within the extent of double the amount of patent fees not paid if he/she falls under any of the following subparagraphs: <Amended by Act No. 9381, Jan. 30, 2009>
  1. Where he/she pays the remaining portion of the patent fees after the lapse of the period of payment under Article 79 (3);
  2. Where he/she pays the remaining portion of the patent fees after the lapse of the period of late payment under Article 81 (1).

[This Article Newly Inserted by Act No. 6768, Dec. 11, 2002]

#### **Article 81-3 (Restoration, etc. of Patent Application or Patent Right by Late Payment or Remaining Payment of Patent Fees)**

- (1) If a patentee or a person intending to register a patent right has failed to observe the deadline for late payment of the patent fees under Article 81 (1) or the deadline for remaining payment of the patent fees under Article



81-2 (2) due to any cause beyond his/her control, he/she may pay the patent fees or the remaining portion thereof within fourteen days after the said cause ceases to exist: Provided, That this shall not apply where six months have elapsed since the expiration of the deadline for late payment or remaining payment, whichever is later. *<Amended by Act No. 6768, Dec. 11, 2002>*

- (2) Notwithstanding Article 81 (3), a person who has paid the patent fees or the remaining portion thereof in accordance with paragraph (1) shall be deemed not to have abandoned the patent application and the relevant patent right shall be deemed to have existed continuously. *<Amended by Act No. 6768, Dec. 11, 2002; Act No. 9381, Jan. 30, 2009>*
- (3) Where the patent right of a patented invention in execution has been extinguished, because the patent fee was not paid within the extended payment deadline under Article 81 (1) or the remaining portion thereof was not paid within the remaining payment period under Article 81-2 (2), the relevant patentee may apply to restore the relevant extinguished right by paying three times the amount of the patent fees under Article 79 within three months from the expiration date of the extended payment deadline or of the remaining payment period. In such cases, the relevant patent right shall be deemed to have existed continuously. *<Newly Inserted by Act No. 7554, May 31, 2005; Act No. 9381, Jan. 30, 2009>*
- (4) The effects of a patent application or a patent right under paragraph (2) or (3) shall not extend to another person's working of the patented invention during a period from the date of expiration of the extended period for late payment of the patent fees to the date of actual payment or remainder payment of the patent fees (hereafter referred to as "period of limited effect" in this Article). *<Amended by Act No. 6768, Dec. 11, 2002; Act No. 7554, May 31, 2005>*
- (5) During the period of limited effect, a person who has been commercially or industrially working or preparing to work an invention in good faith under a patent application or patent right in accordance with paragraph (2) or (3) in the Republic of Korea, shall have a non-exclusive license on that patent right under the patent application within the scope of the object of the invention or business that he/she is working or preparing to work. *<Amended by Act No. 7554, May 31, 2005>*
- (6) A person who has been granted a non-exclusive license in accordance with paragraph (5) shall pay reasonable consideration to the patentee or

exclusive licensee. *<Amended by Act No. 7554, May 31, 2005>*

*[This Article Newly Inserted by Act No. 6411, Feb. 3, 2001]*

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

- (1) A person initiating a patent-related procedure shall pay an official fees.
- (2) Where the number of claims is increased because of the amendments to the specification after a request for examination made by a person, other than the applicant, the applicant shall pay the fees for the request for examination corresponding to the increased number of claims. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (3) Matters necessary for the payment of official fees, the payment method and deadline thereof under paragraph (1) and other necessary matters shall be prescribed by Ordinance of the Ministry of Knowledge Economy. *<Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6768, Dec. 11, 2002; Act No. 8852, Feb. 29, 2008>*

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

- (1) Notwithstanding Articles 79 and 82, the Commissioner of the Korean Intellectual Property Office shall grant an exemption from paying any of the following patent fees or official fees:*<Amended by Act No. 11117, Dec. 2, 2011>*
  1. Official fees or patent fees corresponding to the patent applications or patent rights belonging to the State;
  2. Official fees related to requests for an invalidation trial made by an examiner under Article 133 (1), 134 (1) and (2) or 137 (1).
- (2) Notwithstanding Articles 79 and 82, where a patent application has been filed by a person eligible for assistances in accordance with Article 5 of the National Basic Living Security Act or a person prescribed by Ordinance of the Ministry of Knowledge Economy, the Commissioner of the Korean Intellectual Property Office may reduce or exempt the payment of the official fees prescribed by Ordinance of the Ministry of Knowledge Economy and the patent fees for obtaining the establishment registration of a patent right for the first three years. *<Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6024, Sep. 7, 1999; Act No. 6768, Dec. 11, 2002; Act No. 7871, Mar. 3, 2006; Act No. 8852, Feb. 29, 2008>*
- (3) A person who intends to take advantage of reduction or exemption of patent fees or official fees in accordance with paragraph (2) shall submit documents prescribed by Ordinance of the Ministry of Knowledge Economy to the Commissioner of the Korean Intellectual Property Office.

*<Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6768, Dec. 11, 2002; Act No. 8852, Feb. 29, 2008>*

**Article 84 (Refund of Patent Fees, etc.)**

(1) No patent fee and official fee paid shall be refunded: Provided, That in any of the following cases, such fees shall be refundable upon request by a person who made such payment: *<Amended by Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 8197, Jan. 3, 2007>*

1. Patent fees or official fees paid erroneously;
2. Portions corresponding to the patent fee for the years subsequent to the year in which a trial decision of invalidation on the patent becomes final and conclusive;
3. Portions corresponding to the patent fee for the years subsequent to the year in which a trial decision of invalidation on the registration of patent term extension becomes final and conclusive;
4. Application fees for a patent and fees for the request for examination among official fees already paid where the patent application concerned was withdrawn or abandoned within a month after such application is filed (excluding a divisional application, converted application and patent application with a request for accelerated examination).

(2) When any patent fee or official fee paid falls under any subparagraph of paragraph (1), the Commissioner of the Korean Intellectual Property Office shall issue a notification to the party who paid such fees. *<Newly Inserted by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*

(3) Refund of patent fees and official fees under the proviso to paragraph (1) may not be claimed if more than three years have elapsed from the date of receiving the notification under paragraph (2). *<Amended by Act No. 7871, Mar. 3, 2006; Act No. 8462, May 17, 2007>*

*[This Article Wholly Amended by Act No. 4594, Dec. 10, 1993]*

**Article 85 (Patent Register)**

(1) The Commissioner of the Korean Intellectual Property Office shall keep the Patent Register at the Korean Intellectual Property Office and shall register the following matters: *<Amended by Act No. 6768, Dec. 11, 2002>*

1. The establishment, transfer, extinguishment, recovery, restriction on disposal, or extension of the term of a patent right;
2. The establishment, maintenance, transfer, modification, extinguishment, or restriction on disposal of an exclusive or non-exclusive license;

3. The establishment, transfer, modification, extinguishment or restriction on the disposal of a pledge on a patent right or on an exclusive or non-exclusive license.
- (2) All or parts of the Patent Register under paragraph (1) may be stored on magnetic tapes, etc.
- (3) Necessary information relating to the matters and procedures of registration not provided for in paragraphs (1) and (2) shall be prescribed by Presidential Decree.
- (4) Specifications and drawings of patented inventions and other documents prescribed by Presidential Decree shall be deemed part of the Patent Register.

**Article 86 (Issuance of Patent Registration Certificate)**

- (1) When a patent right has been registered, the Commissioner of the Korean Intellectual Property Office shall issue a patent registration certificate to the relevant patentee.
- (2) Where a patent registration certificate does not coincide with the Patent Register or other documents, the Commissioner of the Korean Intellectual Property Office shall reissue the patent registration certificate with amendments, or issue a new patent registration certificate upon request or ex officio.
- (3) When a decision on a trial for amendment under Article 136 (1) has become final and conclusive, the Commissioner of the Korean Intellectual Property Office shall issue a new patent registration certificate in accordance with the trial decision.

## CHAPTER V PATENT RIGHT

**Article 87 (Registration of Establishment of Patent Right and Publication of Registration)**

- (1) A patent right shall enter into effect upon establishment of registration thereof.
- (2) The Commissioner of the Korean Intellectual Property Office shall register the establishment of a patent right in any case of the following subparagraphs: *<Amended by Act No. 7871, Mar. 3, 2006>*
  1. Where the payment of patent fees has been made in accordance with Article 79 (1);
  2. Where the late payment of patent fees has been made in accordance

- with Article 81 (1);
3. Where the remaining portion of patent fees has been paid in accordance with Article 81-2 (2);
  4. Where the patent fees or the remaining portion thereof has been paid in accordance with Article 81-3 (1);
  5. Where an exemption from the payment of patent fees has been granted under Article 83 (1) 1 and (2).
- (3) Where registration has been made under paragraph (2), the Commissioner of the Korean Intellectual Property Office shall publish the grant of the patent together with the relevant information in the Patent Gazette. *<Amended by Act No. 5329, Apr. 10, 1997>*
- (4) The publication of the registration of a patented invention required to be treated confidentially shall be reserved until it is declassified, and upon declassification, the registration shall be published without delay. *<Newly Inserted by Act No. 5329, Apr. 10, 1997>*
- (5) The Commissioner of the Korean Intellectual Property Office shall provide application documents and attached materials thereof for public inspection for a period of three months from the date of publication of registration. *<Newly Inserted by Act No. 5329, Apr. 10, 1997>*
- (6) Matters to be published in the Patent Gazette with respect to the publication of registration under paragraph (3) shall be prescribed by Presidential Decree. *<Newly Inserted by Act No. 5329, Apr. 10, 1997>*

**Article 88 (Term of Patent Right)**

- (1) The term of a patent right shall commence upon registration of the patent right under Article 87 (1) and last for 20 years from the filing date of the patent application. *<Amended by Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001>*
- (2) Where a patent is granted to a lawful holder of the right under Articles 34 and 35, the term of a patent right under paragraph (1) shall be calculated from the date following the filing date of the patent application by the unentitled person. *<Amended by Act No. 5080, Dec. 29, 1995>*
- (3) Deleted. *<by Act No. 6411, Feb. 3, 2001>*
- (4) Deleted. *<by Act No. 7871, Mar. 3, 2006>*

**Article 89 (Extension of Term of Patent Right by Permit, etc)**

- (1) When any one intends to implement a patented invention, he/she shall obtain a permit or file for registration under other Acts and subordinate statutes, and, in cases of an invention prescribed by Presidential Decree,

which takes a long time due to activity or safety tests, etc. required for such permit or registration. etc. (hereinafter referred to as "permit, etc."), the term of the relevant patent right may be extended up to five years, during which the relevant invention cannot be implemented, notwithstanding the provisions of Article 88 (1).

- (2) In applying the provisions of paragraph (1), the period which has lapsed due to grounds attributable to patentees shall not be included in "period during which the relevant invention cannot be implemented" pursuant to paragraph (1).

*[This Article Wholly Amended by Act No. 11117, Dec. 2, 2011]*

**Article 90 (Applications to Register Extension of Term of Patent Right by Permit, etc.)**

- (1) A person who intends to apply to register the extension of a patent right under Article 89 (1) (hereafter referred to as "applicant for registration of extension" in this Article and Article 91) shall submit an application for registration of an extension of the term of a patent right to the Commissioner of the Korean Intellectual Property Office, stating each of the following: *<Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008; Act No. 11117, Dec. 2, 2011>*

1. The name and domicile of an applicant for registration of extension (if the applicant is a juristic person, its title and the location of its place of business);
  2. The name and domicile, or location of place of business, of the representative, if designated (if the representative is a patent corporation, its name, location of office and designated patent attorney's name);
  3. The identification by the number of patent for which an extension is applied, and the claims of that patent;
  4. The period of extension;
  5. The requirements for permission, etc. under Article 89 (1);
  6. The grounds for extension prescribed by Ordinance of the Ministry of Knowledge Economy (accompanied by materials substantiating the grounds).
- (2) An application to register an extension of the term of a patent right pursuant to paragraph (1) shall be filed within three months from the date permission, etc. under Article 89 (1) was obtained: Provided, That such

application may not be filed six months before the term of patent right provided for in Article 88 expires.<Amended by Act No. 11117, Dec. 2, 2011>

- (3) Where a patent right is owned by joint owners, an application to register an extension of the term of a patent right shall be made in the names of all the joint owners.
- (4) Where an application to register an extension of term of a patent right pursuant to paragraph (1) has been filed, the term shall be deemed extended: Provided, That the same shall not apply where a decision of refusal for registration of extension of term under Article 91 has become final and conclusive.<Amended by Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001; Act No. 11117, Dec. 2, 2011>
- (5) Where an application to register an extension of the term of a patent right pursuant to paragraph (1) has been filed, the Commissioner of the Korean Intellectual Property Office shall publish the information prescribed in paragraph (1) in the Patent Gazette.<Amended by Act No. 11117, Dec. 2, 2011>
- (6) An applicant for registration of an extension may make an amendment to the matters referred to in paragraph (1) 3 through 6, which are described in the application for registration of an extension (excluding the patent number of the patent right to be extended under subparagraph 3) until the examiner transmits a certified copy of the decision for registration or rejection of the extension: Provided, That after receiving a notice of grounds for rejection which is applicable mutatis mutandis pursuant to Article 93, he/she may make an amendment in the period for presentation of a written opinion only, according to the relevant notice of grounds for rejection. <Newly Inserted by Act No. 6411, Feb. 3, 2001; Act No. 9381, Jan. 30, 2009>

**Article 91 (Decision of Rejecting Application to Register Extension of Term of Patent Right by Permit, etc)**

An examiner shall make a decision to reject an application to register an extension of the term of a patent right pursuant to Article 90 when it falls under any of the following subparagraphs:<Amended by Act No. 6411, Feb. 3, 2001; Act No. 11117, Dec. 2, 2011>

1. When a permit etc. under Article 89 (1) is deemed unnecessary for implementing the relevant patented invention;
2. When the relevant patentee or any person who has an exclusive license

- or registered non-exclusive license related to the relevant patent right fails to obtain a permit, etc. under Article 89 (1);
3. When the period of an application for extension exceeds the period during which the relevant patented invention could not have been implemented pursuant to Article 89;
  4. When an applicant for the registration of extension is not the relevant patentee;
  5. When an application for the registration of extension has been filed, in violation of Article 90 (3).

**Article 92 (Decision, etc. to Register Extending Term of Patent Right by Permit, etc)**

- (1) Where an examiner finds no reason under any subparagraph of Article 91 (1) to reject an application for an extension of the term of a patent right under Article 90, he/she shall make a decision to register the extension.  
<Amended by Act No. 6411, Feb. 3, 2001; Act No. 11117, Dec. 2, 2011>
- (2) When a decision to register the extension has been made under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall register the extension of the term of the patent right in the Patent Register. <Amended by Act No. 6411, Feb. 3, 2001>
- (3) When the registration under paragraph (2) has been made, the information prescribed in the following subparagraphs shall be published in the Patent Gazette: <Amended by Act No. 6411, Feb. 3, 2001; Act No. 11117, Dec. 2, 2011>
  1. The name and domicile of a patentee (if the patentee is a legal entity, its title and the location of its place of business);
  2. The patent number;
  3. The date of registration of the extension;
  4. The period of the extension;
  5. The requirements for permission, etc. under Article 89 (1).

attributable to the patentee. <Amended by Act No. 5576, Sep. 23, 1998>

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

- (1) When the registration of establishment of a patent right is delayed than the date on which four years lapse after the date of a patent application or the date on which three years lapse after a request for the examination of an application is made, whichever is later, the term of the relevant patent right may be extended as much as the delayed period, notwithstanding the provisions of Article 88 (1).



- (2) In applying the provisions of paragraph (1), the period delayed due to an applicant shall be excluded from the extension of the term of a patent right under paragraph (1): Provided, That when the period delayed due to an applicant overlaps with the abovementioned delayed period, the period excluded from the extension of the term of a patent right shall not exceed the actual period delayed due to an applicant.
- (3) Matters concerning "the period delayed due to an applicant" under paragraph (2) shall be prescribed by Presidential Decree.
- (4) When four years are reckoned from the date of a patent application pursuant to paragraph (1), any date falling under each of the following subparagraphs shall be deemed the date of a patent application, notwithstanding the provisions of Articles 34, 35, 52 (2), 53 (2), 199 (1) and 214 (4):
  1. The date when the lawful holder of a right applies for a patent, in cases of a patent application by the lawful holder of a right pursuant to Article 34 or 35;
  2. The date when a divisional application is filed, in cases of a divisional application under Article 52;
  3. The date when a converted application is filed, in cases of a converted application under Article 53;
  4. The date when a document containing matters falling under subparagraphs of Article 203 (1) is submitted, in cases of an international application construed as a patent application pursuant to Article 199 (1);
  5. The date when an applicant who filed an international application requests the Commissioner of the Korean Intellectual Property Office to make a decision pursuant to Article 214 (1), in cases of an international application construed as a patent application pursuant to Article 214;
  6. The date when a patent application is filed, in cases of a patent application which does not fall under any of the subparagraphs 1 through 5.

*[This Article Newly Inserted by Act No. 11117, Dec. 2, 2011]*

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

- (1) Any person who intends to apply to register the extension of the term of a patent right under Article 92-2 (hereinafter referred to as "applicant for

registration of extension" in this Article and Article 92-4) shall submit an application for registration of extension of the term of a patent right accompanied with the following matters to the Commissioner of the Korean Intellectual Property Office:

1. The name and domicile of an applicant for registration of extension (if the applicant is a juristic person, its title and the location of its business place);
  2. The name and domicile of an agent or the location of business place, when the agent of an applicant for registration of extension exists (if the agent is a patent office, its title, location of its business place and the name of a designated patent attorney);
  3. The patent number of a patent right subject to extension;
  4. The period of application for extension;
  5. Grounds for extension prescribed by Ordinance of the Ministry of Knowledge Economy (data certifying such grounds shall be attached thereto).
- (2) An application to register extension of the term of a patent right pursuant to paragraph (1) shall be filed within three months from the date when the establishment of a patent right is registered.
- (3) Where a patent right is owned by joint owners, an application to register extension of the term of a patent right shall be filed by all joint owners.
- (4) Any applicant for registration of extension may revise matters falling under paragraph (1) 4 and 5, among matters stated in a written application for registration of extension, before an examiner decides whether extension of the term of a patent right shall be registered: Provided, That after he/she receives a notice on grounds for refusal, which are applied mutatis mutandis under Article 93, he/she may revise such matters only in the period for submission of written opinions following the relevant notice on grounds for refusal.

*[This Article Newly Inserted by Act No. 11117. Dec. 2, 2011]*

**Article 92-4 (Decision to Reject Application to Register Extension of Term of Patent Right Following Delayed Registration)**

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

1. When the period of the application for extension exceeds a period of extension recognized pursuant to Article 92-2;

2. When an applicant for registration of extension is not the relevant patentee;
3. When the application for registration of extension is filed, in violation of Article 92-3 (3).

*[This Article Newly Inserted by Act No. 11117, Dec. 2, 2011]*

**Article 92-5 (Decision, etc to Register Extension of Term of Patent Right Following Delayed Registration)**

- (1) When an examiner cannot find a ground falling under any of the subparagraphs of Article 92-4, with regard to any application to register extension of term of a patent right pursuant to Article 92-3, he/she shall decide to register such extended term.
- (2) When a decision is made to register extension of term of a patent right pursuant to paragraph (1), the Commissioner of the Korean Intellectual Property Office shall register such extension with the patent original register.
- (3) When any registration is made pursuant to paragraph (2), the following matters shall be included in the patent gazette:
  1. The name and domicile of a patentee (if a patentee is a juristic person, its name and its business place);
  2. The patent number;
  3. The date when the extension of term of a patent right is registered;
  4. The period of extension.

*[This Article Newly Inserted by Act No. 11117, Dec. 2, 2011]*

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

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

*[This Article Wholly Amended by Act No. 11117, Dec. 2, 2011]*

**Article 94 (Effects of Patent Right)**

A patentee shall have the exclusive right to work a patented invention both commercially and industrially: Provided, That where the patent right is the subject of an exclusive license, this shall not apply to the extent that the exclusive licensee has the exclusive right to work the patented invention under Article 100 (2).

**Article 95 (Effects of Patent Right with its Term Extended by Permit, etc)**

The effects of a patent right, the term of which has been extended pursuant to Article 90 (4), shall not extend to any other acts except the working of

the patented invention with respect to such products for which permission, etc. was the basis for registering the extension (or where permission, etc. was obtained for any specific use of the product, with respect to the product adapted for such specific use).<Amended by Act No. 11117, Dec. 2, 2011>

#### **Article 96 (Limitations on Patent Rights)**

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

<Amended by Act No. 9985, Jan. 27, 2010>

1. Working of the patented invention for the purpose of research or experiments (including item permission or reporting on medicines under the Pharmaceutical Affairs Act, and research or experiments for registration of agrochemicals under the Agrochemicals Control Act);
2. Vessels, aircraft or vehicles merely passing through the Republic of Korea, or machinery, instruments, equipment or other accessories used therein;
3. Articles existing in the Republic of Korea as at the time the patent application was filed.

(2) The effects of the patent right for inventions of a medicine (referring to products used for diagnosis, therapy, alleviation, medical treatment or prevention of human diseases; hereinafter the same shall apply) manufactured by mixing two or more medicines, or for inventions of processes for manufacturing medicines by mixing two or more medicines, shall not extend to the acts of manufacturing medicines or to medicines manufactured by such acts in accordance with the Pharmaceutical Affairs Act. <Amended by Act No. 7871, Mar. 3, 2006>

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

The scope of protection conferred by a patented invention shall be determined by the subject matters described in the claims.

#### **Article 98 (Relation to Patented Invention, etc. of Another Person)**

Where the working of a patented invention would infringe another person's patented invention, registered utility model or registered design or similar design under an application filed prior to the filing date of the patent application concerned, or where a patent right conflicts with another person's design right or trademark right under an application for registration for a design right or trademark right filed prior to the filing date of the patent application concerned, the patentee, exclusive licensee or non-exclusive licensee shall not work the patented invention commercially or industrially without permission from the owner of the earlier patent, utility model right,

or design right, or trademark right. <Amended by Act No. 4594, Dec. 10, 1993; Act No. 6411, Feb. 3, 2001; Act No. 7289, Dec. 31, 2004>

**Article 99 (Transfer and Joint Ownership of Patent Right)**

- (1) A patent right may be transferred.
- (2) Where a patent right is owned jointly, each joint owner of the patent right may neither transfer his/her share nor establish a pledge upon it without the consent of all the other joint owners.
- (3) Where a patent right is owned jointly, each joint owner may, except as otherwise agreed in a contract among all the joint owners, work the patented invention by himself/herself without the consent of the other joint owners.
- (4) Where a patent right is owned jointly, each joint owner of the patent right may not grant an exclusive license or a non-exclusive license of the patent right without the consent of the other joint owners.

**Article 100 (Exclusive License)**

- (1) A patentee may grant an exclusive license of the patent right to others.
- (2) An exclusive licensee having been granted an exclusive license under paragraph (1), shall have the exclusive right to work the patented invention commercially or industrially to the extent provided for in the license contract.
- (3) No exclusive licensee may transfer the license without the consent of the patentee, unless it is transferred together with the underlying business, or by inheritance or other general succession.
- (4) No exclusive licensee may establish a pledge nor grant a nonexclusive license on the exclusive license without the consent of the patentee.
- (5) Article 99 (2) through (4) shall apply mutatis mutandis to exclusive licenses.

**Article 101 (Effects of Registration of Patent Right and Exclusive License)**

- (1) The following matters shall be of no effect unless they are registered:  
<Amended by Act No. 6411, Feb. 3, 2001>
  1. The transfer (excluding transfer by inheritance or other general succession) or extinguishment by abandonment, or restriction on disposal of a patent right;
  2. The grant, transfer (excluding transfer by inheritance or other general succession), modification, extinguishment (excluding extinguishment by confusion), or restriction on disposal of an exclusive license;
  3. The establishment, transfer (excluding transfer by inheritance or other

general succession), modification, extinguishment (excluding extinguishment by confusion), or restriction on disposal of a pledge on a patent right or exclusive license.

- (2) Inheritance of, or other general succession relating to a patent right, exclusive license, and pledge under paragraph (1) shall be notified without delay to the Commissioner of the Korean Intellectual Property Office.

#### **Article 102 (Non-exclusive License)**

- (1) A patentee may grant to others a non-exclusive license on his/her patent right.
- (2) A non-exclusive licensee shall have the right to work the patented invention commercially or industrially to the extent prescribed in this Act or provided for by the license contract. *<Amended by Act No. 4594, Dec. 10, 1993>*
- (3) A non-exclusive license granted under Article 107 may only be transferred together with the underlying business. *<Amended by Act No. 5080, Dec. 29, 1995>*
- (4) A non-exclusive license under Article 138 of this Act, Article 32 of the Utility Model Act, or Article 70 of the Design Protection Act shall be transferred together with the patent right, utility model right, or design right concerned and shall be extinguished as at the same time the patent, utility model or design right concerned is extinguished. *<Amended by Act No. 5576, Sep. 23, 1998; Act No. 7289, Dec. 31, 2004; Act No. 7871, Mar. 3, 2006>*
- (5) No non-exclusive license, other than those described in paragraphs (3) and (4), may be transferred without the consent of the patentee (or the patentee and the exclusive licensee in cases of a non-exclusive license on an exclusive license), unless it is transferred together with the underlying business, or by inheritance or other general succession. *<Amended by Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001>*
- (6) No pledge may be established on a non-exclusive license, other than those under paragraphs (3) and (4), without the consent of the patentee (or the patentee and the exclusive licensee in cases of a non-exclusive license on an exclusive license).
- (7) Article 99 (2) and (3) shall apply mutatis mutandis to non-exclusive licenses. *<Amended by Act No. 4594, Dec. 10, 1993>*

#### **Article 103 (Non-exclusive License by Prior Use)**

At the time of filing of a patent application, a person who has made an

invention without having prior knowledge of the contents of an invention described in an existing patent application, or has learned how to make the invention from such person and has been working the invention commercially or industrially in the Republic of Korea, in good faith, or has been making preparations therefor, shall have a non-exclusive license on that patent right for the invention under the patent application. Such license shall be limited to the invention which is being worked, or for which preparations for working have been made, and to the purpose of such working or preparations.

*<Amended by Act No. 6411, Feb. 3, 2001>*

**Article 104 (Non-exclusive License due to Working prior to Registration of Request for Invalidation Trial)**

(1) Where a person falling under any of the following subparagraphs has been working an invention or a device in the Republic of Korea commercially or industrially, or has been making preparations therefor, prior to the registration of a request for an invalidation trial of the patent or registered utility model concerned, without knowing that his/her patented invention or registered utility model is subject to invalidation, such person shall have a non-exclusive license on that patent right or have a non-exclusive license on the exclusive license to a patent right existing at the time the patent or the utility model registration was invalidated, but such non-exclusive license shall be limited to the invention or device which is being worked or for which preparations for working are being made and to the purpose of such working or the preparations therefor: *<Amended by Act No. 5576, Sep. 23, 1998; Act No. 7871, Mar. 3, 2006>*

1. The original patentee, where one of two or more patents granted for the same invention has been invalidated;
2. The original owner of a utility model right, where a patented invention and a device registered as a utility model are the same and the utility model registration has been invalidated;
3. The original patentee, where his/her patent has been invalidated and a patent for the same invention has been granted to an entitled person;
4. The original owner of a utility model right, where his/her utility model registration has been invalidated and a patent for the same invention as the device has been granted to an entitled person;
5. In cases of subparagraphs 1 through 4, a person who has been granted an exclusive license or a non-exclusive license, or non-exclusive license

on the exclusive license and has been registered such, at the time of registration of the request for an invalidation trial of the invalidated patent right or utility model right: Provided, That a person falling under Article 118 (2) is not required to register the license.

- (2) A person who has been granted a non-exclusive license in accordance with paragraph (1) shall pay reasonable consideration to the patentee or exclusive licensee.

#### **Article 105 (Non-exclusive License after Expiration of Design Right)**

- (1) Where a design right applied for a patent and registered prior to or on the filing date of a patent application conflicts with the patent right, and the term of the design right has expired, the owner of such design right shall have a non-exclusive license on the patent right or the exclusive license existing at the time the design right expired to the extent of such design right. *<Amended by Act No. 7289, Dec. 31, 2004>*
- (2) Where a design right applied for a patent and registered prior to or on the filing date of a patent application conflicts with the patent right, and the term of the design right has expired, a person who has an exclusive license on the design right existed at the time of expiration, or non-exclusive license under Article 118 (1) of this Act, as applied mutatis mutandis by Article 61 of the Design Protection Act related to the design right or the exclusive license shall have a non-exclusive license on the patent right concerned or on the exclusive license at the time the design right expired to the extent of the expired right. *<Amended by Act No. 7289, Dec. 31, 2004>*
- (3) A person who has been granted a non-exclusive license under paragraph (2) shall pay reasonable consideration to the patentee or exclusive licensee.

#### **Article 106 (Expropriation of Patent Rights)**

- (1) If a patented invention is necessary for national defense in time of war, uprising, or any other similar emergency, the Government may expropriate a patent right. *<Amended by Act No. 9985, Jan. 27, 2010>*
- (2) If a patent right is expropriated, rights to the invention, other than the patent right, shall be extinguished.
- (3) If the Government expropriates a patent right under paragraph (1), it shall pay reasonable compensation to the patentee, exclusive licensee or non-exclusive licensee. *<Amended by Act No. 9985, Jan. 27, 2010>*
- (4) Necessary matters concerning the expropriation of patent rights and



payment of compensation therefor shall be prescribed by Presidential Decree. <Amended by Act No. 9985, Jan. 27, 2010>

**Article 106-2 (Working of Patented Invention by Government, etc.)**

- (1) If it is deemed necessary to non-commercially work a patented invention due to a national or extreme emergency, or for the public interests, the Government may directly work the patented invention or have any person, other than the Government, work it.
- (2) When the Government or any person, other than the Government, becomes aware of or is able to know the fact that a patent right retained by a third person exists, he/she or it shall promptly notify the patentee, exclusive licensee or non-exclusive licensee of the fact of working under paragraph (1).
- (3) When the Government or any person, other than the Government, works a patented invention pursuant to paragraph (1), he/she or it shall pay reasonable compensation to the patentee, exclusive licensee or non-exclusive licensee.
- (4) Necessary matters concerning working of a patented invention and payment of compensation shall be prescribed by Presidential Decree.

*[This Article Newly Inserted by Act No. 9985, Jan. 27, 2010]*

**Article 107 (Adjudication for Grant of Non-exclusive License)**

- (1) Where a patented invention falls under any of the following subparagraphs, and where agreement is not reached while having a consultation with the patentee or exclusive licensee of the relevant patented invention on granting a non-exclusive license under reasonable conditions (hereafter referred to as "consultation" in this Article) or where the consultation is unable to take place, a person who intends to work the patented invention may request the Commissioner of the Korean Intellectual Property Office to adjudicate (hereinafter referred to as "adjudication") for grant of a non-exclusive license thereon: Provided, That where intended to work the patented invention noncommercially for the public interests and where falling under the provisions of subparagraph 4, an adjudication may be applied even if no agreement has been reached:  
<Amended by Act No. 7554, May 31, 2005>

1. Where the patented invention has not been worked for three or more consecutive years in the Republic of Korea, except in cases of natural disaster, unavoidable circumstances or other justifiable reasons prescribed by Presidential Decree;

2. Where the patented invention has not been continuously worked commercially or industrially in the Republic of Korea on a substantial scale during a period of three or more years without justifiable grounds, or where the demand in the Republic of Korea for the patented invention has not been satisfied to an appropriate extent and under reasonable conditions;
  3. Where the working of the patented invention is specially necessary for public interests;
  4. Where the working of the patented invention is necessary to remedy a practice determined to be unfair after the judicial or administrative process;
  5. Where the working of the patented invention is necessary for exporting medicines (including effective ingredients necessary for medicine production and diagnosis kits necessary for the use of medicines) to countries intending to import the medicines (hereafter referred to as "importing countries" in this Article) to cure diseases that threaten the health of the majority of its citizens.
- (2) Paragraph (1) 1 and 2 shall not apply unless a period of four years has lapsed from the filing date of the application for patent right to the patented invention.
- (3) In adjudication for the grant of a non-exclusive license, the Commissioner of the Korean Intellectual Property Office shall consider the necessity of each and every claim.
- (4) In making an adjudication under paragraph (1) 1 through 3, or 5, the Commissioner of the Korean Intellectual Property Office shall impose conditions falling under each of the following subparagraphs on persons subject to the adjudication: *<Amended by Act No. 7554, May 31, 2005>*
1. In cases of adjudication under paragraph (1) 1 through 3, the non-exclusive license shall be mainly worked for the purpose of supplies for sufficiency of demands in the Republic of Korea;
  2. In an adjudication under paragraph (1) 5, all volume of produced medicines shall be exported to importing countries.
- (5) In making an adjudication, the Commissioner of the Korean Intellectual Property Office shall assure that an appropriate price shall be paid. In such cases, in making an adjudication under paragraph (1) 4 or 5, matters falling under each of the following subparagraphs may be considered for a decision of pricing: *<Amended by Act No. 7554, May 31, 2005>*

1. In cases of adjudication under paragraph (1) 4, the purport for correcting unfair trade practices;
  2. In cases of adjudication under paragraph (1) 5, the economic values in importing countries which occur by working the relevant patented inventions.
- (6) With respect to semi-conductor technology, the request for adjudication may be made only in cases set forth in paragraph (1) 3 (limited to noncommercial working for the public interests) or 4. *<Amended by Act No. 7554, May 31, 2005>*
- (7) The importing countries shall be limited to World Trade Organization member countries which have notified the World Trade Organization of the following matters, or non-WTO members prescribed by Presidential Decree which have notified the Government of the Republic of Korea of the following matters: *<Newly Inserted by Act No. 7554, May 31, 2005>*
1. Name and volume of medicines required by importing countries;
  2. If importing countries are not the least developed countries listed in a resolution by the General Assembly of the United Nations, the confirmation of the importing countries that manufacturing abilities for production of the relevant medicines are non-existent or insufficient;
  3. If the relevant medicines have been patented in an importing country, the confirmation of the said country that compulsory licensing has been permitted or intended to be permitted.
- (8) Medicines under paragraph (1) 5 mean those falling under any of the following subparagraphs: *<Newly Inserted by Act No. 7554, May 31, 2005>*
1. Patented medicines;
  2. Medicines produced by the patented manufacturing methods;
  3. Patented effective ingredients necessary for the production of medicines;
  4. Patented diagnosis kit necessary for the use of medicines.
- (9) Documents to be submitted by persons demanding an adjudication and other matters necessary for the adjudication shall be prescribed by Presidential Decree. *<Newly Inserted by Act No. 7554, May 31, 2005>*

*[This Article Wholly Amended by Act No. 5080, Dec. 29, 1995]*

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

Upon a request for adjudication, the Commissioner of the Korean Intellectual Property Office shall transmit a copy of the written request to the patentee or exclusive licensee mentioned in the request and to any other person having any registered right relating to the patent, and shall provide them an

opportunity to submit a response within the fixed period.

**Article 109 (Hearing of Opinions from Intellectual Property Rights Dispute Coordination Committee and Heads of Related Ministries)**

If recognized as necessary for making an adjudication, the Commissioner of the Korean Intellectual Property Office may hear opinions from the Intellectual Property Rights Dispute Coordination Committee under Article 41 of the Invention Promotion Act and the heads of the related Ministries, and may request the related administrative agencies or the related persons to cooperate. *<Amended by Act No. 8357, Apr. 11, 2007>*

*[This Article Wholly Amended by Act No. 7554, May 31, 2005]*

**Article 110 (Formalities, etc. of Adjudications)**

- (1) An adjudication shall be made in writing and shall state the grounds therefor.
- (2) The following matters shall be specified in an adjudication under paragraph (1): *<Amended by Act No. 5080, Dec. 29, 1995; Act No. 7554, May 31, 2005>*
  1. The scope and duration of a non-exclusive license;
  2. The consideration for the license and method and timing of payment;
  3. In cases of adjudication under Article 107 (1) 5, the medicines supplied by the patentee, exclusive licensee, or non-exclusive licensee (excluding the holder of a non-exclusive license issued through adjudication) of the relevant patented invention, externally discernable packaging and markings and the addresses of a web site that publishes information on the adjudication;
  4. Other codes of practice necessary for executing the terms or conditions provided by Acts and subordinate statutes or treaties to be executed by the person who is granted the adjudication in working the relevant patented invention.
- (3) Except for cases having justifiable grounds, the Commissioner of the Korean Intellectual Property Office shall make decisions on adjudication within six months from the date of demanding an adjudication. *<Newly Inserted by Act No. 7554, May 31, 2005>*
- (4) Where the demand for adjudication under Article 107 (1) 5 falls under paragraphs (7) and (8) of the said Article and all documents under paragraph (9) of the same Article are submitted, the Commissioner of the Korean Intellectual Property Office shall make an adjudication of establishment of the non-exclusive license, except for cases where

justifiable grounds exist. <Newly Inserted by Act No. 7554, May 31, 2005>

**Article 111 (Service of Certified Copies of Adjudication)**

- (1) Where an adjudication is made, the Commissioner of the Korean Intellectual Property Office shall serve certified copies of adjudication on the parties and any other person having the registered right relating to the patent.
- (2) When a certified copy of adjudication has been served on the parties under paragraph (1), consultation to the terms as specified in the adjudication shall be deemed to have been held by the parties.

**Article 111-2 (Alteration of Written Adjudication)**

- (1) Where any alteration is required on the matters of Article 110 (2) 3 which are specified on the written adjudication, the person who is granted the adjudication may request such to the Commissioner of the Korean Intellectual Property Office by attaching documents proving the relevant causes.
- (2) Where the request under paragraph (1) is admitted to be reasonable, the Commissioner of the Korean Intellectual Property Office may alter the matters clarified on the written adjudication. In such cases, he/she shall hear opinions of the interested persons.
- (3) Article 111 shall apply mutatis mutandis to cases under paragraph (2).

*[This Article Newly Inserted by Act No. 7554, May 31, 2005]*

**Article 112 (Deposit of Consideration)**

A party who is obligated to pay consideration under Article 110 (2) 2 shall make a deposit thereof under the following circumstances:

1. Where the party entitled to receive the consideration refuses or is unable to receive it;
2. Where an action under Article 190 (1) has been brought with respect to the consideration;
3. Where the patent right or exclusive license is the subject of a pledge: Provided, That the same shall not apply where the pledgee has consented.

**Article 113 (Lapse of Adjudication)**

Where a person who was granted adjudication fails to pay or deposit the consideration (or the first installment thereof, if payment is to be made periodically or by installments) under Article 110 (2) 2 by payment deadline, the adjudication shall lose its effect.

**Article 114 (Cancellation of Adjudication)**

- (1) Where a person who was granted adjudication falls under any of the following subparagraphs, the Commissioner of the Korean Intellectual Property Office may cancel the adjudication, ex officio or upon request by any interested party: Provided, That in cases of subparagraph 2, such action shall protect the non-exclusive license's lawful interests: *<Amended by Act No. 5080, Dec. 29, 1995; Act No. 7554, May 31, 2005>*
1. Where the working of the patented invention is not within the purpose of the adjudication;
  2. Where the grounds for adjudication on the authorization of non-exclusive license disappears and it is deemed that such grounds will not reoccur;
  3. Where matters under Article 110 (2) 3 or 4 which are specified on the written adjudication are violated without justifiable grounds.
- (2) The provisions of Articles 108, 109, 110 (1) and 111 (1) shall apply mutatis mutandis to cases under paragraph (1).
- (3) A non-exclusive license shall be extinguished upon cancellation of the ruling under paragraph (1).

**Article 115 (Restriction on Reason for Objections to Adjudication)**

Where a request for an administrative trial has been filed under the Administrative Appeals Act or a revocation action has been brought under the Administration Litigation Act as to the adjudication, the consideration determined in the adjudication shall not be a basis for objection. *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*

**Article 116 Deleted.** *<by Act No. 11117, Dec. 2, 2011>*

**Article 117 Deleted.** *<by Act No. 6411, Feb. 3, 2001>*

**Article 118 (Effects of Registration of Non-exclusive License)**

- (1) When a non-exclusive license has been registered, it shall also be effective against any person who subsequently acquires the patent right or an exclusive license.
- (2) A non-exclusive license granted under Articles 81-3 (5), 103 through 105, 122, 182 and 183 of this Act, and Article 10 (1) of the Invention Promotion Act shall have the same effect as prescribed under paragraph (1) of this Article even if it has not been registered. *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 8197, Jan. 3, 2007; Act No. 8357, Apr. 11, 2007>*
- (3) The transfer, modification, extinguishment or restriction on disposal of a non-exclusive license or the establishment, transfer, modification,

extinguishment or restriction on disposal of a pledge relating to a nonexclusive license shall not be effective against a third party unless it is registered.

**Article 119 (Restriction on Abandonment of Patent Right, etc.)**

- (1) No patentee shall abandon his/her patent right without the consent of the exclusive licensee, pledgee, or non-exclusive licensee under Articles 100 (4) and 102 (1) of this Act and Article 10 (1) of the Invention Promotion Act. *<Amended by Act No. 4594, Dec. 10, 1993; Act No. 8197, Jan. 3, 2007; Act No. 8357, Apr. 11, 2007>*
- (2) No exclusive licensee shall abandon his/her exclusive license without the consent of the pledgee or non-exclusive licensee under Article 100 (4).
- (3) No non-exclusive licensee shall abandon his/her non-exclusive license without the consent of the pledgee.

**Article 120 (Effects of Abandonment)**

A patent right, or an exclusive or non-exclusive license thereon, shall be extinguished as of the time of abandonment of the patent right or of the exclusive or non-exclusive license thereon.

**Article 121 (Pledge)**

Where a patent right or an exclusive or non-exclusive license is the subject of a pledge, the pledgee may not work the patented invention except as otherwise agreed in a contract.

**Article 122 (Non-exclusive License Incidental to Transfer of Patent Right by Exercise of Pledge Right)**

If a patentee works a patented invention prior to the establishment of a pledge on the patent right, the patentee shall have a non-exclusive license on the patented invention even if the patent right is transferred by an auction, etc. In such cases, the patentee shall pay reasonable consideration to the person to whom the patent right is transferred by an auction, etc. *<Amended by Act No. 4594, Dec. 10, 1993>*

**Article 123 (Subrogation of Pledge)**

A pledge may be exercised against compensation under this Act or against consideration or goods to be received for the working of the patented invention: Provided, That an attachment order shall be obtained prior to the payment or delivery of the consideration or goods.

**Article 124 (Extinguishment of Patent Right in Absence of Successor)**

A patent right shall be extinguished when no successor exists at the time of succession.

**Article 125 (Report on Working of Patent)**

The Commissioner of the Korean Intellectual Property Office may require a patentee, exclusive licensee or non-exclusive licensee to report whether the patented invention has been worked and the extent of such working, etc.

**Article 125-2 (Title of Execution on Amount of Compensation and Consideration)**

A final and conclusive ruling by the Commissioner of the Korean Intellectual Property Office on the amount of the compensation or consideration to be paid under this Act shall have the same effect as an enforceable title of execution. In such cases, the enforceable writ, which has the force of execution, shall be given by a public official of the Korean Intellectual Property Office.

*[This Article Newly Inserted by Act No. 6411, Feb. 3, 2001]*

## CHAPTER VI PROTECTION OF PATENTEES

**Article 126 (Right to Seek Injunction, etc. against Infringement)**

- (1) A patentee or exclusive licensee may demand a person who infringes or is likely to infringe on his/her own patent right to discontinue or refrain from such infringement.
- (2) A patentee or an exclusive licensee acting under paragraph (1) may demand the destruction of the articles by which the act of infringement was committed (including the products obtained by the act of infringement in cases of a process invention for manufacturing the products), the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

**Article 127 (Acts Deemed to be Infringement)**

Where any person intends to conduct any of the following acts as his/her business, he/she shall be deemed to infringe on a patent right or an exclusive license: *<Amended by Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001>*

1. In cases of the invention of a product, acts of making, assigning, leasing, importing, or offering for assignment or lease articles used exclusively for producing such products;
2. In cases of the invention of process, acts of making, assigning, leasing, importing or offering for assignment or lease articles used exclusively for working such process.

**Article 128 (Presumption, etc. of Amount of Losses)**



- (1) Where a patentee or exclusive licensee claims compensation from a person who has intentionally or negligently infringed his/her patent right or exclusive license for losses caused by the infringer's transfer of infringing articles, the amount of losses may be calculated by multiplying the number of transferred articles by the profit per unit of the articles that the patentee or exclusive licensee might have sold in the absence of said infringement. In such cases, the compensation may not exceed an amount calculated by multiplying the estimated profit per unit by the amount obtained by subtracting the number of articles actually sold from the number of products that the patentee or exclusive licensee could have produced: Provided, That where the patentee or exclusive licensee was unable to sell his/her product for reasons, other than infringement, a sum calculated according to the number of articles subject to the said circumstances shall be deducted. <Newly Inserted by Act No. 6411, Feb. 3, 2001>
- (2) Where a patentee or exclusive licensee claims compensation for losses from a person who has intentionally or negligently infringed a patent right or exclusive license, the profits gained by the infringer as a result of the infringement shall be presumed to be the amount of damage suffered by the patentee or exclusive licensee.
- (3) Where a patentee or exclusive licensee claims compensation for losses from a person who has intentionally or negligently infringed a patent right or exclusive license, the pecuniary amount which he/she would normally be entitled to receive for working of the patented invention may be claimed as the amount of losses suffered by the patentee or exclusive licensee.
- (4) Notwithstanding paragraph (3), where the amount of losses exceeds the amount referred to in paragraph (3), the amount in excess may also be claimed as compensation for losses. In such cases, the court may take into consideration the fact that there has been neither willfulness nor gross negligence on the part of the person who has infringed the patent right or the exclusive license when awarding losses. <Amended by Act No. 6411, Feb. 3, 2001>
- (5) In litigation relating to a patent right or exclusive license, where the court recognizes that the nature of the facts of the case makes it difficult to provide evidence proving the amount of losses that have occurred, the court may determine a reasonable amount on the basis of an examination

of the evidence and on a review of all the arguments, notwithstanding paragraphs (1) through (4). <Newly Inserted by Act No. 6411, Feb. 3, 2001>

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

Where one product is identical to another product manufactured by a patented process, the former shall be presumed to have been manufactured by the patented process of the latter: Provided, That where such product falls under any of the following subparagraphs, the same shall not apply:

1. A product publicly known or worked in the Republic of Korea prior to the filing of the patent application;
2. A product described in a publication distributed in the Republic of Korea or in a foreign country or a product made known to the public through telecommunication lines prescribed by Presidential Decree prior to the filing of the patent application.

*[This Article Wholly Amended by Act No. 6411, Feb. 3, 2001]*

**Article 130 (Presumption of Negligence)**

A person who has infringed a patent right or exclusive license of another person shall be presumed to have been negligent regarding such act of infringement.

**Article 131 (Recovery of Reputation of Patentee, etc.)**

Upon request of a patentee or exclusive licensee, the court may order the person who has injured the business reputation of the patentee or exclusive licensee by intentionally or negligently infringing the patent right or exclusive license to take necessary measures to restore the business reputation of the said patentee or exclusive licensee, in lieu of compensation for losses or in addition thereto.

**Article 132 (Submission of Documents)**

In litigation relating to the infringement of a patent right or exclusive license, the court may, upon request of a party, order the other party to submit documents necessary for the assessment of losses caused by the infringement: Provided, That this shall not apply when the person possessing the documents has a justifiable ground for refusing to submit them.

## CHAPTER VII TRIAL

**Article 132-2 (Intellectual Property Tribunal)**

- (1) The Intellectual Property Tribunal shall be established under the jurisdiction of the Commissioner of the Korean Intellectual Property Office

to be responsible for trials and retrials regarding patents, utility models, designs and trademarks and investigation and research thereof. *<Amended by Act No. 7289, Dec. 31, 2004>*

- (2) The Intellectual Property Tribunal shall be comprised of the President and administrative patent judges.
- (3) Matters necessary for the organization, personnel and operation of the Intellectual Property Tribunal shall be determined by Presidential Decree.

*[This Article Newly Inserted by Act No. 4892, Jan. 5, 1995]*

**Article 132-3 (Trial against Decision to Reject Patent Application, etc.)**

Where a person who has received a decision to reject a patent application or a decision to reject an application to register extension of the term of a patent right has an objection to such decision, such person may request a trial within thirty days from the date of receipt of the certified copy of the decision. *<Amended by Act No. 7871, Mar. 3, 2006; Act No. 11117, Dec. 2, 2011>*

*[This Article Wholly Amended by Act No. 6411, Feb. 3, 2001]*

**Article 132-4 Deleted.** *<by Act No. 6411, Feb. 3, 2001>*

**Article 133 (Invalidation Trial of Patent)**

(1) In any of the following cases, an interested party or an examiner may request a trial to invalidate a patent. In such cases, that patent contains two or more claims, a request for the invalidation trial may be made for each claim: Provided, That if three months have not passed since the date of registration publication of the patent right after registration of its establishment, any person may make a request for the invalidation trial on the grounds that the patent falls under any of the following subparagraphs (excluding subparagraph 2): *<Amended by Act No. 7871, Mar. 3, 2006; Act No. 10716, May 24, 2011>*

1. Where a person has violated Articles 25, 29, 32, 36 (1) through (3), or 42 (3) 1 or (4);
2. Where the patent has been granted to a person not entitled to obtain the patent under the main sentence of Article 33 (1), or in violation of Article 44;
3. Where a person is unable to obtain the patent under the proviso to Article 33 (1);
4. After the grant of the patent, where the patentee is no longer capable of enjoying the patent right under Article 25, or the patent comes to be contrary to a treaty;
5. Where a person is unable to obtain the patent for violating a treaty;

6. Where the application is amended beyond the scope under Article 47 (2);
  7. Where the application is a divisional application filed beyond the scope under Article 52 (1);
  8. Where the application is a converted application beyond the scope under Article 53 (1).
- (2) A trial under paragraph (1) may be requested even after the extinguishment of a patent right.
  - (3) Where a trial decision invalidating a patent has become final and conclusive, the patent right shall be deemed never to have existed: Provided, That where a patent falls under paragraph (1) 4 and a trial decision invalidating the patent has become final and conclusive, the patent right shall be deemed not to have existed at the time when the patent first became subject to the said subparagraph.
  - (4) Where a trial under paragraph (1) has been requested, the presiding administrative patent judge shall notify the exclusive licensee of the patent right and any other person having registered rights relating to such patent of the purport of such request.

**Article 133-2 (Correction of Patent during Invalidation Trial of Patent)**

- (1) A defendant of a trial under Article 133 (1) may request corrections to the specification or drawings of a patented invention only in cases falling under any subparagraph of Article 136 (1) within the term designated pursuant to Article 147 (1) or the latter part of Article 159 (1). In such cases, if the presiding administrative patent judge finds it necessary to allow request of corrections due to submission of evidential documents by an applicant after the designated period prescribed by Article 147 (1), he/she may designate another period and allow request of corrections within the period. *<Amended by Act No. 8197, Jan. 3, 2007; Act No. 9381, Jan. 30, 2009>*
- (2) In cases of a request of corrections pursuant to paragraph (1), a request of corrections carried out before the request of corrections during the procedures of relevant invalidation trials shall be deemed withdrawn. *<Newly Inserted by Act No. 8197, Jan. 3, 2007>*
- (3) When the corrections have been requested under paragraph (1), the presiding administrative patent judge shall serve a copy of the written request on the defendant under Article 133 (1).
- (4) Articles 136 (2) through (5), (7) through (11), 139 (3) and 140 (1), (2)

and (5) shall apply mutatis mutandis to requests for correction under paragraph (1). In such cases, "before issuance of a notification of closure of the trial examination under Article 162 (3) (where the trial examination is reopened under Article 162 (4), before a subsequent notification of the closure of the trial examination is issued under Article 162 (3))" in Article 136 (9) shall be construed as "within the designated term where it would be noticed under Article 136 (5)."

- (5) With respect to the application of paragraph (4), Article 136 (4) shall not apply mutatis mutandis in correcting a claim against which a patent invalidation trial is requested under Article 133 (1). *<Newly Inserted by Act No. 7871, Mar. 3, 2006; Act No. 8197, Jan. 3, 2007>*

*[This Article Newly Inserted by Act No. 6411, Feb. 3, 2001]*

**Article 134 (Invalidation Trial of Registration for Extension of Term of Patent Right)**

- (1) In any of the following cases, any interested party or examiner may request a trial to invalidate the registration of an extension of the term of a patent right pursuant to Article 92: *<Amended by Act No. 5329, Apr. 10, 1997; Act No. 11117, Dec. 2, 2011>*

1. Where an extension had been registered with respect to the application that did not require any permission, etc. under Article 89 for purposes of working the patented invention;
2. Where an extension had been registered with respect to the application, permission, etc. under Article 89 of which was not obtained by the patentee or an exclusive licensee thereof or a registered nonexclusive licensee;
3. Where the term extended by the registration of an extension exceeds the period during which the patented invention could not be worked;
4. Where the registration of an extension has been effected on an application made by a person, other than the patentee;
5. Where the registration of an extension has been effected on an application made in violation of Article 90 (3);
6. Deleted. *<by Act No. 5576, Sep. 23, 1998>*

- (2) When registering extension of the term of a patent right pursuant to Article 92-5 falls under any of the following subparagraphs, any interested party or examiner may request a trial to invalidate such registration: *<Newly Inserted by Act No. 11117, Dec. 2, 2011>*

1. When the period extended following the registration of extension

exceeds the period of extension recognized pursuant to Article 92-2;

2. When the registration of extension is made, with regard to an application filed by any person, other than the relevant patentee;

3. When the registration of extension is made, with regard to an application which violates Article 92-3 (3).

(3) The provisions of Article 133 (2) and (4) shall apply mutatis mutandis to requests for a trial under paragraphs (1) and (2). *<Amended by Act No. 11117, Dec. 2, 2011>*

(4) Where a trial decision that the registration of extension is to be invalidated has become final and conclusive, the registration of extension of the term shall be deemed never existed: Provided, That where the registration of extension falls under any of the following subparagraphs, extension shall be deemed not existed for the relevant period:*<Amended by Act No. 6411, Feb. 3, 2001; Act No. 11117, Dec. 2, 2011>*

1. In cases where the registration of extension falls under paragraph (1) 3 and thus becomes invalidated, the period extended in excess of a period during which the relevant patented invention could not be implemented;

2. In cases where the registration of extension falls under paragraph (2) 1 and thus becomes invalidated, the period extended in excess of a period for extension recognized pursuant to Article 92-2.

#### **Article 135 (Trial to Confirm Scope of Patent Right)**

(1) A patentee, an exclusive licensee or an interested person may request a trial to confirm the scope of a patent right. *<Amended by Act No. 7871, Mar. 3, 2006>*

(2) Where a trial is requested to confirm the scope of a patent right under paragraph (1), the confirmation may apply to each claim if the patent contains two or more claims.

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

(1) A patentee may request a trial to correct the specification or drawings in any of the following cases: Provided, That this shall not apply where an invalidation trial against the patent is pending before the Intellectual Property Tribunal: *<Amended by Act No. 7871, Mar. 3, 2006; Act No. 9381, Jan. 30, 2009>*

1. Where the scope of claims is reduced;

2. Where a clerical error is corrected;

3. Where an ambiguous statement is made to a clear statement.

- (2) Correction of the specification or drawings under paragraph (1) shall be limited to the scope of the subject matter disclosed in the specification or drawings of the patented invention: Provided, That where a clerical error is corrected pursuant to paragraph (1) 2, it shall be limited to the scope of the subject matter of the specification or drawings initially attached to the application. *<Amended by Act No. 9381, Jan. 30, 2009>*
- (3) For purposes of correction of the specification or drawings under paragraph (1), the claim shall neither be extended nor modified.
- (4) A correction which is made in accordance with paragraph (1) and falls under paragraph (1) 1 and 2 shall be patentable at the time of filing of the patent application with regard to the matters which are described in the scope of claims after the correction. *<Amended by Act No. 9381, Jan. 30, 2009>*
- (5) Where a request for a trial for correction under paragraph (1) is deemed not to comply with any subparagraph of paragraph (1), to exceed the scope of paragraph (2), or to be in violation of paragraph (3) or (4), the administrative patent judge shall notify the petitioner of the reasons therefor and provide him/her an opportunity to submit his/her written opinion within a designated period. *<Amended by Act No. 9381, Jan. 30, 2009>*
- (6) A trial for correction under paragraph (1) may be requested even after the patent right has been extinguished: Provided, That this shall not apply where the patent has been invalidated by a trial decision. *<Amended by Act No. 7871, Mar. 3, 2006>*
- (7) No patentee shall request a trial for correction under paragraph (1) without the consent of an exclusive licensee, a pledgee or a non-exclusive licensee under Articles 100 (4) and 102 (1) of this Act and Article 10 (1) of the Invention Promotion Act. *<Amended by Act No. 8197, Jan. 3, 2007; Act No. 8357, Apr. 11, 2007>*
- (8) Where a trial decision allowing the specification or drawings of a patented invention to be corrected becomes final and conclusive, the patent application, laying-open of the application, decision to grant the patent or trial decision on patent and the establishment registration of the patent right shall be deemed to have been made on the basis of such corrected specification or drawings.
- (9) A petitioner may amend the corrected specification or drawings attached to the written request prescribed in Article 140 (5) only before issuance

of a notification of closure of trial proceedings under Article 162 (3) (where the trial proceedings are reopened under Article 162 (4), before a subsequent notification of the closure of trial proceedings is issued under Article 162 (3)).

- (10) Where a decision has been rendered to allow correction of the specification or drawings of the patented invention, the President of the Intellectual Property Tribunal shall notify the Commissioner of the Korean Intellectual Property Office of the corrected subject matter.
- (11) In cases where a notification is issued under paragraph (10), the Commissioner of the Korean Intellectual Property Office shall publish it in the Patent Gazette.

*[This Article Wholly Amended by Act No. 6411, Feb. 3, 2001]*

#### **Article 137 (Trial for Invalidation of Correction)**

- (1) An interested party or an examiner may request a trial for an invalidation of a correction, where the correction of the specification or drawings of a patented invention under Article 133-2 (1) or 136 (1) has been made in violation of any of the following: *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 8197, Jan. 3, 2007; Act No. 9381, Jan. 30, 2009>*
1. Any subparagraph of Article 136 (1);
  2. Article 136 (2) through (4) (including cases where the said provisions shall apply *mutatis mutandis* under Article 133-2 (4)).
- (2) Article 133 (2) and (4) shall apply *mutatis mutandis* to requests for trial under paragraph (1).
- (3) A defendant in an invalidation trial under paragraph (1) may request corrections of the specification or drawings of a patented invention only in a case falling under any subparagraph of Article 136 (1) within the term designated under Article 147 (1) or the latter part of Article 159 (1). *<Newly Inserted by Act No. 6411, Feb. 3, 2001; Act No. 9381, Jan. 30, 2009>*
- (4) Article 133-2 (3) and (4) shall apply *mutatis mutandis* to requests for correction under paragraph (3). In such cases, "Article 133 (1)" in Article 133-2 (3) shall be construed as "Article 137 (1)." *<Newly Inserted by Act No. 6411, Feb. 3, 2001; Act No. 8197, Jan. 3, 2007>*
- (5) Where a trial decision to invalidate a correction under paragraph (1) has become final and conclusive, the correction shall be deemed never to have been made.

#### **Article 138 (Trial for Granting Non-exclusive License)**



- (1) If a patentee, or exclusive or non-exclusive licensee, intends to obtain permission to exercise the right provided for in Article 98, and if the other party concerned refuses to grant the permission without justifiable grounds or it is not possible to obtain such permission, the said patentee or exclusive or non-exclusive licensee may request a trial for the grant of a non-exclusive license having the scope necessary to work the patented invention.
- (2) Where a request under paragraph (1) has been made, a non-exclusive license shall be granted only where the patented invention of the later application constitutes any important technical advance having substantial economical value in comparison with the other party's patented invention or registered utility model for which an application was filed prior to the filing date of the later application. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (3) If a person who has granted a non-exclusive license under paragraph (1) needs to work the patented invention of the person who has been granted such non-exclusive license, and if the latter refuses to grant permission or if it is impossible to obtain such permission, the former may request a trial for the grant of a non-exclusive license within the scope of the patented invention which he/she intends to work by obtaining such license.
- (4) A non-exclusive licensee under paragraphs (1) and (3) shall pay consideration to the patentee, owner of the utility model right, owner of the design right, or exclusive licensee thereof. Provided, That if the non-exclusive licensee is unable to make payment for reasons beyond his/her control, the consideration shall be deposited. *<Amended by Act No. 7289, Dec. 31, 2004>*
- (5) No non-exclusive licensee under paragraph (4) shall work the patented invention, registered utility model or registered design, or similar design without payment of consideration or deposit thereof. *<Amended by Act No. 4594, Dec. 10, 1993; Act No. 7289, Dec. 31, 2004>*

**Article 139 (Request, etc. for Joint Trial)**

- (1) Where two or more persons request an invalidation trial under Articles 133 (1), 134 (1) and (2) and 137 (1) or a trial to confirm the scope of a patent right under Article 135 (1), the request may be made jointly. *<Amended by Act No. 11117, Dec. 2, 2011>*
- (2) Where a trial is requested against any of the joint owners of a patent right, all the joint owners shall be made defendants.
- (3) Where joint owners of a patent right or of a right to obtain a patent

request a trial concerning the right under joint ownership, the request shall be made jointly by all of the owners.

- (4) Where there are grounds for the suspension of trial proceedings which apply to one of the requesters under paragraph (1) or (3) or one of the defendants under paragraph (2), the suspension shall be effective against all of them.

**Article 140 (Formal Requirements of Request for Trial)**

- (1) A person who intends to request a trial shall submit a written request stating the following matters to the President of the Intellectual Property Tribunal: *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>*

1. Name and domicile of a person (if the person is a juristic person, its title and the location of its place of business);
- 1-2. The name and domicile, or location of place of business, of the representative, if designated (if the representative is a patent corporation, its title, location of office and designated patent attorney's name);
2. Identification of the trial case;
3. The purport of the request and the grounds therefor.

- (2) No amendment to a request for trial submitted under paragraph (1) shall be made in the intent or purpose thereof: Provided, That this shall not apply when such amendment falls under any of the following subparagraphs: *<Amended by Act No. 8197, Jan. 3, 2007; Act No. 9381, Jan. 30, 2009>*

1. Where an amendment (including an addition) is made to correct a statement of a patentee from among the persons concerned pursuant to paragraph (1) 1;
2. Where a ground for request under paragraph (1) 3 is amended;
3. At a trial requested by a patentee or an exclusive licensee as a petitioner to confirm the scope of a patent right, the specification or drawings of the invention subject to confirmation on the written request for a trial is amended by the petitioner in order to make it identical with the invention which is on the working by the defendant, in cases where the defendant insists that the specification or drawings of the invention subject to confirmation on the written request for a trial (referring to the defendant's invention claimed by the petitioner) are different from the invention which is on the working by

himself/herself.

- (3) When a trial is requested to confirm the scope of a patent right under Article 135 (1), the specification capable to be compared with the patented invention and the relevant drawings shall be attached to the written request. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (4) A written request for a trial for the grant of a non-exclusive license under Article 138 (1) shall, in addition to the particulars referred to in paragraph (1), state the following: *<Amended by Act No. 5080, Dec. 29, 1995; Act No. 7289, Dec. 31, 2004>*
  1. The number and title of his/her patent which is required to be worked;
  2. The number, title and date of the other party's patent, registered utility model or registered design to be worked;
  3. The scope, duration and consideration for the non-exclusive license for a patented invention, registered utility model or registered design.
- (5) When a trial for amendment under Article 136 (1) is requested, the amended specification or drawings shall be attached to the written request for trial. *<Amended by Act No. 6411, Feb. 3, 2001>*

**Article 140-2 (Formal Requirements of Request for Trial against Decision to Reject Patent Application)**

- (1) Notwithstanding Article 140 (1), a person who intends to request a trial against a decision to reject a patent application under Article 132-3 shall, submit a written request stating the following matters to the President of the Intellectual Property Tribunal: *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 9381, Jan. 30, 2009>*
  1. The name and domicile of a petitioner (if the petitioner is a juristic person, its title and the location of its place of business);
  - 1-2. The name and domicile, or location of place of business, of the representative, if designated (if the representative is a patent corporation, its title, location of office and designated patent attorney's name);
  2. The filing date and file number of the application;
  3. The title of the invention;
  4. The date of the decision;
  5. The identification of the trial case;
  6. The purport of the request and the grounds therefor.
- (2) Where a written request for a trial submitted pursuant to paragraph (1) is amended, the gist thereof shall not be changed: Provided, That this shall

not apply where such amendment falls under any of the following subparagraphs: <Newly Inserted by Act No. 9381, Jan. 30, 2009>

1. Where an amendment (including an addition) is made to correct a statement of a petitioner pursuant to paragraph (1) 1;

2. Where a ground for request pursuant to paragraph (1) 6 is amended.

(3) Deleted. <by Act No. 9381, Jan. 30, 2009>

*[This Article Wholly Amended by Act No. 5329, Apr. 10, 1997]*

#### **Article 141 (Rejection of Request for Trial)**

(1) The presiding administrative patent judge shall order an amended submission within a specified period where any of the following subparagraphs applies: <Amended by Act No. 6411, Feb. 3, 2001>

1. Where a request for trial does not comply with Article 140 (1) and (3) through (5) or 140-2 (1);

2. Where a procedure relating to a trial falls under any of the following cases:

(a) Where the procedure is not in compliance with Article 3 (1) or 6;

(b) Where fees required in accordance with Article 82 have not been paid;

(c) Where the procedure is not in compliance with the formalities specified in this Act or any order thereunder.

(2) Where a person who has been ordered to make an amended submission under paragraph (1) fails to do so within the specified period, the presiding administrative patent judge shall reject the request for trial by decision. <Amended by Act No. 6411, Feb. 3, 2001>

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

(4) through (6) Deleted. <by Act No. 4892, Jan. 5, 1995>

#### **Article 142 (Dismissal of Request for Trial containing Incurable Defects by Trial Decision)**

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

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

(1) When a trial is requested, the President of the Intellectual Property Tribunal shall direct administrative patent judges to hear the case. <Amended by Act No. 4892, Jan. 5, 1995>

(2) The qualifications of administrative patent judges shall be prescribed by

Presidential Decree. <Amended by Act No. 4892, Jan. 5, 1995>

- (3) Administrative patent judges shall conduct their official trial duties in an independent manner. <Amended by Act No. 4892, Jan. 5, 1995>

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

- (1) For each trial, the President of the Intellectual Property Tribunal shall designate administrative patent judges constituting a board for trial under Article 146. <Amended by Act No. 4892, Jan. 5, 1995>
- (2) When any administrative patent judge designated in accordance with paragraph (1) is unable to participate in the trial, the President of the Intellectual Property Tribunal may allow another administrative patent judge to do so. <Amended by Act No. 4892, Jan. 5, 1995>

**Article 145 (Presiding Administrative Patent Judge)**

- (1) The President of the Intellectual Property Tribunal shall select one of the administrative patent judges designated under Article 144 (1) as the presiding administrative patent judge. <Amended by Act No. 4892, Jan. 5, 1995>
- (2) The presiding administrative patent judge shall preside over all matters relating to the trial.

**Article 146 (Board for Trial)**

- (1) A trial shall be conducted by a board of three or five administrative patent judges. <Amended by Act No. 4892, Jan. 5, 1995>
- (2) The board referred to in paragraph (1) shall make its decisions by a majority vote.
- (3) The consultations of the administrative patent judges shall not be open to the public.

**Article 147 (Submission of Written Response, etc.)**

- (1) When a trial has been requested, the presiding administrative patent judge shall serve a copy of the written request on the defendant and shall provide him/her an opportunity to submit a written response within a designated deadline.
- (2) Upon receipt of a written response under paragraph (1), the presiding administrative patent judge shall serve a copy of the response on the petitioner.
- (3) The presiding administrative patent judge may directly examine the parties in relation to the trial.

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

In any of the following cases, an administrative patent judge shall be

precluded from exercising his/her functions in a trial: *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 7427, Mar. 31, 2005; Act No. 7871, Mar. 3, 2006>*

1. Where the administrative patent judge or his/her spouse or ex-spouse is a party or intervenor;
2. Where the administrative patent judge is or was a relative of a party or intervenor;
3. Where the administrative patent judge is or was a legal representative of a party or intervenor;
4. Where the administrative patent judge has become a witness or expert witness or was an expert witness;
5. Where the administrative patent judge is or was a representative of a party or intervenor;
6. Where the administrative patent judge has participated as an examiner or administrative patent judge in a decision to grant a patent or a trial decision relating to the case;
7. Where the administrative patent judge has a direct interest.

**Article 149 (Request for Exclusion)**

Where grounds for preclusion under Article 148 exist, a party or intervenor may request the exclusion of an administrative patent judge.

**Article 150 (Challenge of Administrative Patent Judges)**

- (1) Where there are circumstances wherein the participation of an administrative patent judge would compromise the fairness of the proceedings in a trial, such administrative patent judge may be challenged by a party or intervenor.
- (2) After a party or intervenor has made a written or oral statement with regard to the case before a administrative patent judge, he/she may not challenge the administrative patent judge: Provided, That the same shall not apply where the party or intervenor did not know that there was a ground for challenge or where a ground for challenge arose subsequently.

**Article 151 (Indication of Grounds for Exclusion or Challenge)**

- (1) A person who presents a motion for exclusion or challenge under Articles 149 and 150 shall submit a document stating the grounds therefor to the President of the Intellectual Property Tribunal: Provided, That in an oral trial examination, an oral challenge may be made. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>*
- (2) The underlying causes for exclusion or challenge shall be substantiated within three days from the date the motion was presented.

**Article 152 (Decision on Petition for Exclusion or Challenge)**

- (1) A decision on a petition for exclusion or challenge shall be made by a trial.
- (2) No administrative patent judge subject to the exclusion or challenge motion shall participate in the trial of the request: Provided, That he/she may state his/her opinion.
- (3) A decision made under paragraph (1) shall be in writing and shall state the grounds therefor.
- (4) No appeal shall be made against a decision made under paragraph (1).

**Article 153 (Suspension of Proceedings)**

When a motion for exclusion or challenge has been presented, the trial proceedings shall be suspended until a decision thereon has been made: Provided, That this shall not apply to the matters requiring urgent attention.

**Article 153-2 (Avoidance of Administrative Patent Judges)**

Where Article 148 or 150 applies to an administrative patent judge, he/she may avoid trial proceedings relating to the case with permission from the President of the Intellectual Property Tribunal.

*[This Article Newly Inserted by Act No. 6411, Feb. 3, 2001]*

**Article 154 (Trial Proceedings, etc.)**

- (1) Trial proceedings shall be conducted by oral hearing or documentary examination: Provided, That where a party requests an oral hearing, trial proceedings shall be conducted by oral hearing except where it is recognized that a decision can be made on the basis of a documentary examination alone. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (2) Deleted. *<by Act No. 6411, Feb. 3, 2001>*
- (3) Oral hearings shall be conducted in public: Provided, That this shall not apply where public order or morality is likely to be injured thereby. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (4) Where trial proceedings are conducted by oral hearings in accordance with paragraph (1), the presiding trial examiner shall designate the date and place thereof and serve a document containing such information on the parties and intervenors: Provided, That this shall not apply where the parties or intervenors to attend the case have already been notified. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (5) With respect to the trial proceedings by oral hearings under paragraph (1), an official designated by the President of the Intellectual Property Tribunal shall, under the direction of the presiding administrative patent judge,

prepare a protocol setting forth the gist of the proceedings and other necessary matters for the date of each trial proceeding. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>*

- (6) The presiding administrative patent judge and the official who has prepared the protocol under paragraph (5) shall sign the protocol and affix their seals thereto.
- (7) Articles 153, 154, and 156 through 160 of the Civil Procedure Act shall apply mutatis mutandis to protocols under paragraph (5). *<Amended by Act No. 6626, Jan. 26, 2002; Act No. 7871, Mar. 3, 2006>*
- (8) Articles 143, 259, 299 and 367 of the Civil Procedure Act shall apply mutatis mutandis to trials. *<Amended by Act No. 6626, Jan. 26, 2002; Act No. 7871, Mar. 3, 2006>*

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

- (1) Any person having the right to request a trial under Article 139 (1) may intervene in the trial before the conclusion of the trial examination.
- (2) An intervenor under paragraph (1) may continue a trial even after the request for the trial has been withdrawn by the original party.
- (3) Any person having an interest in the result of a trial may intervene in the trial before the conclusion of the trial examination in order to assist one of the parties.
- (4) An intervenor under paragraph (3) may initiate and take part in any procedure relating to the trial.
- (5) Where there are grounds for suspension of a trial proceeding applicable to the intervenor under paragraph (1) or (3), the suspension shall also be effective against the original party.

#### **Article 156 (Request for Intervention and Ruling thereon)**

- (1) A person intending to intervene in a trial shall submit a request for intervention to the presiding administrative patent judge.
- (2) The presiding administrative patent judge shall serve copies of the request for intervention on the parties and other intervenors and provide them an opportunity to submit written opinions within a designated deadline.
- (3) Where a request for intervention is made, the ruling thereon shall be made by a trial.
- (4) The ruling under paragraph (3) shall be in writing and shall state the grounds therefor.
- (5) No appeal shall be made against the ruling under paragraph (3).

#### **Article 157 (Taking and Preserving Evidence)**



- (1) With respect to a trial, evidence may be taken or preserved upon request of a party, intervenor or interested person, or ex officio.
- (2) The provisions of the Civil Procedure Act relating to taking and preserving evidence shall apply mutatis mutandis to taking and preserving evidence under paragraph (1): Provided, That the administrative patent judge may not impose a fine for negligence, order compulsory appearance, or require the deposit of money as a security. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 7871, Mar. 3, 2006>*
- (3) A request to preserve evidence shall be made to the President of the Intellectual Property Tribunal prior to a request for trial and to the presiding administrative patent judge of the case while the trial is pending. *<Amended by Act No. 4892, Jan. 5, 1995>*
- (4) Where a motion for preservation of evidence has been made under paragraph (1) prior to a request for trial, the President of the Intellectual Property Tribunal shall designate an administrative patent judge to be responsible for the preservation of evidence. *<Amended by Act No. 4892, Jan. 5, 1995>*
- (5) Where evidence has been taken or preserved ex officio under paragraph (1), the presiding administrative patent judge shall serve the result thereof on the parties, intervenors, and interested persons and shall provide them an opportunity to submit written opinions within a designated deadline.

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

Notwithstanding the failure of a party or intervenor to take any proceedings within a statutory period or designated deadline, or failure to appear on the designated date in accordance with Article 154 (4), the presiding administrative patent judge may proceed with the trial proceedings.

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

- (1) Grounds which have not been pleaded by a party or intervenor in a trial may be examined. In such cases, the parties and intervenors shall be provided an opportunity to state their opinions regarding such grounds, within a designated deadline. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (2) In a trial, no examination may be made on the purpose of a claim not requested by the petitioner. *<Newly Inserted by Act No. 4594, Dec. 10, 1993>*

**Article 160 (Joint or Separate Conduct of Trial Proceedings or Trial Decisions)**

An administrative patent judge may jointly or separately conduct trial proceedings or trial decisions with regard to two or more trial proceedings where one or both parties thereto are the same.

### **Article 161 (Withdrawal of Request for Trial)**

- (1) A request for trial may be withdrawn by a petitioner before the trial decision has become final and conclusive: Provided, That the consent of the defendant for the withdrawal shall be obtained where a response has already been submitted.
- (2) When a request for a trial for invalidating a patent under Article 133 (1) or for confirming the scope of a patent right under Article 135 has been made with regard to two or more claims, the request may be withdrawn for each of the claims.
- (3) Where a request for a trial or a request for each of the claims is withdrawn in accordance with paragraph (1) or (2), the request shall be deemed never to have been made. *<Amended by Act No. 6411, Feb. 3, 2001>*

### **Article 162 (Trial Decisions)**

- (1) Except as otherwise provided for, a trial shall be closed when a trial decision has been made.
- (2) The trial decision under paragraph (1) shall be in writing, signed and sealed by the administrative patent judges who have rendered it, and shall state the following: *<Amended by Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001>*
  1. The number of the trial;
  2. The name and domicile of the parties and intervenors (if a juristic person, its title and the place of business);
  - 2-2. The name and domicile or place of business of the representative, if any (if the representative is a patent corporation, its title, location of office and designated patent attorney's name);
  3. The identification of the trial case;
  4. The text of the ruling (including the scope, duration and consideration of a non-exclusive license in trial cases under Article 138);
  5. The grounds for the decision (including the purport and a summary of the grounds for the request);
  6. The date of the ruling.
- (3) When a case has been thoroughly examined and is ready to be ruled, the presiding administrative patent judge shall notify the parties and intervenors thereof.
- (4) Even after notification of the closure of the trial examination under paragraph (3), the presiding administrative patent judge may, if necessary, reopen the examination upon the motion of a party or an intervenor or ex

officio.

- (5) The decision shall be rendered within twenty days following the date on which the closure of a trial examination is notified under paragraph (3).  
<Amended by Act No. 4594, Dec. 10, 1993>
- (6) When a trial decision or a ruling has been rendered, the presiding administrative patent judge shall serve a certified copy of the trial decision or the ruling on the parties, intervenors, and persons who have requested intervention to the trial, but have been rejected. <Amended by Act No. 4892, Jan. 5, 1995>

**Article 163 (Res Judicata)**

When a trial decision has become final and conclusive pursuant to this Act, with regard to the case, no person may demand the trial again on the basis of the same facts and evidence: Provided, That this shall not apply where the final and conclusive trial decision is a decision of rejection. <Amended by Act No. 6411, Feb. 3, 2001>

**Article 164 (Relations to Litigation)**

- (1) Procedures of a trial may, if necessary, be suspended until the trial decision of another trial relevant to the trial becomes final and conclusive or litigation procedures thereon are concluded. <Amended by Act No. 5329, Apr. 10, 1997; Act No. 7871, Mar. 3, 2006>
- (2) The court may, if deemed necessary for litigation procedures, suspend the litigation procedures until a trial decision on the patent becomes final and conclusive.
- (3) Where a legal action against an infringement on a patent right or exclusive license is instituted, the relevant court shall notify the President of the Intellectual Property Tribunal of its purport. This shall also apply where the litigation procedures have been terminated. <Newly Inserted by Act No. 6411, Feb. 3, 2001>
- (4) Where a trial for invalidating a patent, etc. is requested in response to a legal action against an infringement on a patent right or exclusive license under paragraph (3), the President of the Intellectual Property Tribunal shall notify the relevant court under paragraph (3) of its purport. This shall also apply where a decision of rejection, a request for trial, or a withdrawal of a request has occurred. <Newly Inserted by Act No. 6411, Feb. 3, 2001>

**Article 165 (Costs of Trial)**

- (1) The imposition of costs in connection with a trial under Articles 133 (1),

- 134 (1) and (2), 135 and 137 (1) shall be decided by a trial decision in the event the trial is terminated by a trial decision, or by a decision in the trial where the trial is terminated in a manner, other than by a trial decision. *<Amended by Act No. 11117, Dec. 2, 2011>*
- (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 costs in connection with the trial under paragraph (1). *<Amended by Act No. 6626, Jan. 26, 2002; Act No. 7871, Mar. 3, 2006>*
- (3) The costs in connection with the trial under Article 132-3, 136 or 138 shall be borne by a petitioner. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*
- (4) Article 102 of the Civil Procedure Act shall apply mutatis mutandis to the costs borne by the petitioner under paragraph (3). *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6626, Jan. 26, 2002; Act No. 7871, Mar. 3, 2006>*
- (5) The President of the Intellectual Property Tribunal shall decide the costs of a trial upon request by an interested party, after the trial decision or the ruling has become final and conclusive. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>*
- (6) The extent, amount, and payment of the costs of a trial, as well as the payment of the costs for performing any procedural acts in the trial, shall be governed by the relevant provisions of the Costs of Civil Procedure Act unless they are incompatible. *<Amended by Act No. 7871, Mar. 3, 2006>*
- (7) The fees which a party has paid or will pay to a patent attorney who represents the party in the trial shall be deemed an element of the costs in connection with a trial to determine the extent of the costs by the Commissioner of the Korean Intellectual Property Office. In such cases, even if two or more patent attorneys have represented a person for the trial, it shall be deemed represented by one patent attorney.

**Article 166 (Title of Enforcement of Trial Costs or Consideration)**

A final and conclusive ruling on the costs of a trial decided by the President of the Intellectual Property Tribunal or on the consideration decided by an administrative patent judge, to be paid under this Act, shall have the same effect as an enforceable title of liability. In such cases, the enforceable writ, which has the force of execution, shall be given by an official of the Intellectual Property Tribunal.

*[This Article Wholly Amended by Act No. 6411, Feb. 3, 2001]*

**Article 167 Deleted.** *<by Act No. 4892, Jan. 5, 1995>*

**Article 168 Deleted.** <by Act No. 4892, Jan. 5, 1995>

**Article 169 Deleted.** <by Act No. 4892, Jan. 5, 1995>

**Article 170 (Mutatis Mutandis Application of Provisions on Examination to Trial against Decision to Reject Patent Application)**

(1) Article 47 (1) 1 and 2, Articles 51, 63 and 66 shall apply mutatis mutandis to a trial against a decision to reject a patent application. In such cases, "Article 47 (1) 2 and 3" in the main sentence of Article 51 (1) shall be construed as "Article 47 (1) 2", and "amendment" in the main sentence of Article 51 (1) shall be construed as "amendment (excluding such amendments made before a request for a trial against a decision to reject a patent application referred to in Article 132-3)." <Amended by Act No. 9381, Jan. 30, 2009>

(2) Article 63, which applies mutatis mutandis under paragraph (1), shall apply where grounds for rejection have been found that are different from those in the examiner's original decision to reject a patent application. <Amended by Act No. 6411, Feb. 3, 2001>

*[This Article Wholly Amended by Act No. 5329, Apr. 10, 1997]*

**Article 171 (Special Provisions of Trial against Decision to Reject Patent Application)**

Articles 147 (1) and (2), 155 and 156 shall not apply to a trial against a decision to reject a patent application or against a decision to reject to register an extension of the term of a patent right.

*[This Article Wholly Amended by Act No. 9381, Jan. 30, 2009]*

**Article 172 (Effect of Examination Proceedings)**

Patent-related procedures previously taken during the course of an examination shall also remain effective in a trial against a decision to reject a patent application or against a decision to reject to register an extension of the term of a patent right.

*[This Article Wholly Amended by Act No. 7871, Mar. 3, 2006]*

**Article 173 Deleted.** <by Act No. 9381, Jan. 30, 2009>

**Article 174 Deleted.** <by Act No. 9381, Jan. 30, 2009>

**Article 175 Deleted.** <by Act No. 9381, Jan. 30, 2009>

**Article 176 (Cancellation of Decision to Reject Patent Application, etc.)**

(1) Where an administrative patent judge deems that the request for a trial under Articles 132-3 is well-grounded, he/she shall make a trial decision to cancel the decision to reject a patent application or to reject the registration of an extension of term of a patent right. <Amended by Act No.

*5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006*>

- (2) When any decision to reject a patent or to reject the registration of extension of term of a patent right is revoked pursuant to paragraph (1) in a trial, a trial decision may be made to remand the case for examination proceedings. *<Amended by Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 11117, Dec. 2, 2011>*
- (3) In ruling on a trial under paragraphs (1) and (2), the reasons constituting the basis for the reversal shall bind the examiner with respect to the case.

*[This Article Wholly Amended by Act No. 4892, Jan. 5, 1995]*

**Article 177 Deleted.** *<by Act No. 4892, Jan. 5, 1995>*

## CHAPTER VIII RETRIAL

### **Article 178 (Request for Retrial)**

- (1) Any party may request a retrial against a trial decision which has become final and conclusive.
- (2) Articles 451 and 453 of the Civil Procedure Act shall apply *mutatis mutandis* to requests for retrial under paragraph (1). *<Amended by Act No. 6626, Jan. 26, 2002; Act No. 7871, Mar. 3, 2006>*

### **Article 179 (Request for Retrial on Trial Decision on Fraudulent Acts)**

- (1) Where the parties in a trial acted in collusion for the purpose of causing a trial decision to be rendered which damages the rights or interests of a third party, the third party may request a retrial against the final and conclusive trial decision. *<Amended by Act No. 4892, Jan. 5, 1995>*
- (2) In cases of a request for a retrial under paragraph (1), the parties of the trial shall be joint defendants. *<Amended by Act No. 4892, Jan. 5, 1995>*

### **Article 180 (Period for Requesting Retrial)**

- (1) A retrial shall be requested within thirty days from the date on which the petitioner becomes aware of the grounds for the retrial after the trial ruling became final and conclusive.
- (2) Where a retrial is requested on the ground of defects in the authority of representative, the period provided for in paragraph (1) shall be counted from the day following the date on which the petitioner or his/her legal representative becomes aware that the trial decision had been rendered, by means of service of the certified copy of such ruling.
- (3) No request for a retrial shall be made after the expiration of three years from the date on which the trial ruling became final and conclusive.

- (4) Where grounds for a retrial arise after the trial decision has become final and conclusive, the period prescribed in paragraph (3) shall be counted from the day following the date on which the grounds first arose.
- (5) Paragraphs (1) and (3) shall not apply to a request for a retrial made on the grounds that the trial ruling conflicts with a final and conclusive trial decision previously rendered.

**Article 181 (Restriction on Effects of Patent Rights Restored by Retrial)**

- (1) Patent rights shall not be effective to any product that was imported into, manufactured or acquired in good faith, in the Republic of Korea after the trial decision became final and conclusive but before a request for a retrial has been registered in any of the following cases: *<Amended by Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*
  1. Where the patent right whose patent or registration of term extension was concluded to be invalid has been restored by a retrial;
  2. Where a trial decision to the contrary through a retrial has become final and conclusive after a trial decision that a product was outside the scope of the patent right became final and conclusive;
  3. Where the establishment of a patent right or the extension of a patent term with respect to a patent application or application for registration of extension of patent term, previously refused by a trial decision, has been registered through a retrial.
- (2) Patent rights under any subparagraph of paragraph (1) shall not extend to any of the following acts: *<Amended by Act No. 5080, Dec. 29, 1995>*
  1. Working the invention in good faith after a trial decision became final and conclusive but before the registration of a request for retrial;
  2. In cases of a patent for an invention of a product, manufacturing, assigning, leasing, importing, or offering for to assign or lease such articles as to be used exclusively for the manufacture of the products, in good faith, after trial decision became final and conclusive but before the registration of a request for retrial;
  3. In cases of a patent for an invention of a process, manufacturing, assigning, leasing, importing, offering to assign or lease such articles as to be used exclusively for the working of the process, in good faith, after a trial decision became final and conclusive but before the registration of a request for retrial.

**Article 182 (Non-exclusive License for Prior User of Patent Right Restored)**

**through Retrial)**

For cases which fall under any subparagraph of Article 181 (1), any person who has, in good faith, commercially or industrially worked the invention in the Republic of Korea, or has been making preparations therefor, after a trial ruling became final and conclusive but prior to the registration of a request for retrial, such person shall have a non-exclusive license on the patent right to the extent of the invention and of the purpose of business which is being worked or of which the preparations for working are being made.

**Article 183 (Non-exclusive License for Person Deprived of Non-exclusive License by Retrial)**

(1) After a decision to grant a non-exclusive license under Article 138 (1) or (3) has become final and conclusive, where a decision to the contrary is rendered through a retrial, any person who has, in good faith, commercially or industrially worked the invention in the Republic of Korea or has been making preparations therefor under a non-exclusive license, prior to the registration of a request for retrial, shall have a non-exclusive license on the patent right or on the exclusive license existing at the time the decision at the retrial becomes final and conclusive, to the extent of the purpose of his/her business and to the scope of the invention under the original non-exclusive license.

(2) Article 104 (2) shall apply mutatis mutandis to cases under paragraph (1).

**Article 184 (Mutatis Mutandis Application of Provisions on Trial to Retrial)**

The provisions relating to the procedures of a trial shall apply mutatis mutandis to procedures of a retrial on a trial, unless they are not compatible.

*[This Article Wholly Amended by Act No. 4892, Jan. 5, 1995]*

**Article 185 (Mutatis Mutandis Application of the Civil Procedure Act)**

Article 459 (1) of the Civil Procedure Act shall apply mutatis mutandis to requests for retrial. <Amended by Act No. 6626, Jan. 26, 2002; Act No. 7871, Mar. 3, 2006>

## CHAPTER IX LITIGATION

**Article 186 (Action against Trial Decision, etc.)**

(1) The Patent Court of Korea shall have original jurisdiction over any action against a trial decision or dismissal of a request for a trial or retrial.

*<Amended by Act No. 6411, Feb. 3, 2001>*

(2) The action prescribed in paragraph (1) may be brought by a person who



is a party, intervenor or any person who has requested for intervention in the trial but has been rejected.

- (3) The action prescribed in paragraph (1) shall be brought within thirty days from the date of receipt of a certified copy of the trial decision or ruling.
- (4) The period prescribed in paragraph (3) shall be invariable.
- (5) With respect to an invariable period as referred to in paragraph (4), the presiding administrative patent judge may, ex officio, determine any additional period for the benefit of a person residing in a remote area or area with poor transportation. *<Newly Inserted by Act No. 5576, Sep. 23, 1998>*
- (6) No action may be brought unless it relates to matters for which a trial may be requested.
- (7) No action under paragraph (1) on a trial decision on consideration under Article 162 (2) 4 and a trial decision or ruling on trial costs under Article 165 (1) may be brought independently.
- (8) Any person who has received a ruling from the Patent Court may appeal to the Supreme Court.

*[This Article Wholly Amended by Act No. 4892, Jan. 5, 1995]*

#### **Article 187 (Qualification for Defendants)**

In an action under Article 186 (1), the Commissioner of the Korean Intellectual Property Office shall be a defendant: Provided, That in cases of a trial or trial decisions on a retrial under Articles 133 (1), 134 (1) and (2), 135 (1), 137 (1), and 138 (1) and (3) or retrial, the petitioner or the defendant thereof shall be a defendant. *<Amended by Act No. 11117, Dec. 2, 2011>*

*[This Article Wholly Amended by Act No. 4892, Jan. 5, 1995]*

#### **Article 188 (Notification of Institution of Action and Service of Original Copy of Judgment)**

- (1) When an action under Article 186 (1) is instituted or an appeal under Article 186 (8) is filed, the court shall promptly notify the President of the Intellectual Property Tribunal thereof. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (2) When an action under the proviso to Article 187 (1) has been concluded, the court shall serve an original copy of a judgment on the President of the Intellectual Property Tribunal.

*[This Article Wholly Amended by Act No. 4892, Jan. 5, 1995]*

#### **Article 188-2 (Exclusion, Challenge or Avoidance of Technical Examiner)**

- (1) Article 148 of this Act, Articles 42 through 45, 47 and 48 of the Civil Procedure Act shall apply mutatis mutandis to exclusion or challenge of technical examiners under Article 54-2 of the Court Organization Act. *<Amended by Act No. 6626, Jan. 26, 2002; Act No. 7871, Mar. 3, 2006>*
- (2) A decision on a request for exclusion or challenge of a technical examiner under paragraph (1) shall be made by a trial of court to which the technical examiner belongs.
- (3) If there are justifiable grounds for exclusion or challenge, any technical examiner may avoid trial proceedings relating to the case with permission from the President of the Intellectual Property Tribunal.

*[This Article Newly Inserted by Act No. 4892, Jan. 5, 1995]*

**Article 189 (Revocation of Trial Decision or Ruling)**

- (1) Where the court deems that an action instituted under Article 186 (1) is well-grounded, it shall revoke the relevant trial decision or ruling by judgment.
- (2) Where a reversal of trial decision or ruling becomes final and conclusive under paragraph (1), the administrative patent judge shall review the case and make a trial decision or ruling.
- (3) The reasons for a judgment on an action under paragraph (1) which constitute the basis for the revocation shall bind the Intellectual Property Tribunal with respect to the case.

*[This Article Wholly Amended by Act No. 4892, Jan. 5, 1995]*

**Article 190 (Action against Decision on Compensation or Consideration)**

- (1) A person dissatisfied with a decision and ruling or an adjudication regarding the compensation or consideration under Article 41 (3) and (4), 106 (3), 106-2 (3), 110 (2) 2, and 138 (4) may bring an action before the court. *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 9985, Jan. 27, 2010>*
- (2) An action under paragraph (1) shall be filed within thirty days from the date a certified copy of the decision and ruling or adjudication is served. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (3) The period prescribed in paragraph (2) shall be invariable.

**Article 191 (Defendant in Action relating to Compensation or Consideration)**

In an action under Article 190, any of the following persons shall be a defendant: *<Amended by Act No. 7289, Dec. 31, 2004; Act No. 9985, Jan. 27, 2010>*

1. The government agency or applicant liable for payment of

- compensation in cases of compensation under Article 41 (3) and (4);
2. The government agency, patentee, exclusive licensee or non-exclusive licensee liable for payment of compensation in cases of compensation under Article 106 (3) and 106-2 (3);
  3. The non-exclusive licensee, exclusive licensee, patentee or owner of a utility model or a registered design in cases of consideration under Articles 110 (2) 2 and 138 (4).

**Article 191-2 (Remuneration for Patent Attorney and Costs of Litigation)**

With respect to remuneration to be paid to a patent attorney who performs a lawsuit on behalf of a party, Article 109 of the Civil Procedure Act shall apply *mutatis mutandis*. In such cases, "lawyer" shall be construed as "patent attorney."

*[This Article Newly Inserted by Act No. 7871, Mar. 3, 2006]*

## CHAPTER X INTERNATIONAL APPLICATIONS UNDER PATENT COOPERATION TREATY

### SECTION 1 International Application Procedure

**Article 192 (Persons Capable of International Application)**

Any person who falls under any of the following subparagraphs may file an international application with the Commissioner of the Korean Intellectual Property Office: *<Amended by Act No. 4541, Mar. 6, 1993; Act No. 4594, Dec. 10, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>*

1. A national of the Republic of Korea;
2. A foreigner who has a domicile or place of business in the Republic of Korea;
3. A person who does not fall under subparagraph 1 or 2 but who files an international application under the name of a representative falling under subparagraph 1 or 2;
4. A person who meets the requirements prescribed by Ordinance of the Ministry of Knowledge Economy.

### **Article 193 (International Application)**

- (1) A person intending to file an international application shall submit to the Commissioner of the Korean Intellectual Property Office a request, description, the scope of claims, drawings (where required) and an abstract prepared in a language prescribed by Ordinance of the Ministry of Knowledge Economy. *<Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 5576, Sep. 23, 1998; Act No. 7871, Mar. 3, 2006; Act No. 8852, Feb. 29, 2008>*
- (2) The request under paragraph (1) shall contain the following: *<Amended by Act No. 4594, Dec. 10, 1993; Act No. 7871, Mar. 3, 2006>*
  1. A petition to the effect that the international application be processed according to the Patent Cooperation Treaty;
  2. The designation of the contracting states of the Patent Cooperation Treaty in which protection for the invention is desired on the basis of the international application;
  3. If the applicant intends to obtain a regional patent referred to in Article 2 (iv) of the Patent Cooperation Treaty, an indication to that effect;
  4. The name or title, domicile or place of business, and nationality, of the applicant;
  5. The name and domicile or place of business of the representative, if any;
  6. The title of the invention;
  7. The name and domicile, or place of business, of the inventor (limited to cases where the national law of a designated state requires that these indications be furnished).
- (3) The description under paragraph (1) shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out easily by a person skilled in the art to which the invention pertains.
- (4) The claims under paragraph (1) shall clearly and concisely define the matter for which protection is sought and be fully supported by the description.
- (5) Other necessary matters which are not prescribed in paragraphs (1) through (4) concerning an international application shall be prescribed by Ordinance of the Ministry of Knowledge Economy. *<Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>*

#### **Article 194 (Recognition, etc. of International Filing Date)**

- (1) The Commissioner of the Korean Intellectual Property Office shall deem the date of receipt of the international application as the international filing date under Article 11 of the Patent Cooperation Treaty (hereinafter referred to as "international filing date"): Provided, That this shall not apply to the following cases: *<Amended by Act No. 7871, Mar. 3, 2006>*
1. Where the applicant does not meet the requirements prescribed in Article 192;
  2. Where the international application is not in the language prescribed under Article 193 (1);
  3. Where the international application does not contain a description and scope of claims under Article 193 (1);
  4. Where the elements listed in Article 193 (2) 1 and 2 and the name or title of the applicant are not indicated.
- (2) If an international application falls under the proviso to paragraph (1), the Commissioner of the Korean Intellectual Property Office shall order the applicant to amend the defect, in writing, within a designated deadline. *<Amended by Act No. 4594, Dec. 10, 1993>*
- (3) If an international application refers to a drawing which is not included in that application, the Commissioner of the Korean Intellectual Property Office shall notify the applicant thereof.
- (4) The Commissioner of the Korean Intellectual Property Office shall deem the international filing date as the date of receipt of the amendment in writing when the applicant ordered to amend under paragraph (2) has complied with the invitation within the designated deadline, or as the date of receipt of the drawings when the applicant notified under paragraph (3) has furnished the drawings within the deadline prescribed by Ordinance of the Ministry of Knowledge Economy: Provided, That if the applicant notified under paragraph (3) has not furnished the drawings within the deadline prescribed by Ordinance of the Ministry of Knowledge Economy, reference to the said drawings shall be considered nonexistent. *<Amended by Act No. 4541, Mar. 6, 1993; Act No. 4594, Dec. 10, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>*

#### **Article 195 (Order to Amend)**

The Commissioner of the Korean Intellectual Property Office shall order the applicant to make amendments within a designated deadline, if the international application falls under any of the following subparagraphs:

*<Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>*

1. Where the title of the invention is not included;
2. Where an abstract is not submitted;
3. Where it violates Article 3 or 197 (3);
4. Where it violates the requirements prescribed by Ordinance of the Ministry of Knowledge Economy.

**Article 196 (International Application Considered to have been Withdrawn, etc.)**

(1) An international application shall be considered to have been withdrawn if it falls under any of the following subparagraphs: *<Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 8852, Feb. 29, 2008>*

1. Where an applicant ordered to make an amendment under Article 195 has failed to do so within the designated deadline;
2. Where an official fee with regard to an international application has not been paid within the deadline prescribed by Ordinance of the Ministry of Knowledge Economy, and Article 14 (3) (a) of the Patent Cooperation Treaty therefore becomes applicable;
3. With regard to an international application to which an international filing date has been recognized under Article 194, the said application is found to fall under any subparagraph of the proviso to Article 194 (1), within the deadline prescribed by Ordinance of the Ministry of Knowledge Economy.

(2) If part of an official fee payable with regard to an international application has not been paid within the deadline prescribed by Ordinance of the Ministry of Knowledge Economy, and Article 14 (3) (b) of the Patent Cooperation Treaty therefore becomes applicable, the designation of the designated state which has not paid such official fee shall be considered to have been withdrawn. *<Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 8852, Feb. 29, 2008>*

(3) If an international application, or designation of a designated state, is considered to have been withdrawn under paragraphs (1) and (2), the Commissioner of the Korean Intellectual Property Office shall notify the applicant of such fact.

**Article 197 (Common Representative, etc.)**

(1) Where two or more applicants jointly file an international application, the

procedures under Articles 192 through 196 and 198 may be initiated by a common representative of the applicants.

- (2) Where two or more applicants jointly file an international application and do not designate a common representative, a representative may be designated as their common representative, as prescribed by Ordinance of the Ministry of Knowledge Economy. *<Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>*
- (3) Where an applicant intends to allow a representative to initiate a procedure under paragraph (1), he/she shall appoint a patent attorney as his/her representative unless the procedure is initiated by a legal representative under Article 3.

#### **Article 198 (Official Fees)**

- (1) An applicant for an international application shall pay an official fee.
- (2) Necessary matters for official fees, and proceedings and deadline of payment thereof under paragraph (1) shall be prescribed by Ordinance of the Ministry of Knowledge Economy. *<Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>*

#### **Article 198-2 (International Search and International Preliminary Examination)**

- (1) The Korean Intellectual Property Office shall perform duties as an international search authority and as an international preliminary examination authority for an international application in accordance with a convention concluded with the International Bureau (hereinafter referred to as the "International Bureau") referred to in Article 2 (xix) of the Patent Cooperation Treaty. *<Amended by Act No. 7871, Mar. 3, 2006; Act No. 9381, Jan. 30, 2009>*
- (2) Details concerning the performance of duties as prescribed in paragraph (1) shall be prescribed by Ordinance of the Ministry of Knowledge Economy. *<Amended by Act No. 8852, Feb. 29, 2008>*

*[This Article Newly Inserted by Act No. 5576, Sep. 23, 1998]*

## SECTION 2 SpecialProvisionsonInternational Patent Applications

#### **Article 199 (Patent Application Based on International Application)**

- (1) An international application for which an international filing date has been recognized under the Patent Cooperation Treaty, and which designates the Republic of Korea as a designated state in order to obtain a patent, shall be deemed a patent application filed on its international filing date.  
<Amended by Act No. 7871, Mar. 3, 2006>
- (2) Article 54 shall not apply to an international application deemed a patent application under paragraph (1) (hereinafter referred to as "international patent application").

**Article 200 (Special Provisions concerning Inventions not Deemed to be Publicly Known, etc.)**

Notwithstanding Article 30 (2), any person intending to have Article 30 (1) 1 applied to the invention claimed in an international patent application may submit to the Commissioner of the Korean Intellectual Property Office a written statement stating the purport of such intention and a document proving the relevant fact within the period prescribed by Ordinance of the Ministry of Knowledge Economy. <Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 8852, Feb. 29, 2008>

**Article 201 (Translation of International Patent Application)**

- (1) An applicant who has filed an international patent application in a foreign language shall submit to the Commissioner of the Korean Intellectual Property Office a Korean translation of the specification, scope of claims, drawings (only the text matter therein) and abstract filed on the international filing date within two years and seven months from the priority date (hereinafter referred as "priority date") as defined in Article 2 (xi) of the Patent Cooperation Treaty (hereinafter referred to as "period for submitting domestic documents"): Provided, That in cases where the said applicant has amended the claims under Article 19 (1) of the Patent Cooperation Treaty, he/she may substitute a Korean translation of the amended claims for the Korean translation of the claims filed on the international filing date. <Amended by Act No. 5329, Apr. 10, 1997; Act No. 5576, Sep. 23, 1998; Act No. 6768, Dec. 11, 2002; Act No. 7871, Mar. 3, 2006>
- (2) If the translations of the specification and claims under paragraph (1) have not been submitted within the period for submitting domestic documents, the international patent application shall be deemed to have been withdrawn.
- (3) An applicant who has submitted the translation referred to in paragraph



- (1) may submit a new translation to replace the prior translation within the period for submitting domestic documents: Provided, That this shall not apply where the applicant has made a request for examination.
- (4) Matters stated in the specification, claims and text matter of drawings of an international patent application filed on the international filing date, but not stated in the translation under paragraph (1) or (3) (hereinafter referred to as "translated version") submitted within the period for submitting domestic documents (or the date of the request for examination where the applicant has made such request within the said period; hereinafter referred to as "relevant date") shall be deemed not to have been stated in the specification and claims of the said international patent application filed on the international filing date or deemed to have no text in the drawings of such application.
- (5) An application of an international patent application submitted on the international filing date shall be deemed an application submitted under Article 42 (1).
- (6) The translated version of the specification, scope of claims, drawings and abstract of an international patent application (the specification, scope of claims, drawings and abstract submitted on the international filing date, in cases of an international patent application made in the Korean language) shall be deemed the specification, drawings and abstract submitted under Article 42 (2). *<Amended by Act No. 5576, Sep. 23, 1998>*
- (7) Article 204 (1) and (2) shall not apply where a Korean translation of the amended claims has been submitted pursuant to the proviso to paragraph (1). *<Newly Inserted by Act No. 5329, Apr. 10, 1997>*
- (8) Where the Korean translation for only the amended claims has been submitted pursuant to the proviso to paragraph (1), the claims submitted at the international filing date shall not be recognized. *<Newly Inserted by Act No. 5329, Apr. 10, 1997>*

**Article 202 (Special Provisions on Priority Claim by Patent Application, etc.)**

- (1) Articles 55 (2) and 56 (2) shall not apply to an international patent application.
- (2) In applying Article 55 (4), "specification or drawings initially attached to the earlier application" shall be construed as "specification, scope of claims or drawings (only text matter thereof) submitted on the international filing date under Article 201 (1), and the translated version of the said documents under Article 201 (4) or drawings (excluding the

text matter thereof) of the international application submitted on the international filing date", and "laying open for public inspection" shall be construed as "international publication under Article 21 of the Patent Cooperation Treaty." *<Amended by Act No. 7871, Mar. 3, 2006>*

- (3) Where an earlier application is an international patent application or an application for registration of an international utility model pursuant to Article 34 (2) of the Utility Model Act, the following subparagraphs shall apply for the purposes of Articles 55 (1) and (3) through (5) and 56 (1): *<Amended by Act No. 9381, Jan. 30, 2009>*

1. "Specification or drawings initially attached to an application" in the main text of Article 55 (1), Article 55 (3) and the main text of Article 55 (5) shall be construed as "specification, scope of claims or drawings of an international application submitted on the international filing date";
2. "Specification or drawings initially attached to an earlier application" in Article 55 (4) shall be construed as "specification, scope of claims or drawings of an international application submitted on the international filing date of an earlier application", and "laid open with respect to an earlier application" shall be construed as "published internationally pursuant to Article 21 of the Patent Cooperation Treaty with respect to the earlier application";
3. "At the time of expiration of one year and three months from the filing date" in the main text of Article 56 (1) shall be construed as "at the time of expiration of one year and three months from the international filing date, or on the basic date pursuant to Article 201 (4) of this Act, or Article 35 (4) of the Utility Model Act, whichever comes later."

- (4) Where an earlier application pursuant to Article 55 (1) is an international application which becomes a patent application or application for registration of a utility model pursuant to Article 214 (4) of this Act, or Article 40 (4) of the Utility Model Act, the following subparagraphs shall apply for the purposes of Articles 55 (1) and (3) through (5) and 56 (1): *<Amended by Act No. 9381, Jan. 30, 2009>*

1. "Specification or drawings initially attached to an application" in the main text of Article 55 (1), Article 55 (3), and the main text of Article 55 (5) shall be construed as "specification, scope of claims, or drawings of an international application on the date which may have

- been deemed the international filing date pursuant to Article 214 (4) of this Act, or Article 40 (4) of the Utility Model Act";
2. "Specification or drawings initially attached to an earlier application" in Article 55 (4) shall be construed as "specification, scope of claims, or drawings of an international application of an earlier application on the date which may have been deemed the international filing date pursuant to Article 214 (4) of this Act, or Article 40 (4) of the Utility Model Act";
  3. "At the time of expiration of one year and three months from the filing date" in the main text of Article 56 (1) shall be construed as "at the time of expiration of one year and three months from the date which may have been deemed the international filing date pursuant to Article 214 (4) of this Act, or Article 40 (4) of the Utility Model Act, or when a decision is made pursuant to Article 214 (4) of this Act, or Article 40 (4) of the Utility Model Act, whichever comes later."

#### **Article 203 (Submission of Documents)**

- (1) An applicant for an international patent shall submit to the Commissioner of the Korean Intellectual Property Office a document stating the following matters within the period for submitting domestic documents. In such cases, an applicant who has filed an international patent application in a foreign language shall submit a Korean translation under Article 201 (1), together with such document: *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 6768, Dec. 11, 2002>*
  1. The name and domicile of the applicant (if the applicant is a juristic person, its title and location of place of business);
  2. The name and domicile or place of business of the representative, if any (if the representative is a patent corporation, its title, location of office and designated patent attorney's name);
  3. Deleted; *<by Act No. 6411, Feb. 3, 2001>*
  4. The title of the invention;
  5. The name and domicile, or place of business of the inventor;
  6. The international filing date and the international application number.
- (2) The Commissioner of the Korean Intellectual Property Office shall, in any of the following cases, order an amendment thereto designating a deadline: *<Newly Inserted by Act No. 6768, Dec. 11, 2002>*
  1. Where a document under the former part of paragraph (1) is not submitted within the period for submitting domestic documents;

2. Where a document submitted under the former part of paragraph (1) is in violation of the formalities as specified by this Act or by an order made by this Act.
- (3) Where a person who receives an order for amendment under paragraph (2) fails to make such amendment within the designated deadline, the Commissioner of the Korean Intellectual Property Office may invalidate the international patent application concerned. *<Newly Inserted by Act No. 6768, Dec. 11, 2002>*

**Article 204 (Amendment after Receipt of International Search Report)**

- (1) Where an applicant who filed an international patent application, after having received an international search report pursuant to Article 19 (1) of the Patent Cooperation Treaty, has amended the scope of claims of the international application, he/she shall submit the documents falling under any of the following subparagraphs to the Commissioner of the Korean Intellectual Property Office by the relevant date (where the relevant date is the date of request for examination of application, referring to such time when a request for examination of application is made; hereafter the same shall apply in this Article and Article 205):
  1. In cases of an international application filed in a foreign language, the Korean translation of such amendment;
  2. In cases of an international application filed in the Korean language, a copy of such amendment.
- (2) When the translation or a copy of the amendment has been submitted in accordance with paragraph (1), the scope of claims pursuant to Article 47 (1) shall be deemed to have been amended according to the translation or a copy of such amendment: Provided, That when the amendment (limited to cases of an international patent application filed in the Korean language) has been served on the Korean Intellectual Property Office by the relevant date pursuant to Article 20 of the Patent Cooperation Treaty, the scope of claims shall be deemed to have been amended according to such amendment.
- (3) Where an applicant who filed an international patent application has submitted a brief statement pursuant to Article 19 (1) of the Patent Cooperation Treaty to the International Bureau, he/she shall submit the documents falling under any of the following subparagraphs to the Commissioner of the Korean Intellectual Property Office by no later than the relevant date:

1. In cases of an international application filed in a foreign language, the Korean translation of such statement;
  2. In cases of an international application filed in the Korean language, a copy of such statement.
- (4) Where an applicant who filed an international patent application has failed to comply with the formalities pursuant to paragraph (1) or (3) by the relevant date, the written amendment or statement pursuant to Article 19 (1) of the Patent Cooperation Treaty shall be deemed not to have been submitted: Provided, That this shall not apply when the written amendment or statement of an international application filed in the Korean language has been served on the Korean Intellectual Property Office by the relevant date pursuant to Article 20 of the Patent Cooperation Treaty.

*[This Article Wholly Amended by Act No. 9381, Jan. 30, 2008]*

**Article 205 (Amendment before Preparation of International Preliminary Examination Report)**

- (1) Where an applicant who filed an international patent application has amended the specification, scope of claims, and drawings of an international patent application pursuant to Article 34 (2) (b) of the Patent Cooperation Treaty, he/she shall submit the documents falling under any of the following subparagraphs to the Commissioner of the Korean Intellectual Property Office by the relevant date:
  1. In cases of an international application filed in a foreign language, the Korean translation of such amendment;
  2. In cases of an international application filed in the Korean language, a copy of such amendment.
- (2) When the translation or a copy of the amendment has been submitted pursuant to paragraph (1), the specification and drawings prescribed in Article 47 (1) shall be deemed to have been amended according to the translation or a copy of such amendment: Provided, That this shall not apply when the written amendment (limited to cases of an international patent application filed in the Korean language) has been served on the Korean Intellectual Property Office by the relevant date pursuant to Article 36 (3) (a) of the Patent Cooperation Treaty.
- (3) Where an applicant who filed an international patent application has failed to comply with the formalities pursuant to paragraph (1) by the relevant date, a written amendment pursuant to Article 34 (2) (b) of the Patent Cooperation Treaty shall be deemed not to have been submitted: Provided,

That this shall not apply when the written amendment (limited to cases of an international patent application filed in the Korean language) has been served on the Korean Intellectual Property Office by the relevant date pursuant to Article 36 (3) (a) of the Patent Cooperation Treaty.

*[This Article Wholly Amended by Act No. 9381, Jan. 30, 2009]*

**Article 206 (Special Provisions on Patent Administrators for Overseas Residents)**

- (1) Notwithstanding the provisions of Article 5 (1), an overseas resident applicant for an international patent may initiate a patent-related procedure application without a patent administrator by the relevant date.
- (2) An overseas resident who has submitted a translation of an application under paragraph (1) shall appoint a patent administrator and report such fact to the Commissioner of the Korean Intellectual Property Office within the deadline prescribed by Ordinance of the Ministry of Knowledge Economy. *<Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>*
- (3) An international application shall be deemed to have been withdrawn where the appointment of a patent administrator is not reported within the deadline prescribed by paragraph (2).

**Article 207 (Special Provisions on Time and Effect of Laying Open Application)**

- (1) When Article 64 (1) applies to the laying-open of an international patent application, "at the time of expiration of one year and six months from any of the following dates" shall be construed as "at the time of expiration of the period for submitting domestic documents (in cases of an international application for which an applicant has requested an examination of a patent application and which has been internationally published pursuant to Article 21 of the Patent Cooperation Treaty, when one year and six months have passed from the preference date or the date of request for examination of application, whichever is later)." *<Amended by Act No. 9381, Jan. 30, 2009>*
- (2) Notwithstanding paragraph (1), where an international application filed in the Korean language has already been published internationally in accordance with Article 21 of the Patent Cooperation Treaty before the application is laid open pursuant to paragraph (1), such international application shall be deemed to have been laid open at the time of such international publication. *<Newly Inserted by Act No. 9381, Jan. 30, 2009>*
- (3) An applicant who filed an international patent application may, after the

domestic laying-open (in cases of an international application filed in the Korean language, referring to an international publication pursuant to Article 21 of the Patent Cooperation Treaty; hereafter the same shall apply in this paragraph) and after having issued a warning in the form of a document describing the contents of the invention claimed in the international patent application, demand of a person who has commercially or industrially worked the invention, after the warning but before the registration of a patent right, the payment of compensation in an amount equivalent to what he/she would normally receive for the working of the invention. Even in the absence of a warning, this shall apply to a person who commercially or industrially worked the invention before the domestic laying-open and who had known that the invention was the one claimed in the international patent application: Provided, That the applicant shall not claim the right for compensation before the registration of a patent right. <Amended by Act No. 5329, Apr. 10, 1997; Act No. 9381, Jan. 30, 2009>

**Article 208 (Special Provisions on Amendment)**

(1) Notwithstanding Article 47 (1), no amendment (excluding an amendment under Articles 204 (2) and 205 (2)) to an international patent application shall be made unless all the following requirements are satisfied:

<Amended by Act No. 9381, Jan. 30, 2009>

1. Official fees pursuant to Article 82 (1) shall be paid;
2. The Korean translation pursuant to Article 201 (1) shall be submitted: Provided, That this shall not apply to an international patent application filed in the Korean language;
3. The relevant date shall have passed (where the relevant date is the date of request for an examination of application, referring to the time of filing a request for examination of application).

(2) Deleted. <by Act No. 6411, Feb. 3, 2001>

(3) With regard to the scope of an amendment made to an international patent application filed in a foreign language, "features stated in the specification or drawings initially attached to the patent application" in Article 47 (2) shall be construed as "features stated in a translation of the specification, scope of claims or drawings (only the text matter therein), or the features stated in the drawings (excluding the text matter therein), in the international patent application submitted on the international filing date." <Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>

(4) and (5) Deleted. <by Act No. 6411, Feb. 3, 2001>

**Article 209 (Restriction on Time of Conversion of Utility Model Registration Application)**

Notwithstanding Article 53 (1) of this Act, a patent application made on the basis of and by converting from an international application which is deemed a utility model registration application filed on the international filing date under Article 34 (1) of the Utility Model Act may not be filed until the fees under Article 17 (1) of the Utility Model Act have been paid, and a translation of the application under Article 35 (1) of the Utility Model Act (excluding cases of international utility model registration application made in the Korean language) has been submitted (with respect to an international application considered to be a utility model registration application under Article 40 (4) of the Utility Model Act, until the decision under the said provision has been made). *<Amended by Act No. 7871, Mar. 3, 2006>*

*[This Article Wholly Amended by Act No. 5576, Sep. 23, 1998]*

**Article 210 (Restriction on Time of Request for Examination)**

Notwithstanding Article 59 (2), an applicant of an international patent application may not make a request for examination of his/her application until the proceedings (excluding cases of international patent application made in the Korean language) under Article 201 (1) have been taken and the official fees under Article 82 (1) have been paid. A person, other than the applicant of an international patent application, may not make a request for examination of the international patent application until the period under Article 201 (1) has lapsed. *<Amended by Act No. 5576, Sep. 23, 1998>*

**Article 211 (Orders to Submit Documents Cited in International Search Report, etc.)**

The Commissioner of the Korean Intellectual Property Office may require an applicant for an international patent to submit copies of the references cited in the international search report under Article 18 of the Patent Cooperation Treaty and the international preliminary examination report under Article 35 of the said Treaty, designating a deadline. *<Amended by Act No. 7871, Mar. 3, 2006>*

**Article 212 Deleted.** *<by Act No. 7871, Mar. 3, 2006>*

**Article 213 (Special Provisions on Invalidation Trial of Patent)**

With respect to a patent granted for an international patent application filed in a foreign language, an invalidation trial thereagainst may be brought on the grounds that the invention concerned does not fall under any of the following subparagraphs as well as the grounds falling under any subparagraph of



Article 133 (1): <Amended by Act No. 7871, Mar. 3, 2006>

1. An invention described in both the specification, scope of claims or drawings (limited to the text matter therein) in the international application submitted on the international filing date and the translated version thereof;
2. An invention described in the drawings (excluding the text matter therein) in the international application submitted on the international filing date.

[This Article Wholly Amended by Act No. 6768, Dec. 11, 2002]

**Article 214 (International Application Considered to be Patent Application by Ruling)**

- (1) An applicant who filed an international application may, where the international application (only applicable to a patent application) which includes the Republic of Korea in the designated states referred to in Article 4 (1) (ii) of the Patent Cooperation Treaty falls under any of the following subparagraphs, request the Commissioner of the Korean Intellectual Property Office to make a decision pursuant to Article 25 (2) (a) of the same Treaty, within the period prescribed by Ordinance of the Ministry of Knowledge Economy, as prescribed by Ordinance of the Ministry of Knowledge Economy: <Amended by Act No. 9381, Jan 30, 2009>
  1. Where a receiving office referred to in Article 2 (xv) of the Patent Cooperation Treaty has rejected such international application pursuant to Article 25 (1) (a) of the same Treaty;
  2. Where a receiving office referred to in Article 2 (xv) of the Patent Cooperation Treaty has made a declaration on such international application pursuant to Article 25 (1) (a) or (b) of the same Treaty;
  3. Where the International Bureau has recognized such international application pursuant to Article 25 (1) (a) of the same Treaty.
- (2) A person who intends to make a request under paragraph (1) shall submit to the Commissioner of the Korean Intellectual Property Office a Korean translation of the specification, scope of claims or drawings (limited to the text matter thereof) as well as other documents relating to the international application provided by Ordinance of the Ministry of Knowledge Economy. <Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>
- (3) Where a request under paragraph (1) has been made, the Commissioner of the Korean Intellectual Property Office shall decide whether the refusal,

- declaration or finding was justified under the Patent Cooperation Treaty and the Regulations thereunder. *<Amended by Act No. 7871, Mar. 3, 2006>*
- (4) Where the Commissioner of the Korean Intellectual Property Office has made a decision under paragraph (3) to the effect that the refusal, declaration or finding was not justified under the Patent Cooperation Treaty and the Regulations thereunder, the international application concerned shall be considered to be a patent application filed on the date which would have been recognized as the international filing date if the said refusal, declaration or finding had not been made in respect of the said international application. *<Amended by Act No. 7871, Mar. 3, 2006>*
- (5) Where the Commissioner of the Korean Intellectual Property Office decides on the justification pursuant to paragraph (3), he/she shall serve a certified copy of the decision on the relevant applicant for an international patent. *<Newly Inserted by Act No. 8197, Jan. 3, 2007>*
- (6) Articles 199 (2), 200, 201 (4) through (8), 202 (1) and (2), 208, 210 and 213 shall apply mutatis mutandis to international applications considered to be patent applications under paragraph (4). *<Amended by Act No. 5576, Sep. 23, 1998; Act No. 7871, Mar. 3, 2006>*
- (7) In cases of the laying open of an international application considered to be a patent application under paragraph (4), "filing date of a patent application" in Article 64 (1) shall be construed as "priority date referred to in Article 201 (1)."

## CHAPTER XI SUPPLEMENTARY PROVISIONS

### **Article 215 (Special Provisions for Patent or Patent Right with Two or More Claims)**

Where Articles 65 (6), 84 (1) 2, 85 (1) 1 (limited to extinguishment), 101 (1) 1, 104 (1) 1, 3 or 5, 119 (1), 133 (2) or (3), 136 (6), 139 (1), 181 and 182 of this Act and Article 26 (1) 2, 4 or 5 of the Utility Model Act apply to a patent or patent right with two or more claims, a patent shall be deemed to have been granted, or a patent right to have been established, for each claim. *<Amended by Act No. 7871, Mar. 3, 2006>*

*[This Article Wholly Amended by Act No. 6411, Feb. 3, 2001]*

### **Article 215-2 (Special Provisions for Registration of Patent Application with Two or More Claims)**

- (1) Where a person who has received a decision to grant a patent for a

patent application with two or more claims has paid the registration fees, the person may abandon individual claims.

- (2) Matters necessary for abandonment of claims under paragraph (1) shall be prescribed by Ordinance of the Ministry of Knowledge Economy.

*<Amended by Act No. 8852, Feb. 29, 2008>*

*[This Article Newly Inserted by Act No. 6411, Feb. 3, 2001]*

**Article 216 (Inspection of Documents, etc.)**

- (1) A person who intends to receive a certificate for a patent or a trial, a certified copy or extract of documents, or inspect or copy the Patent Register or documents may request the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal to that effect. *<Amended by Act No. 4892, Jan. 5, 1995>*

- (2) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may refuse to permit the request referred to in paragraph (1) if it relates to a patent application, the establishment of which has not been registered or which has not been laid open for public inspection, or if it relates to matters liable to contravene public order or morality. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 5329, Apr. 10, 1997; Act No. 9381, Jan. 30, 2009>*

**Article 217 (Prohibition of Documents Relating to Patent Application, Examination, Trial, Retrial, Patent Register, etc. from being Taken out or Opened to Public)**

- (1) Documents relating to a patent application, examination, trial or retrial or the Patent Register shall be prohibited from being taken out except for any of the following cases: *<Amended by Act No. 7871, Mar. 3, 2006; Act No. 8171, Jan. 3, 2007; Act No. 10012, Feb. 4, 2010>*

1. Where documents relating to patent applications or examinations are taken out for the purpose of searching prior art, etc. under Article 58 (1) or (2);
  2. Where documents relating to patent applications, examinations, trials or retrials or the Patent Register are taken out for the purpose of entrusting the affairs of digitizing patent documents under Article 217-2 (1);
  3. Where documents relating to patent applications, examinations, trials or retrials or the Patent Register are taken out for the purpose of online remote working under Article 32 (2) of the Electronic Government Act.
- (2) A response shall not be given to a request for an expert opinion,

testimony or an inquiry as to the contents of a pending patent application, examination, trial, or retrial that is in process, or as to the contents of an examiner's decision, trial decision or ruling. <Amended by Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>

**Article 217-2 (Agency for Affairs of Digitizing Patent Documents)**

- (1) Where it is deemed necessary to effectively deal with patent-related procedures, the Commissioner of the Korean Intellectual Property Office may entrust any corporation equipped with facilities and manpower prescribed by Ordinance of the Ministry of Knowledge Economy with the digitization of documents relating to patent applications, examinations, trials or retrials or the Patent Register through an electronic information processing system and its technology of utilizing the electronic information processing system (hereinafter referred to "affairs of digitizing patent documents"). <Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 8852, Feb. 29, 2008>
- (2) Deleted. <by Act No. 7871, Mar. 3, 2006>
- (3) A person who is or was an executive or employee of the person who has been entrusted with the affairs of digitizing patent documents pursuant to paragraph (1) (hereinafter referred to as "agency of digitizing patent documents") shall not divulge confidential information on inventions or appropriate the invention disclosed in a pending application to which he/she had access during the course of his/her duties.
- (4) The Commissioner of the Korean Intellectual Property Office may, pursuant to paragraph (1), digitize a written patent application or other documents prescribed by Ordinance of the Ministry of Knowledge Economy, which fail to be submitted with such electronic documents as prescribed in Article 28-3 (1), and may record them in a file of an electronic information processing system operated by the Korean Intellectual Property Office or the Intellectual Property Tribunal. <Newly Inserted by Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>
- (5) The details written in a file under paragraph (4) shall be deemed the same as those entered in the documents concerned. <Newly Inserted by Act No. 5576, Sep. 23, 1998>
- (6) The method of carrying out the affairs of digitizing patent documents as referred to in paragraph (1) and other matters necessary for carrying out the affairs of digitizing patent documents, shall be determined by

Ordinance of the Ministry of Knowledge Economy. <Amended by Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>

- (7) Where any agency of digitizing patent documents which fails to meet the standards for facilities and manpower determined by Ordinance of the Ministry of Knowledge Economy under paragraph (1) does not comply with any corrective measures therefor taken by the Commissioner of the Korean Intellectual Property Office, the latter may cancel the entrustment of the affairs of digitizing patent documents to the agency. In such cases, he/she shall first provide the agency an opportunity to present its opinion thereabout. <Newly Inserted by Act No. 7871, Mar. 3, 2006; Act No. 8852, Feb. 29, 2008>

*[This Article Newly Inserted by Act No. 5329, Apr. 10, 1997]*

**Article 218 (Service of Documents)**

Necessary matters related to procedures for service of documents, etc. in this Act shall be prescribed by Presidential Decree. <Amended by Act No. 8197, Jan. 3, 2007>

**Article 219 (Service by Public Announcement)**

- (1) In cases where documents cannot be served because the domicile or place of business of a person to be served is unclear, service shall be made by public announcement.
- (2) Service by public announcement shall be implemented by publishing a notice in the Patent Gazette to the effect that the documents will be served at any time to the person to be served.
- (3) The initial service by public announcement shall come into force after the expiry of two weeks from the date it is published in the Patent Gazette: Provided, That subsequent service by public announcement on the same party shall come into force from the date following its publication in the Patent Gazette.

**Article 220 (Service of Documents to Overseas Residents)**

- (1) For an overseas resident having a patent administrator, documents shall be served on his/her patent administrator.
- (2) For an overseas resident without a patent administrator, documents may be sent to him/her by registered airmail.
- (3) When documents have been sent by registered airmail under paragraph (2), such documents shall be deemed to have been served on the mailing date.

**Article 221 (Patent Gazette)**

- (1) The Korean Intellectual Property Office shall publish the Patent Gazette.
- (2) The Patent Gazette may be published by the electronic media, as prescribed by Ordinance of the Ministry of Knowledge Economy. *<Newly Inserted by Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001; Act No. 8852, Feb. 29, 2008>*
- (3) In publishing the Patent Gazette by the electronic media, the Commissioner of the Korean Intellectual Property Office shall make public matters regarding the fact of publication of the Patent Gazette, its main contents, and service by public announcement through information and communication networks. *<Newly Inserted by Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001>*

**Article 222 (Submission, etc. of Documents)**

The Commissioner of the Korean Intellectual Property Office or any examiner may require a party concerned to submit documents and articles necessary for dealing with proceedings, other than those relating to trial or retrial.

**Article 223 (Patent Indication)**

A patentee or an exclusive or non-exclusive licensee may indicate an identification of the patent upon a patented product in cases of an invention of a product or in cases of an invention of process, on the manufactured product. If it is not possible to place such indication on the product, the identification may be made on the container or package thereof.

**Article 224 (Prohibition of False Indication)**

No person shall be allowed to perform any of the following acts:

1. Marking with an indication of a patent having been granted or patent application having been filed, or any sign likely to cause confusion therewith, on an article for which a patent has not been granted, a patent application is not pending, or upon an article manufactured by a process for which a patent has not been granted or a patent application is not pending, or a container or package thereof;
2. Assigning, leasing or displaying an article which has been marked with an indication referred to in subparagraph 1;
3. For the purpose of manufacture, use, assignment or lease of an article referred to in subparagraph 1, marking with an indication upon advertisements, signboards or tags that a patent has been granted, a patent application had been filed for it, that it has been produced by a process for which a patent has been granted, a patent application is pending, or marking with any sign likely to cause confusion therewith;

4. For the purpose of use, assignment or lease of a process for which a patent has not been granted or a patent application is not pending, marking with an indication on advertisements, signboards or tags that a patent has been granted, a patent application had been filed for the process, or marking with any sign likely to cause confusion therewith.

**Article 224-2 (Restriction on Objection)**

- (1) No objection may be raised under any other Act against a ruling to dismiss an amendment, a decision of patentability, a trial decision, or a ruling to dismiss a request for trial or retrial, and no objection may be raised under any other Act against any disposition against which no objection may be raised under this Act. *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*
- (2) Any objection against a disposition, other than that referred to in paragraph (1) shall be governed by the Administrative Appeals Act or the Administrative Litigation Act. *<Newly Inserted by Act No. 7871, Mar. 3, 2006>*

*[This Article Wholly Amended by Act No. 5329, Apr. 10, 1997]*

**Article 224-3 (Order of Secrecy)**

- (1) When the following grounds are explained in a lawsuit against infringement of a patent right or exclusive license, with regard to trade secret (referring to trade secret pursuant to subparagraph 2 of Article 2 of the Unfair Competition Prevention and Trade Secret Protection Act) possessed by the relevant party, the court may order, in its ruling, the other relevant party (in cases of a juristic person, referring to the representative thereof), a person who files a lawsuit on behalf of the relevant party or any other person who becomes aware of trade secret due to the relevant lawsuit not to use the relevant trade secret for purposes other than for continuing the relevant lawsuit or not to disclose such secret to any person, other than a person who has received an order with respect to the relevant trade secret pursuant to this paragraph, upon the request of the relevant party: Provided, That this shall not apply where the other relevant party (in cases of a juristic person, referring to the representative thereof), a person who files a lawsuit on behalf of the relevant party or any other person who becomes aware of trade secret has already acquired such secret by methods, other than the perusal of preparatory documents or examination of evidence prescribed in subparagraph 1 until the time of the relevant application:

1. That trade secret is included in preparatory documents which have already been submitted or should be submitted, or evidence which has already been examined or should be examined;
  2. That the usage or disclosure of trade secret shall be restricted to prevent the trade secret under subparagraph 1 from being used or disclosed for purposes other than for filing the relevant lawsuit, as such usage or disclosure is likely to affect the business operation of the relevant party.
- (2) Requests for order (hereinafter referred to as "order of secrecy") under paragraph (1) shall be made in written documents containing the following:
1. A person who receives an order of secrecy;
  2. Actual facts which are enough to specify trade secret subject to order of            secrecy;
  3. Actual facts falling under subparagraphs of paragraph (1).
- (3) When a decision is made on the order of secrecy, the court shall deliver such written decision to a person who has received the order of secrecy.
- (4) The order of secrecy shall take effect from the date when a written decision under paragraph (3) is delivered to a person who has received the order of secrecy.
- (5) The immediate appeal may be made against a trial which has dismissed or rejected requests for the order of secrecy.

*[This Article Newly Inserted by Act No. 11117, Dec. 2, 2011]*

**Article 224-4 (Revoking Order of Secrecy)**

- (1) In cases where requirements prescribed in Article 224-3 (1) have not been satisfied or fail to be satisfied any longer, any person who has requested the order of secrecy or has received such order may request the court which keeps trial records (if there is no court which keeps trial records, referring to the court which has issued the order of secrecy) to revoke the order of secrecy.
- (2) When a trial is to be conducted concerning requests for revocation of the order of secrecy, the court shall deliver the relevant written decision to a person who has made such requests and the other party.
- (3) The immediate appeal may be made against a trial concerning requests for revocation of the order of secrecy.
- (4) A trial which revokes the order of secrecy shall become effective only after it is made final and conclusive.



- (5) A court which has held a trial concerning revocation of the order of secrecy shall inform a person who has requested the revocation of the order of secrecy or a person who has received such order concerning the relevant trade secret, other than the other party, of a trial on the revocation of the order of secrecy, without delay.

*[This Article Newly Inserted by Act No. 11117, Dec. 2, 2011]*

**Article 224-5 (Notice, etc. on Requests for Perusal, etc. of Trial Records)**

- (1) In cases where a decision under Article 163 (1) of the Civil Procedure Act is made with respect to trial records concerning a lawsuit in which the order of secrecy is issued (excluding a lawsuits in which all orders of secrecy are revoked), if the relevant party has requested the perusal, etc. of confidential information prescribed in the abovementioned paragraph, but a person who has not received the order of secrecy has followed procedures for requests in the relevant lawsuit, the court clerical official of Grade IV, court clerical official of Grade V, court clerical official of Grade VI or court clerical official of Grade VII (hereinafter referred to as "court clerical official of Grade V, etc." in this Article) shall inform the relevant party who has filed a request (excluding a person who requested the relevant perusal, etc.; hereinafter the same shall apply in paragraph (3)) pursuant to Article 163 (1) of the Civil Procedure Act of the request for the relevant perusal immediately after such request.
- (2) In cases under paragraph (1), court clerical official of Grade V, etc. shall not allow a person who has followed procedures for the relevant request to peruse confidential information under paragraph (1) until two weeks lapse (if a request for the order of secrecy is made during the period against a person who has followed procedures for the relevant request, until the time when a trial on the relevant application becomes final and conclusive) from the date when a request under paragraph (1) is made.
- (3) The provisions of paragraph (2) shall not apply to cases where all the relevant parties who have filed a request pursuant to Article 163 (1) of the Civil Procedure Act have agreed to allow a person who has made a request pursuant to paragraph (1) to peruse the confidential information under paragraph (1).

*[This Article Newly Inserted by Act No. 11117, Dec. 2, 2011]*

## CHAPTER XII PENAL PROVISIONS

**Article 225 (Offense of Infringement)**

- (1) Any person who infringes a patent right or exclusive license shall be punished by imprisonment not exceeding seven years or by a fine not exceeding 100 million won. *<Amended by Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001>*
- (2) Prosecution for offenses under paragraph (1) shall be initiated upon filing of a complaint by an injured party.

**Article 226 (Offense of Divulging Confidential Information, etc.)**

Where any present or former employee of the Korean Intellectual Property Office or the Intellectual Property Tribunal has divulge confidential information on inventions or appropriate the invention disclosed in a pending patent application (including an invention for which an international application is pending) to which he/she had learned in the course of performing his/her duties, such employee shall be punished by imprisonment not exceeding five years or by a fine not exceeding 50 million won. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 9381, Jan. 30, 2009>*

**Article 226-2 (Executives and Employees of Specialized Institutions, etc. Deemed to be as Public Officials)**

A person who is or was an executive or employee of any specialized institution or any agency of digitizing patent documents under Article 58 (1) shall be deemed one who is or was an employee of the Korean Intellectual Property Office for purposes of applying Article 226. *<Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006; Act No. 9381, Jan. 30, 2009>*  
*[This Article Newly Inserted by Act No. 5329, Apr. 10, 1997]*

**Article 227 (Offense of Perjury)**

- (1) Where a witness, expert witness or interpreter, having taken an oath under this Act, has made a false statement or provided a false expert opinion or interpreted falsely before the Intellectual Property Tribunal, he/she shall be punished by imprisonment not exceeding five years or by a fine not exceeding 10 million won. *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>*
- (2) Any person who has committed an offense under paragraph (1), who confesses it before the trial decision concerned becomes final and conclusive, may be partially or totally exempted from the application of the sentence. *<Amended by Act No. 5329, Apr. 10, 1997; Act No. 7871, Mar. 3, 2006>*

**Article 228 (Offense of False Marking)**

Any person who violates Article 224 shall be punished by imprisonment not exceeding three years or by a fine not exceeding 20 million won.

**Article 229 (Offense of Frauds)**

Any person who has obtained a patent, the registration of an extension of a patent term, or a trial decision by means of a fraudulent or any other unjust act shall be punished by imprisonment not exceeding three years or by a fine not exceeding 20 million won. *<Amended by Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*

**Article 229-2 (Offences Violating Order of Secrecy)**

- (1) Any person who has violated the order of secrecy under Article 224-3 (1) in the Republic of Korea or in a foreign country without any justifiable ground shall be punished by imprisonment not exceeding five years or by a fine not exceeding 50 million won.
- (2) A public action against an offence under paragraph (1) shall be instituted only if a complaint thereof is filed by a person who has requested the order of secrecy.

*[This Article Newly Inserted by Act No. 11117, Dec. 2, 2011]*

**Article 230 (Joint Penal Provisions)**

If a representative of a juristic person, or an agent, an employee or any other employed person of a juristic person or individual has committed an offense under Articles 225 (1), 228 or 229 with respect to the duties of the juristic person or individual, not only shall the offender be punished, but also the juristic person shall be punished by a fine under any of the following subparagraphs and the individual shall be punished by a fine referred to in the relevant provisions: Provided, That this shall not apply to cases where the juristic person or individual has not been negligent in giving due attention and supervision concerning the relevant duties to prevent such offense: *<Amended by Act No. 9381, Jan. 30, 2009>*

1. Cases referred to in Article 225 (1): A fine not exceeding 300 million won;
2. Cases referred to in Article 228 or 229: A fine not exceeding 60 million won.

*[This Article Wholly Amended by Act No. 9249, Dec. 26, 2008]*

**Article 231 (Confiscation, etc.)**

- (1) Any article that is the subject of an infringing act under Article 225 (1), or any article arising out of such act, shall be confiscated or, upon request of the injured party, a judgment shall be rendered to the effect

that such article shall be delivered to the injured party. *<Amended by Act No. 5329, Apr. 10, 1997>*

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

**Article 232 (Fines for Negligence)**

- (1) Any person falling under any of the following subparagraphs shall be punished by a fine for negligence not exceeding 500,000 won: *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6626, Jan. 26, 2002; Act No. 7871, Mar. 3, 2006>*
1. Where a person who has taken an oath under Articles 299 (2) and 367 of the Civil Procedure Act has made a false statement before the Intellectual Property Tribunal;
  2. Where a person was ordered by the Intellectual Property Tribunal to submit or show documents or other materials with respect to taking evidence or to the preservation of evidence, and has failed to comply with the order without justifiable grounds;
  3. Deleted; *<by Act No. 7871, Mar. 3, 2006>*
  4. Where a person was summoned by the Intellectual Property Tribunal as a witness, expert witness or interpreter and has failed to comply with the subpoena, or has refused to take an oath, to make a statement, to testify, to give an expert opinion or to interpret, without justifiable grounds.
- (2) Fines for negligence referred to in paragraph (1) shall be imposed and collected by the Commissioner of the Korean Intellectual Property Office, as prescribed by Presidential Decree.
- (3) Deleted. *<by Act No. 11117, Dec. 2, 2011>*
- (4) Deleted. *<by Act No. 11117, Dec. 2, 2011>*
- (5) Deleted. *<by Act No. 11117, Dec. 2, 2011>*

ADDENDA

**Article 1 (Enforcement Date)**

This Act shall enter into force on September 1, 1990: Provided, That matters concerning Chapter II of the Patent Cooperation Treaty as prescribed in Articles 201, 205 and 211 shall enter into force on the day on which Chapter II of the Patent Cooperation Treaty takes effect to the Republic of Korea.

**Article 2 (General Transitional Measures)**

Except as otherwise provided for in Articles 3 through 9 of this Addenda, this Act shall also apply to matters having taken place before this Act enters into force: Provided, That any effect produced pursuant to the previous provisions shall not be affected.

**Article 3 (Transitional Measures concerning Patent Application, etc.)**

The examination as to a patent application and the appellate trial as to a refusal ruling, which are made before this Act enters into force, shall be governed by the previous provisions.

**Article 4 (Transitional Measures concerning Trial, etc. on Patent for which Right is established)**

The trial, appellate trial, review and lawsuit on a patent for which a right is established on the basis of a patent application filed before this Act enters into force, shall be governed by the previous provisions.

**Article 5 (Transitional Measures concerning Submission of Priority Evidentiary Documents under Treaty)**

The period for submitting priority evidentiary documents of a patent application which requests a priority to the Republic of Korea before this Act enters into force, shall be governed by the previous provisions.

**Article 6 (Transitional Measures concerning Rejection of Correction)**

Any correction made before this Act enters into force shall be governed by the previous provisions.

**Article 7 (Transitional Measures concerning Duration of Patent Right)**

The duration of any patent right established before this Act enters into force and that established by patent application shall be governed by the previous provisions.

**Article 8 (Transitional Measures concerning Expropriation, etc. of Patent Right)**

Any disposition or lawsuit on restriction, expropriation, revocation, or embodiment of a patent right, which is requested before this Act enters into force, shall be governed by the previous provisions.

**Article 9 (Transitional Measures concerning Procedure, Expenses and Compensation for Losses, etc. of Trial)**

The procedure, expenses and compensation for losses, etc. concerning any trial, appellate trial, review and lawsuit, which are requested before this Act enters into force, shall be governed by the previous provisions.

ADDENDA <Act No. 4541, Mar. 6, 1993>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

**Articles 2 through 5 Omitted.**

ADDENDA <Act No. 4594, Dec. 10, 1993>

- (1)(Enforcement Date) This Act shall enter into force on January 1, 1994.
- (2)(Transitional Measures concerning Period for Return of Patent Fees, etc.) The return of patent fees and official fees paid by mistake before this Act enters into force, shall be governed by the previous provisions.
- (3) (Applicability to Return of Patent Fees) The amended provisions of Article 84 (1) 2 and 3 concerning the return of patent fees due to a final decision on nullity of a patent, shall apply to those on which a decision on nullity becomes conclusive after this Act enters into force.

ADDENDA <Act No. 4757, Mar. 24, 1994>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation.

**Articles 2 through 5 Omitted.**

ADDENDA <Act No. 4892 Jan. 5, 1995>

**Article 1 (Enforcement Date)**

This Act shall enter into force on March 1, 1998.

**Article 2 (Transitional Measures on Cases Pending)**

- (1) Any case for which a request for trial has been made or a case pending for which a request for appellate trial against a ruling of refusal, decision of revocation, or a decision of rejection for correction before this Act enters into force shall be deemed to have made a request against a trial with the Intellectual Property Tribunal and to have been pending therein.
- (2) Any case for which a request for trial and decision has been made or a case pending for which a request for immediate appeal against a decision of dismissal for request for trial before this Act enters into force shall be deemed to have brought a litigation against the Patent Court under this Act and to have been pending therein.

**Article 3 (Transitional Measures on Cases against which Dissatisfactions may be Brought)**

- (1) Any litigation may be brought against a case on which a trial, a decision of rejection for request for trial, a ruling of refusal, or a decision of dis

missal for correction by an examiner as at the time this Act enters into force, and against which a dissatisfaction has not brought with the board of patent appeals under the previous provisions, within 30 days from the date this Act enters into force, a litigation as referred to in Article 186 (1) may be brought against a trial and decision of the trial and a decision of rejection for request for trial, and a trial as referred to in Article 132-3 or 132-4 may be requested against a ruling of refusal, or a decision of dismissal for correction by an examiner: Provided, That where any period for dissatisfaction has expired under the previous provisions as at the time this Act enters into force, the same shall not apply.

(2) Any dissatisfaction may be brought against a case on which a trial and decision of a trial, a decision of rejection for request for appellate trial and a decision of rejection for correction by the appellate trial judge as at the time this Act enters into force has been served, with the Supreme Court within 30 days from the date this Act enters into force: Provided, That where any period for dissatisfaction has expired under the previous provisions as at the time this Act enters into force, the same shall not apply.

(3) Any case against which a dissatisfaction has been brought with the Supreme Court and which is pending therein before this Act enters into force and any case against which a dissatisfaction on has been brought pursuant to paragraph (2) shall be deemed to have been pending or to have been brought against the Supreme Court.

**Article 4 (Transitional Measures on Review Cases)**

**Articles 2 and 3 of Addenda shall apply mutatis mutandis to any review case pending.**

**Article 5 (Transfer, etc. of Documents)**

(1) The Commissioner of the Korean Industrial Property Office shall transfer documents on a pending case as referred to in Article 2 (1) of Addenda (including those applied mutatis mutandis under Article 4 of Addenda) without delay to the President of the Intellectual Property Tribunal.

(2) The Commissioner of the Korean Industrial Property Office shall transfer documents on a pending case as referred to in Article 2 (2) of Addenda (including those applied mutatis mutandis under Article 4 of Addenda) without delay to the chief Justice of the Patent Court. In such cases, matters necessary for the transfer etc. of documents shall be determined by the Supreme Court Regulations.

**Article 6 Omitted.**

ADDENDA <Act No. 5080, Dec. 29, 1995>

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 1996.

**Article 2 (Transitional Measures concerning Invention of Substance to be Manufactured by Nuclear Conversion Method)**

(1) Any applicant of a patent specifying an invention of a substance to be manufactured by the nuclear conversion method, in the specification or drawings appended first to the patent application of those pending in the Korean Industrial Property Office (excluding cases where a certified copy of the patent ruling is served), as at the time this Act enters into force, may correct such specification or drawings within six months after this Act enters into force.

(2) The correction as referred to in paragraph (1) shall be deemed the correction made prior to the service of a certified copy of the decision on public announcement on application.

**Article 3 (Transitional Measures concerning Duration of Patent Right)**

(1) This Act shall not apply to any patent right, the duration of which is terminated pursuant to the previous provisions before this Act enters into force.

(2) The duration of the patent rights existing, or those the application of which is pending in the Korean Industrial Property Office, and the duration of which is to be shortened due to the enforcement of this Act, as at the time this Act enters into force, shall be governed by the previous provisions.

**Article 4 (Special Cases for Recognition of Non-exclusive License for those Preparing Embodiment Project)**

(1) In the event that the patent right to the invention of substance to be manufactured by the nuclear conversion method is established under the amended provisions of Article 32, the person who is carrying on or preparing for the embodiment project of such invention is Korea before January 1, 1995, shall have a non-exclusive license of the patent right to such invention, in the limit of the object of such invention or project which is embodied or prepared.

(2) In the event that the term of a patent right is extended by the enforcement of this Act, any person who is preparing the embodiment project of the invention in Korea before January 1, 1995, in anticipation of the termination of such patent right pursuant to the previous provisions, shall



have a non-exclusive license as to such patent right, to the extent of the object of the invention and business which he/she is preparing, during the term extended by the enforcement of this Act from the expiration of the duration as set forth by the previous provisions.

(3) Any person who holds a non-exclusive license under paragraphs (1) and (2), shall pay a considerable compensation to the patentee or exclusive licensee.

(4) The provisions of Article 118 (2) shall be applicable mutatis mutandis to non-exclusive licenses as referred to in paragraphs (1) and (2).

**Article 5 (Transitional Measures concerning Procedure and Expenses of Trial, and Compensation for Losses, etc.)**

The procedure, expenses, compensation for losses, etc. concerning any trial, appellate trial, review and lawsuit requested against any act committed before this Act enters into force, shall be governed by the previous provisions.

ADDENDA <Act No. 5329, Apr. 10, 1997>

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 1997: Provided, That Articles 15 (2), 16 (1) and (2), 46, 132-3, 140-2, 164 (1), 170, 171 (2), 172, 176 (1) and (2), 224-2 of this Act and Articles 2 (1) and 3 (1) of Addenda of the amended Patent Act, Act No. 4892 shall enter into force on March 1, 1998.

**Article 2 (Special Cases on Patent Objections)**

(1) In applying Article 6, "request an appellate trial against a ruling of refusal under Article 167" in the same Article shall be construed as "request an appellate trial against a ruling of refusal or a decision of revocation under Article 167" until February 28, 1998.

(2) In applying Article 164 (1), "until the decision of another trial or appellate trial becomes definite" in the same paragraph shall be construed as "until a decision on a patent objection, of another trial or appellate trial becomes definite" until February 28, 1998.

(3) In applying Article 170 (1), "Articles 50, 51, 63 and 66 through 75" in the former part of the same paragraph shall be construed as "Articles 51, 63 and 66" and the latter part of the same paragraph shall be deemed as if it were deleted until February 28, 1998, and in applying paragraph (3) of the same Article, "Article 51 (4) through (6)" in the same paragraph shall be construed as "Article 51 (1) and (5)" until February 28, 1998.

(4) In applying Article 171 (3) and (4), "ruling of refusal" in the same

paragraph shall be construed as "ruling of refusal or decision of revocation" until February 28, 1998.

(5) In applying Article 172, "procedure for the patent, which was taken for the examination or trial" in the same Article shall be construed as "procedure for the patent, which was taken for the examination, patent objection or trial" until February 28, 1998.

(6) In applying Article 176, "shall reverse the refusal ruling or decision on trial" in the same Article shall be construed as "shall reverse or revoke the refusal ruling, decision of revocation or decision on trial" until February 28, 1998.

### **Article 3 (Transitional Measures on Modification of Patent Objection System)**

(1) Any application for a patent which has been pending in the Korean Industrial Property Office before this Act enters into force and on which a certified copy of decision for publicity of application has been served, and any patent, patent right, trial or review related to the application for a patent on which a certified copy of decision for publicity of application has been served before this Act enters into force shall be governed by the previous provisions.

(2) Any application for a patent on which a copy of decision for publicity of application has been served before this Act enters into force or any application for a patent for which has been applied as the same invention as an invention or a device described in the specification or drawing appended initially to the patent application after the date of application of a utility model registration application shall, notwithstanding the amended provisions of Article 29 (3), be governed by the previous provisions.

### **Article 4 (Transitional Measures on Penal Provisions)**

The application of penal provisions to acts committed before this Act enters into force shall be governed by the previous provisions.

### **Article 5 Omitted.**

ADDENDA <Act No. 5576, Sep. 23, 1998>

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

This Act shall enter into force on January 1, 1999: Provided, That Articles 193 (1) and 198-2, the amended provisions concerning the effect of specification, claims, drawings and abstracts of an international patent application made in the Korean language of Article 201 (6), the amended provisions concerning the exemption of submission of translations with respect

to an international patent application made in the Korean language of Article 208 (1) and the amended provisions concerning the exemption of submission of translations with respect to an international patent application made in the Korean language of Article 210, shall enter into force on the date when a convention which the Government of the Republic of Korea concludes with the International Bureau in connection with the appointment of an international search authority enters into force, and the amended provisions of Articles 6, 11, 29, 36, 49, 53, 55, 56, 59, 69, 87, 88, 102, 104, 133, 202, 209 and 215 of this Act, and those of Articles 21 and 22 of the Design Act in Article 5 (2) of this addenda shall enter into force on July 1, 1999.

[Effective Date of the Agreement: Dec. 1, 1999]

**Article 2 (General Transitional Measures)**

The previous provisions shall apply to a patent application made under the previous provisions as at the time this Act enters into force, and the patent registration, patent right, opposition to a patent, trial, review and litigation related thereto.

**Article 3 (Applicability to Disposition of Procedures Related to Filing of Patent Application by Means of Electronic Documents)**

The amended provisions of Articles 28-3 and 217-2 (5) involving patent application and opposition-related procedures shall apply with respect to a patent application that is filed from January 1, 1999.

**Article 4 (Applicability to Requirements for Patents)**

The amended provisions of Article 29 (3) shall apply in cases where an invention for which a patent application is made after this Act enters into force (hereafter referred to as "later-filed invention" in this Article) is the same as a device described in the specifications or drawings appended to a written application for utility model registration, which was filed before this Act enters into force and which was laid open after the filing date of the patent application for a later-filed invention.

**Article 5 Omitted.**

ADDENDA <Act No. 6024, Sep. 7, 1999>

**Article 1 (Enforcement Date)**

This Act shall enter into force on October 1, 2000. (Proviso Omitted.)

**Articles 2 through 13 Omitted.**

ADDENDA <Act No. 6411, Feb. 3, 2001>

(1) (Enforcement Date) This Act shall enter into force on July 1, 2001: Provided, That the amended provisions of Articles 56 (1), 84 (2) and (3), the proviso to Article 217 (1) and Article 229-2 shall enter into force on the date of its promulgation.

(2) (Applicability to Requirements for Patents) The amended provisions of Articles 29 (1) 2 and 30 (1) 1 (c) shall apply to a patent application that is filed on and after this Act enters into force.

(3) (General Transitional Measures) The previous provisions shall apply to an examination, patent registration, patent right, opposition to a patent, trial, retrial and litigation related to a patent application which is made under the previous provisions as at the time this Act enters into force: Provided, That this shall not apply to any of the following cases: *<Amended by Act No. 7871, Mar. 3, 2006>*

1. Where an opposition to a patent is made, Articles 136 (9) and 140 (2) as applied mutatis mutandis under amended Article 77 (3) shall apply;

2. Where a patent application or patent right is deemed to have retroactive effect, amended Article 81-2 shall apply;

3. Where a trial to invalidate a patent is requested, amended Article 133-2 (1), (2), amended Articles 136 (3) through (5), (7) through (11), 139 (3), 140 (1), (2) and (5), and 136 (1) as applied mutatis mutandis under amended Article 133-2 (3) shall apply;

4. Where a trial against ruling of refusal of patent application is requested, the amended provisions of the proviso to Article 140-2 (1), and (3) shall apply;

5. Where individual claims of a patent application with two or more claims are abandoned, amended Article 215-2 shall apply.

ADDENDA *<Act No. 6582, Dec. 31, 2001>*

(1) (Enforcement Date) This Act shall enter into force six months after the date of its promulgation.

(2) (Transitional Measures for State or Public Patents) The patents and the rights eligible to obtain the patent on the in-service inventions of the teachers and staff of any State or public school, which have owned by the State or local government as at the time this Act enters into force, shall pass to the fully-responsible systems of the school at the time of such inservice inventions.

(3) (Transitional Measures for State or Public Utility Model Right, etc.) With regard to the transfer of the utility model rights for an in-service device and in-service creation of the teachers and staff of any State or public school, the

rights eligible to obtain a registration of utility model, and the design rights and the rights eligible to obtain a registration of design, which have owned by the State or local government as at the time this Act enters into force, the amended provisions of Article 39 and paragraph (2) of the Addenda applied mutatis mutandis respectively in Article 20 of the Utility Model Act and in Article 24 of the Design Act shall apply mutatis mutandis.

ADDENDA <Act No. 6626, Jan. 26, 2002>

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2002.

**Articles 2 through 7 Omitted.**

ADDENDA <Act No. 6768, Dec. 11, 2002>

(1) (Enforcement Date) This Act shall enter into force five months after the date of its promulgation: Provided, That the amended provisions of Article 201 (1) shall enter into force three months after the date of its promulgation.

(2) (Applicability to Handling of Opposition to Grant of Patent) The amended provisions of Article 78-2 shall apply to an opposition to the grant of a patent which is filed on and after the date this Act enters into force.

(3) (Transitional Measures on Period for Submitting Domestic Documents on International Patent Application) Notwithstanding the amended provisions of Article 201 (1), the previous provisions shall apply with respect to an international patent application for which the period for submitting domestic documents has expired as at the time this Act enters into force.

ADDENDA <Act No. 7289, Dec. 31, 2004>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation.

**Articles 2 through 5 Omitted.**

ADDENDA <Act No. 7427, Mar. 31, 2005>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation: Provided, That ... (Omitted.) ... Article 7 (excluding paragraphs (2) and (29)) of the Addenda shall enter into force on January 1, 2008.

**Articles 2 through 7 Omitted.**

ADDENDUM <Act No. 7554, May 31, 2005>

This Act shall enter into force six months after the date of its promulgation: Provided, That the amended provisions of Article 81-3 shall enter into force on September 1, 2005.

ADDENDA <Act No. 7869, Mar. 3, 2006>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation. (Proviso Omitted.)

**Articles 2 through 6 Omitted.**

ADDENDA <Act No. 7871, Mar. 3, 2006>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation: Provided, That the amended provisions of Articles 3 (3), 6, 7-2 and 11 (1), subparagraph 7 of Article 20, subparagraph 6 of Article 21, and Articles 29 (1), (3) and (4) (amendments related to the Utility Model Act), 31, 36 (3), 49, 52, 53, 55 (1), (3) and (4) (amendments related to the Utility Model Act), 56 (1), 58, 58-2, 59 (3), 62, 63-2, 64, 87 (2), 88 (4), 102 (4) (amendments related to the Utility Model Act), 104 (1), 133 (1), 133-2 (4), 135 (1), 154 (8), 193 (1), 202 (3) (amendments related to the Utility Model Act) and (4), 204 and 205 (amendments related to the relevant date), 208 (3), 209, 213, 215 (amendments related to the Utility Model Act), and 229-2 shall take effect on October 1, 2006; and the amended provisions of Articles 3 (2), 4, 15 (1), 35, 55 (3) (amendments related to the patent objections), 57 (1), 65 (6), 69 through 78, 78-2, 84 (1), 132-3, 136 (1) and (6), 137 (1), 140-2, 148, 164 (1), 165 (3) and (4) (amendments related to the patent objections), 171 (2), 172, 176 (1) and (2), 181 (1), 212, 214 (5), 215, 217 (1) (amendments related to the patent objections) and (2), 217-2 (1) and (2) (amendments related to the patent objections), 224-2 (1) (amendments related to the patent objections), 226 (2), and 228, on July 1, 2007.

**Article 2 (Applicability to Patent Requirements, etc.)**

The amended provisions of Articles 29 (1) 1, 30 (1) and 36 (4) shall apply from the first patent application filed after this Act enters into force.

**Article 3 (Applicability to Refund of Patent Fees)**

The amended provisions of Article 84 (2) and (3) shall apply with respect to a decision to cancel a patent or a trial decision to invalidate a patent or the

registration of an extension of the term of a patent right which becomes final and conclusive after this Act enters into force.

**Article 4 (Applicability to Revision of Patent Invalidation Trial)**

The amended provisions of the proviso to Article 133 (1) (excluding subparagraphs 7 and 8) shall apply to a patent right whose establishment is registered after this Act enters into force.

**Article 5 (Applicability to Remuneration for Patent Attorney)**

The amended provisions of Article 191-2 shall apply to a fee to be paid to a patent attorney who performs a lawsuit on behalf of a party after this Act enters into force.

**Article 6 (General Transitional Measures)**

The previous provisions shall apply with respect to the examination of a patent application filed under the previous provisions as at the time this Act enters into force, and the patent registration, patent right, trial, retrial and litigation related thereto: Provided, That the calculation of a period shall be governed by the amended provisions of subparagraph 4 of Article 14 and a request for the invalidation trial of the patent shall be governed by the amended provisions of Article 133-2 (4), and a request for a trial to confirm the scope of the patent right, by the amended provisions of Article 135 (1).

**Article 7 (Transitional Measures concerning Abolition of Patent Objection System)**

The previous provisions shall apply with respect to a patent objection against a patent right whose establishment is registered prior to July 1, 2007.

ADDENDA <Act No. 8171, Jan. 3, 2007>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation. (Proviso Omitted.)

**Articles 2 through 6 Omitted.**

ADDENDA <Act No. 8197, Jan. 3, 2007>

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2007.

**Article 2 (Applicability to Patent Applications, etc.)**

The amended provisions of Articles 42, 47 (1) and 55 (3), proviso to Article 59 (2), subparagraph 4 of Article 62, Article 63-2, proviso to Article 64 (1), the latter parts of Articles 170 (1) and 174 (2) shall apply from the first patent application filed after this Act enters into force.

**Article 3 (Applicability to Cancellation of Designation of Specialized Institutions)**

The amended provisions of Article 58-2 shall apply from the first violation made after this Act enters into force.

**Article 4 (Applicability to Refund of Official Fees for Patent Applications, etc.)**

The amended provisions of Article 84 (1) 4 shall apply from the first patent application filed after this Act enters into force.

**Article 5 (Applicability to Correction of Patent in Procedures of Patent Invalidation Trials)**

The amended provisions of Articles 133-2 and 137 shall apply from the first request for a patent invalidation trial made after this Act enters into force.

**Article 6 (Applicability to Amendment Made in Specification and Drawings at Trials to Confirm Scope of Right)**

The amended provisions of Article 140 (2) 2 shall apply from the first request for a trial to confirm the scope of a patent right, filed after this Act enters into force.

**Article 7 (General Transitional Measures)**

The previous provisions shall apply to a patent application filed under the previous provisions as well as an examination, trial, retrial, or litigation with regard to such application as at the time this Act enters into force.

ADDENDA <Act No. 8357, Apr. 11, 2007>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation: Provided, That ... (Omitted)... and the amended provisions of Article 6 (4) of the Addenda shall enter into force on July 1, 2007.

**Articles 2 through 7 Omitted.**

ADDENDA <Act No. 8462, May 17, 2007>

(1) (Enforcement Date) This Act shall enter into force six months after the date of its promulgation.

(2) (Applicability to Refund of Patent Fees, etc.) The amended provisions of Article 84 (3) shall apply even to patent fees and official fees whose time period of the request for refund under the previous provisions does not elapse at the time this Act enters into force.

ADDENDA <Act No. 8852, Feb. 29, 2008>

**Article 1 (Enforcement Date)**



This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

**Articles 2 through 7 Omitted.**

ADDENDUM <Act No. 9249, Dec. 26, 2008>

This Act shall enter into force on the date of its promulgation.

ADDENDA <Act No. 9381, Jan. 30, 2009>

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2009: Provided, That the amended provisions of Articles 15 (1), 29 (4), 55, 56, 58 (1), 63 (2), 81-3, 90 (6), 140, 140-2 (2), 202, 204, 205, 207, 208, 214, 216, 226, 226-2, and 227 through 230 shall enter into force on the date of its promulgation.

**Article 2 (Applicability to Requirements for Patent of International Patent Application Filed in Korean Language)**

The amended provisions of Articles 29 (4), 204, 205 and 207 shall apply from the first international patent application filed in the Korean language on or after January 1, 2009.

**Article 3 (Applicability to Amendment to Patent Application)**

The amended part related to the deletion of Article 47 (4) of the amended provisions of Article 47, the main sentence of Article 51 (1) and Article 55 shall apply from the first amendment made after this Act enters into force. Where an amendment is made to a patent application filed before this Act enters into force, "period (in cases of subparagraph 3, that time)" in the proviso to the part other than the subparagraphs of Article 47 (1) shall be construed as "period"; "when an applicant requests a re-examination pursuant to Article 67-2" in subparagraph 3 of the same paragraph as "where a request for a trial against a ruling of refusal to grant a patent is made in accordance with Article 132-3, 30 days from the date of such request for a trial"; and "Article 47 (1) 2 and 3" in the main sentence of Article 51 (1) as "Article 47 (1) 2. "

**Article 4 (Applicability to Request for Re-examination)**

The amended part related to a request for re-examination of the amended provisions of Article 47, the amended part related to a request for re-examination of the amended provisions of Article 51, and the amended provisions of Article 67-2 shall apply from the first patent application filed after this Act enters into force.

**Article 5 (Applicability to Divided Application)**

The amended provisions of Article 52 shall apply to a divisional application based on the first patent application filed after this Act enters into force.

**Article 6 (Applicability to Ex Officio Amendment, etc.)**

The amended provisions of Article 66-2 shall apply from the first decision to grant a patent, made after this Act enters into force.

**Article 7 (Applicability to Late Payment and Remaining Payment of Patent Fees)**

The amended provisions of Articles 79, 81 and 81-2 shall apply from the first payment, late payment or remaining payment of patent fees, made after this Act enters into force.

**Article 8 (Applicability to Application for Registration of Extension of Term of Patent Right)**

The amended provisions of Article 90 (6) shall apply from the first application for registration of the extension of the term of a patent right, filed after this Act enters into force.

**Article 9 (Applicability to Amendment to Request for Trial, etc.)**

The amended provisions of Articles 140 and 140-2 (2) shall apply from the first request for a trial, made after this Act enters into force.

**Article 10 (General Transitional Measures)**

The previous provisions (excluding Articles 15 (1) and 216) shall apply to a patent application filed before this Act enters into force.

**Article 11 Omitted.**

ADDENDUM <Act No. 9985, Jan. 27, 2010>

This Act shall enter into force six months after the date of its promulgation: Provided, That the amended provisions of Article 96 shall enter into force on the date of its promulgation.

ADDENDA <Act No. 10012, Feb. 4, 2010>

**Article 1 (Enforcement Date)**

This Act shall enter into force three months after the date of its promulgation. (Proviso Omitted.)

**Articles 2 through 6 Omitted.**

ADDENDA <Act No. 10716, May 24, 2011>

(1) (Enforcement Date) This Act shall enter into force on July 1, 2011.

(2) (Applicability to Patent Applications) The amended provisions of Articles 42 (3), 63-2 and 133 (1) 1 shall apply from the first patent application filed after this Act enters into force.

ADDENDA <Act No. 11117, Dec. 2, 2011>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date when the Free Trade Agreement between the Republic of Korea and the United States of America and Exchange of Letters related to the Agreement takes effect: Provided, That the amended provisions of the proviso to Article 6 of the Addenda of the Patent Act (No. 7871) shall enter into force on the date of its promulgation.

**Article 2 (Applicability to Inventions not Deemed to be Publicly Known, etc.)**

The amended provisions of Article 30 shall apply from the first patent application filed after this Act enters into force.

**Article 3 (Applicability to Extension, etc. of Term of Patent Right Following Delayed Registration)**

The amended provisions of Articles 83, 92-2 through 92-5, 93, 132-3, 134, 139, 165, 176 and 187 shall apply from the first patent application filed after this Act enters into force.

**Article 4 (Applicability to Order of Secrecy, etc.)**

The amended provisions of Articles 224-3 through 224-5 shall apply from the first lawsuit against infringement of a patent right or exclusive license filed after this Act enters into force.

**Article 5 (Transitional Measures concerning Repeal of Revocation of Patent Right)**

The revocation of a patent right due to grounds for revocation of a patent right under the former Article 116 before this Act enters into force, shall be governed by the previous provisions.