

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

The trial-related provisions apply *mutatis mutandis* to a request for a retrial against the decision of a trial decision, unless they are incompatible.

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

Article 459(1) of the Civil Procedure Act applies *mutatis mutandis* to a request for a retrial.

CHAPTER IX

LITIGATION

Article 186 Action on a Trial Decision etc.

- (1) The Patent Court of Korea has original jurisdiction over any action against a trial decision or dismissal of a request for a trial or retrial.
- (2) The action prescribed in paragraph(1) may be brought by a person who is a party or intervener in the trial or by any person who has requested an intervention in the trial but has had the request rejected.
- (3) The action prescribed in paragraph(1) may be brought within the thirty-day period immediately after the date on which a certified copy of the trial decision or ruling was received.
- (4) The period prescribed in paragraph (3) may not be changed.
- (5) For the peremptory period referred to in paragraph (4) of this Article, a presiding trial examiner may *ex officio* determine any additional period for the benefit of a person residing in an area that is remote or difficult to access.

(6) An action may not be brought unless it relates to matters for which a trial may be requested.

(7) An action under paragraph (1) on a trial decision on remuneration under Article 162(2)(iv) and a trial decision or ruling on trial costs under Article 165(1) may not be brought independently.

(8) Any person who has received a ruling from the Patent Court may appeal to the Supreme Court.

Article 187 Qualification for Defendant

In an action under Article 186(1), the Commissioner of the Korean Intellectual Property Office is the defendant. However, in an action on the decisions of a trial under Articles 133(1), 134(1), 135(1), 137(1), 138(1) and (3) or a retrial, the petitioner or the defendant is the defendant.

Article 188 Notification of Institution of Action and Transmittal of Document

(1) When an action under Article 186(1) is started or an appeal is filed under Article 186(8), the Patent Court shall immediately notify the President of the Intellectual Property Tribunal accordingly.

(2) When an action under Article 187 has been concluded, the Patent Court shall immediately transmit a certified copy of the judgment on the action to the President of the Intellectual Property Tribunal.

Article 188bis Exclusion or Recusal of a Technical Examiner

(1) Article 148 of the Patent Act and Articles 42 to 45, 47 and 48 of the Civil Procedure Act apply to the exclusion or recusal of a technical examiner prescribed by Article 54bis of the Court Organization Act.

(2) The court to which a technical examiner belongs shall decide on a request for exclusion or recusal of the technical examiner under paragraph (1)

(3) Where grounds for exclusion or recusal exist, technical examiners may recuse themselves from conducting trial proceedings related to the case with the consent of the President of the Patent Court.

Article 189 Revoking a Trial Decision or Ruling

(1) Where the Patent Court considers that an action under Article 186(1) is well grounded, the Patent Court shall revoke the trial decision or ruling by judgment.

(2) Where the reversal of a trial decision or ruling becomes final under paragraph(1), the trial examiner shall review the case and make a trial decision or ruling.

(3) The reasons for a judgment on an action under paragraph(1) that constitute the basis for a revocation are binding on the Intellectual Property Tribunal.

Article 190 Action against Decision on Amount of Compensation or Remuneration

(1) A person who is dissatisfied with a decision, ruling or adjudication regarding the amount of compensation or remuneration under Articles 41(3) or (4), 106(3), 110(2)(ii) or 138(4) may bring an action before the court.

(2) An action under paragraph(1) must be filed within thirty days of the date on which a certified copy of the decision, ruling or adjudication was received.

(3) The period prescribed in paragraph (2) may not be changed.

Article 191 Defendant in an Action Related to Compensation or Remuneration

In an action under Article 190, the following persons are the defendants:

- (i) for compensation under Article 41(3) or (4), the government agency or applicant liable for payment of compensation;
- (ii) for compensation under Article 106(3), the government agency, patentee, exclusive licensee or nonexclusive licensee liable for payment of compensation; or
- (iii) for remuneration under Articles 110(2)(ii) or 138(4), the nonexclusive licensee, exclusive licensee, patentee or owner of a utility model or design registration.

CHAPTER X

INTERNATIONAL APPLICATIONS UNDER THE PATENT COOPERATION TREATY

Part I. 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:

- (i) a national of the Republic of Korea;
- (ii) a foreigner who has a residential or business address in the Republic of Korea;
- (iii) a person who does not fall under subparagraph (i) or (ii) but who files an international application under the name of a representative falling under subparagraph (i) or (ii); or