

## **CHAPTER III**

### **EXAMINATION**

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

- (1) The Commissioner of the Korean Intellectual Property Office shall have applications for design registration and oppositions to an unexamined design registration examined by an examiner.
- (2) The qualifications of examiners are prescribed by Presidential Decree.

#### **Article 26 Decision to Refuse Design Registration**

- (1) An examiner shall decide to refuse design registration under any of the following reasons (referred to as "the reasons for refusal"):
  - (i) where the design in the application for design registration is unregistrable under Articles 5 to 7, 9(6), 10 to 12, 16(1) and (2) of this Act or Article 25 of the Patent Act as applied under Article 4 of this Act;
  - (ii) deleted;
  - (iii) where a person is not entitled to design registration under Article 3(1), or where the design in the application for design registration is unregistrable under the proviso of Article 3(1);
  - (iv) where an application for design registration violates a treaty; or
  - (v) where an application for a similar unexamined design registration falls under any of the following subparagraphs:
    - (a) where a design registered as a similar design or a design for which an application for similar design registration has been filed is indicated as the principal design;

- (b) where the term of the design right of a principal design has expired; or
- (c) where an application for a principle unexamined design registration has been invalidated, withdrawn or abandoned, or where a decision to refuse design registration becomes final;
- (d) where an applicant for similar unexamined design registration is not identical to the owner of a design right related to a principle design or an applicant for principle design registration; or
- (e) where the design of a filed application for similar unexamined design registration is dissimilar to the principle design.

(2) Notwithstanding paragraph (1), Articles 5, 7, 11(1) and 16(1) and (2) do not apply to an application for unexamined design registration (unless the design is industrially applicable under provisions other than those prescribed in the subparagraphs of Article 5(1)).

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

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

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

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

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

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

- (1) An examiner's decision to grant or refuse design registration must be in writing and must state the reasons for the decision.
- (2) Where an examiner decides to grant or refuse design registration, the Commissioner of the Korean Intellectual Property Office shall transmit a certified copy of the decision to the applicant.

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

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

- (i) where the design in the application for design registration violates Articles 5, 6, 7(1), 10 and 16(1) and (2) of this Act or Article 25 of the Patent Act as applied under Article 4 of this Act;
- (ii) where a person is not entitled to design registration under Article 3(1) or the design in the application for design registration is unregistrable under the proviso of Article 3(1); or
- (iii) where an application for design registration violates a treaty.

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

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

- (*ibis*) the name and residential or business address of the agent, if any (and, if a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (ii) the indication of the registered design(s) subject to the opposition to an unexamined design registration;
- (iii) the purpose of the opposition to an unexamined design registration; and
- (iv) the grounds for the opposition to an unexamined design registration and indication of supporting evidence.

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

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

#### **Article 29*ter* Amendment to Grounds for an Opposition to Unexamined Design Registration etc.**

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

#### **Article 29*quater* Collegial Body for Examinations and Decisions etc.**

(1) A collegial body consisting of three examiners shall examine and decide an opposition to an unexamined design registration.

(2) The Commissioner of the Korean Intellectual Property Office shall designate examiners constituting a collegial body for each opposition to an unexamined design registration.

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

(4) Articles 144(2), 145(2) and 146(2) and (3) of the Patent Act apply *mutatis mutandis* to the collegial body of examiners and the presiding examiner.

### **Article 29quinquies Decision on Opposition to Unexamined Designs Registration**

(1) An examiner shall decide on an opposition to an unexamined design registration after the period provided under Articles 29bis(3) and 29ter has elapsed.

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

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

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

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

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

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

(1) Articles 58, 58bis, 61, 68 and 78 of the Patent Act apply *mutatis mutandis* to examination of applications for design registration.

(2) Articles 72, 73, 75, 76, 78, 141(1) to (3), 142, 148(i) to (v) and (vii), 154(8), 157, 165(3) to (6) and 166 of the Patent Act apply *mutatis mutandis* to an examination or decision on an opposition to an unexamined design registration.

## CHAPTER IV

### REGISTRATION FEES AND REGISTRATION OF DESIGNS

#### Article 31 Design Registration Fees

(1) The owner of a design right or a person seeking to register the establishment of a design right shall pay the design registration fees (referred to as "the registration fees").

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

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

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

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