

CHAPTER I

GENERAL PROVISIONS

Article 1 Purpose

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

Article 2 Definitions

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

- (i) "invention" means the highly advanced creation of a technical idea using the rules of nature;
- (ii) "patented invention" means an invention for which a patent has been granted; and
- (iii) "working" means any of the following acts:
 - (a) acts of manufacturing, using, assigning, leasing, importing or offering for assignment or lease (including displaying for assignment or lease) an invented product;
 - (b) acts of using an invented process; and
 - (c) acts of using, assigning, leasing, importing or offering for assignment or lease a product manufactured by an invented process for manufacturing a product, in addition to the acts mentioned in subparagraph (b).

Article 3 Capacity of Minors etc.

(1) Minors, quasi-incompetents and incompetents may not initiate a procedure for filing an application, requesting an examination or any other patent-

related procedure (referred to as "a patent-related procedure") unless represented by a legal representative. However, this provision does not apply where a minor or quasi-incompetent can perform a legal act independently.

(2) The legal representative referred to in paragraph(1) may act without the consent of the family council in any patent-related opposition, trial or retrial procedure initiated by another party.

(3) Patent-related procedures initiated by a person who lacks the requisite power of legal representation or competence or delegation necessary to initiate the procedures have retroactive effect if the procedures are ratified by a person with the power of representation or competence.

Article 4 Associations etc. Other than a Legal Entity

A representative or an administrator designated by an association or a foundation that is not a legal entity may request an examination of a patent application, file an opposition to the grant of a patent, or appear as a plaintiff or defendant in a trial or a retrial in the name of the association or foundation.

Article 5 Patent Administrator for Nonresidents

(1) A person who has neither a residential nor business address in the Republic of Korea (referred to as "a nonresident") may not, except when the nonresident (or a representative of the nonresident if a legal entity) is sojourning in the Republic of Korea, initiate any patent-related procedure or appeal any decision taken by an administrative agency in accordance with this Act or any decree under this Act, unless the person is represented by an agent (referred to as "a patent administrator") who has a residential nor business address in the Republic of Korea.

(2) A patent administrator shall, within the scope of powers conferred on the patent administrator, represent the principal in all procedures related to a patent and in any appeal against a decision taken by an administrative agency in accordance with this Act or any decree under this Act.

(3) Deleted.

(4) Deleted.

Article 6 Scope of Power of Attorney

Unless expressly empowered, a representative instructed to initiate a patent-related procedure before the Korean Intellectual Property Office by a person whose residential or business address is in the Republic of Korea may not abandon or withdraw an application for a patent, withdraw an application to register an extension for the term of a patent right, abandon a patent right, withdraw a petition, withdraw a request for a motion, make or withdraw a priority claim under Article 55(1), request a trial under Article 132^{ter} or appoint a sub-representative.

Article 7 Proof of Power of Attorney

Where an agent, which in this Act includes patent administrators, purports to represent a person who is initiating a patent-related procedure before the Korean Intellectual Property Office, the agent shall present written proof of the power of attorney.

Article 8 Continuation of Power of Attorney

The power of attorney of an agent representing a person initiating a patent-related procedure is not extinguished upon the death or loss of legal capacity of the principal, the extinguishment of a legal entity of the principal due to a merger, the termination of the duty of trust of the principal, the death or loss of legal capacity of the legal representative or the modification or extinguishment of the power of attorney.

Article 9 Independence of Representation

Where two or more agents of a person initiating a patent-related procedure

have been designated, each of them may independently represent the principal before the Korean Intellectual Property Office or the Intellectual Property Tribunal.

Article 10 Replacement of Agents etc.

(1) Where the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner considers that a person initiating a patent-related procedure is not qualified to conduct the procedure or make oral statements and so on, the Commissioner or presiding trial examiner may order *ex officio* the appointment of an agent to conduct the procedure.

(2) Where the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner considers that an agent representing a person initiating a patent-related procedure is not qualified to conduct the procedure or make oral statements and so on, the Commissioner or presiding trial examiner may order *ex officio* the replacement of the agent.

(3) The Commissioner of the Korean Intellectual Property Office or the presiding trial examiner may, in the case referred to in paragraphs (1) or (2) of this Article, order the appointment of a patent attorney to conduct the procedure.

(4) The Commissioner of the Korean Intellectual Property Office or the presiding trial examiner may invalidate any action taken before the Korean Intellectual Property Office or the Intellectual Property Tribunal by a person initiating a patent-related procedure referred to in paragraph (1) of this Article or by an agent referred to in paragraph (2) of this Article before the appointment or the replacement of an agent referred to in paragraphs (1) or (2), respectively, after issuing the order referred to in paragraphs (1) or (2).

Article 11 Representation of Two or More Persons

(1) Where two or more persons jointly initiate a patent-related procedure, any of them may represent the joint initiators except for actions falling under any of the following subparagraphs, unless they have appointed a common

representative and have notified the Korean Intellectual Property Office or the Intellectual Property Tribunal of the appointment of the representative:

- (i) abandonment or withdrawal of a patent application or withdrawal of an application to register an extension for the term of a patent right;
- (ii) withdrawal of a petition; claim or withdrawal of a priority claim under Article 55(1);
- (iii) withdrawal of a request; and
- (iv) a request for a trial under Article 132*ter*.

(2) Where a common representative has been appointed and notification has been given under paragraph (1), written proof that the representative has been appointed must be presented.

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

Notwithstanding provisions in this Act expressly related to agents, Part I, Section 2, Subsection 4 of the Civil Procedure Act applies *mutatis mutandis* to agents under this Act.

Article 13 Venue of Nonresidents

If a nonresident appoints a patent administrator to administer a patent right or other right related to a patent, the residential or business address of the patent administrator is deemed to be that of the nonresident. Where a patent administrator has not been appointed, the location of the Korean Intellectual Property Office is regarded as the seat of the property under Article 11 of the Civil Procedure Act.

Article 14 Calculation of Time Limits

A time limit in this Act or in any decrees under this Act is calculated as follows:

- (i) the first day of a period is not counted unless the period starts at midnight;
- (ii) when a period is expressed in months or years, it is counted according to the calendar;
- (iii) when the start of a period does not coincide with the beginning of a calendar month or year, the period expires in the final month or year of the day preceding the date that corresponds to the starting date of the period; however, if no corresponding date occurs in the final month, the period expires on the last day of that month; and
- (iv) when the last day of a period for executing a patent-related procedure falls on an official holiday, including Labor Day designated by the Labor Day Designation Act, the period expires on the first working day after the holiday.

Article 15 Extension of Time Limits etc.

(1) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may extend, for the benefit of a person residing in an area that is remote or difficult to access, the period for submitting an amendment of grounds for an opposition according to Article 70(1), or the period for demanding a trial under Article 132*ter*, upon a request or *ex officio*.

(2) The Commissioner of the Korean Intellectual Property Office, the President of the Intellectual Property Tribunal, a presiding trial examiner or an examiner who has designated a period for a patent-related procedure to be initiated under this Act may extend the period upon a request or *ex officio*.

(3) A presiding trial examiner or an examiner who has designated a date for initiating a patent-related procedure under this Act may change the date upon a request or *ex officio*.

Article 16 Invalidation of Procedure

(1) Where a person who has been instructed to make an amendment under 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. However, where a person who has been instructed to make an amendment for not paying the fees for requesting an examination under Article 82(2) fails to pay the fees for requesting an examination, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may invalidate the amendment to the description attached to the patent application.

(2) Where a patent-related procedure is invalidated under paragraph (1), if the delay is considered to have been caused by unavoidable reasons, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may revoke the disposition of invalidation at the request of the person instructed to make the amendment, provided the request is made within fourteen days of the date on which the reasons for the delay cease to exist and not more than a year after the designated period expired.

Article 17 Subsequent Completion of Procedure

Where a person who has initiated a patent-related procedure fails to observe either the period for requesting a trial under Article 132^{ter} or the period for demanding a retrial under Article 180(1) for unavoidable reasons, the person may complete the procedure within the fourteen-day period immediately after the date on which the reasons ceased to exist, if not more than one year has elapsed since the designated period expired.

Article 18 Succession of Procedural Effects

The effects of a patent-related procedure or other patent-related right extend to the successor in title.

Article 19 Continuation of a Procedure by a Successor

Where a patent right or other patent-related right is transferred while a patent-related procedure is pending before the Korean Intellectual Property Office or the Intellectual Property Tribunal, the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner may require the successor in title to continue the patent-related procedure.

Article 20 Interruption of a Procedure

A patent-related procedure pending before the Korean Intellectual Property Office or the Intellectual Property Tribunal that falls under any of the following subparagraphs, is interrupted, unless a representative is authorized to conduct the procedure:

- (i) when the party involved has died;
- (ii) when the legal entity involved has ceased to exist due to a merger;
- (iii) when the party involved has lost the ability to conduct the procedure;
- (iv) when the legal representative of the party involved has died or lost the power of attorney;
- (v) when the commission of a trustee given by the trust of the party involved has terminated; or
- (vi) where the representative under Article 11(1) has died or been disqualified.

Article 21 Resumption of an Interrupted Procedure

Where a procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal is interrupted in the manner referred to in Article 20, a person who falls under any of the following subparagraphs may resume the procedure:

- (i) under Article 20(i), a deceased person's successor, administrator of inheritance or other person legally authorized to pursue the procedure; however, a successor may not resume the procedure until the right to succession is no longer subject to renunciation;
- (ii) under Article 20(ii), the legal entity established by or existing after the merger;
- (iii) under Article 20(iii) and (iv), the party whose ability to carry out the necessary procedure has been restored or any person who becomes the legal representative of the party;
- (iv) under Article 20(v), a new trustee; and
- (v) under Article 20(vi), a new representative or each joint initiator involved.

Article 22 Request for a Resumption

- (1) An opposing party may request a resumption of an interrupted procedure under Article 20.
- (2) Where a request for the resumption of an interrupted procedure under Article 20 is made, the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner shall notify the opposing party.
- (3) If no grounds are considered to exist for granting a request for the resumption of an interrupted procedure under Article 20, the Commissioner of the Korean Intellectual Property Office or the trial examiner shall dismiss the request *ex officio* by decision after examining the request.
- (4) The Commissioner of the Korean Intellectual Property Office or the trial examiner shall decide, upon a request for resumption, whether to permit the resumption of an interrupted procedure after a certified copy of the decision or trial decision has been sent.

(5) If a person referred to in Article 21 does not resume an interrupted procedure, the Commissioner of the Korean Intellectual Property Office or the trial examiner shall *ex officio* order the resumption of the procedure within a designated period.

(6) If no request for resumption is made within the period designated in paragraph (5), the resumption is deemed to have been made on the day after the designated period expires.

(7) Having determined that a resumption has been made in accordance with paragraph (6), the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner shall notify the parties involved.

Article 23 Suspension of a Procedure

(1) If the Commissioner of the Korean Intellectual Property Office or the trial examiner is unable to carry out duties due to a natural disaster or other unavoidable circumstances, any procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal is suspended until the impediments cease to exist.

(2) If a party 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 trial examiner may order a suspension by decision.

(3) The Commissioner of the Korean Intellectual Property Office or the trial examiner may cancel the decision issued under paragraph (2).

(4) If a procedure is suspended under paragraphs (1) or (2), or a decision is canceled under paragraph (3), the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner shall notify the parties involved.

Article 24 Effects of an Interruption or Suspension

The interruption or suspension of a patent-related procedure pending in the Korean Intellectual Property Office suspends the running of a term and the entire term starts to run again from the date of the notification of the continuation or resumption of the procedure.

Article 25 Capacity of Foreigners

Foreigners who have neither a residential nor business address in the Republic of Korea are not entitled to enjoy patent rights or other patent-related rights, except under any of the following circumstances:

- (i) where their country allows nationals of the Republic of Korea to enjoy patent rights or other patent-related rights under the same conditions as its own nationals;
- (ii) where their country allows nationals of the Republic of Korea to enjoy patent rights or other patent-related rights under the same conditions as its own nationals when the Republic of Korea allows their country's nationals to enjoy patent rights or other patent-related rights; or
- (iii) where they may enjoy patent rights or other patent-related rights according to a treaty or the equivalent of a treaty (referred to as "a treaty").

Article 26 Effects of a Treaty

Where a treaty contains a patent-related provision that differs from this Act, the treaty prevails.

Article 27 Deleted

Article 28 Effective Date of Submitted Documents

(1) Applications, demands or other documents (which in this Article includes articles) submitted to the Korean Intellectual Property Office or the Intellectual Property Tribunal under this Act, or any decree under this Act, are effective from the date on which they are delivered to the Korean Intellectual Property Office or the Intellectual Property Tribunal.

(2) Where applications, demands or other documents are submitted by mail to the Korean Intellectual Property Office or the Intellectual Property Tribunal, they are deemed to have been delivered to the Korean Intellectual Property Office or the Intellectual Property Tribunal on the date stamped by the mail service, if the date stamp is clear. Where the date stamp is unclear, they are deemed to have been delivered on the date on which the mail was submitted to a post office, if the date is verified by a receipt. However, this provision does not apply if written applications to register a patent right and other related rights and documents concerning an international application under Article 2(vii) of the Patent Cooperation Treaty (referred to as "an international application") are submitted by mail.

(3) Deleted.

(4) Notwithstanding paragraphs (1) and (2), details concerning the submission of documents with regard to the delay of mail, loss of mail or interruption of the mail service are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

Article 28bis Entry of Identification Number

(1) A person who initiates a patent-related procedure prescribed by ordinance of the Ministry of Commerce, Industry and Energy (excluding any person to whom an identification number has already been granted under paragraphs (2) or (3)) shall apply to the Korean Intellectual Property Office or the Intellectual Property Tribunal for an identification number.

(2) Where a person applies for the identification number referred to in 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 the person.

(3) Where a person who initiates a patent-related procedure under paragraph(1) fails to apply for an 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 the person.

(4) Where a person to whom an identification number has been granted under paragraphs (2) or (3) initiates a patent-related procedure, the person shall enter the identification number in any document prescribed by ordinance of the Ministry of Commerce, Industry and Energy; however, notwithstanding this Act or any decree under this Act, the person may not enter a residential address (or a business address if a legal entity) in such a document.

(5) Paragraphs (1) to (4) apply *mutatis mutandis* to an agent of a person who initiates a patent-related procedure.

(6) An application for the grant of an identification number, the grant and notification of the grant or other necessary matters are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

Article 28ter Procedure for Filing Patent Applications by Electronic Means

(1) A person who initiates a patent-related procedure may, in accordance with the methods prescribed by ordinance of the Ministry of Commerce, Industry and Energy, convert a written application for a patent or other documents presented to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal under this Act into an electronic document, and may present it by means of any communication network or on a floppy disk.

(2) An electronic document presented under paragraph(1) has the same effect as other documents presented under this Act.

(3) The content of an electronic document presented through a communication network under paragraph(1) is, if the presenter confirms a receipt number through the communication network, considered to be the same as the content of the receipted file saved on a computer system operated by the Korean Intellectual Property Office or the Intellectual Property Tribunal.

(4) The kinds of documents capable of being presented by electronic means under paragraph (1) and the methods of such presentation or other necessary matters are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 28^{quater} Report on Use of Electronic Documents and
Electronic Signatures**

(1) A person who intends to initiate a patent-related procedure by means of electronic documents shall report in advance the intended use of electronic documents to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal, and shall affix an electronic signature for identification.

(2) An electronic document presented under Article 28^{ter} is considered to have been filed by the person who affixes an electronic signature under paragraph(1).

(3) Matters necessary for reporting on the intended use of electronic documents and the methods of signing the electronic signature prescribed under paragraph(1) are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

**Article 28^{quinquies} Notification etc. through a
Communication Network**

(1) When giving notification and transmitting (referred to as "a notification") any pertinent documents to a person who reports the intended use of electronic documents under Article 28^{quater}(1), the Commissioner of the Korean Intellectual Property Office, the President of the Intellectual Property

Tribunal, a presiding trial examiner, a trial examiner, a presiding examiner or an examiner may do so through a communication network.

(2) Notification of any pertinent documents through a communication network under paragraph(1) has the same effect as notification given in writing.

(3) Where the notification of any pertinent documents under paragraph(1) is saved in a file of a computer system operated by a person who receives the notification, the notification is considered to be the same as the contents saved in a file of a computer system operated by the Korean Intellectual Property Office or the Intellectual Property Tribunal for the transmission of documents.

(4) Matters necessary for the classification and methods of notification through a communication network under paragraph(1) are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

CHAPTER II

REQUIREMENTS FOR PATENT REGISTRATION AND PATENT APPLICATIONS

Article 29 Requirements for Patent Registration

(1) Inventions that have industrial applicability are patentable unless they fall under either of the following subparagraphs:

- (i) inventions publicly known or worked in the Republic of Korea before the filing of the patent application; or
- (ii) inventions described in a publication distributed in the Republic of Korea or in a foreign country before the filing of the patent application or inventions published through electric telecommunication lines as prescribed by Presidential Decree.