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Article 61 *Mutatis Mutandis* Application of the Patent Act

Articles 101, 106, 118 and 125*bis* of the Patent Act apply *mutatis mutandis* to design rights.

CHAPTER VI

PROTECTION OF OWNER OF DESIGN RIGHT

Article 62 Injunction against an Infringement etc.

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

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

Article 63 Acts Considered to be Infringing

Acts of commercially or industrially manufacturing, assigning, leasing, importing or offering for assignment or lease (including displaying for assignment or lease) articles used exclusively for manufacturing articles to which a registered design or similar design has been applied for are shall be considered to infringe the design right or exclusive license.

Article 64 Presumption etc. of the Amount of Damages

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

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

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

(4) Notwithstanding paragraph (3), where the amount of damage exceeds the amount referred to in paragraph (3), the excess amount may also be claimed as compensation for damages. When awarding damages, the court may consider whether the person who infringed the design right or the exclusive license was willful or grossly negligent.

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

all the arguments.

Article 65 Presumption of Negligence

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

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

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

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

Article 67 *Mutatis Mutandis* Application of the Patent Act

Article 132 of the Patent Act applies *mutatis mutandis* to the protection of the owner of a design right.