

CHAPTER X

PENAL PROVISIONS

Article 82 Offense of Infringement

(1) A person who infringes a design right or an exclusive license is liable to imprisonment with labor not exceeding seven years or to a fine not exceeding 100 million won.

(2) Prosecution for offenses under paragraph (1) is initiated when an injured party files a complaint.

Article 83 Offense of Perjury

(1) Having taken an oath under the law, a witness, expert witness or interpreter who makes a false statement or gives a false expert opinion or interprets falsely before the Intellectual Property Tribunal is liable to imprisonment with labor not exceeding five years or to a fine not exceeding 10 million won.

(2) Having committed an offense under paragraph (1), a person who admits the offense before the examiner's decision or decision on opposition to registration of an unexamined design is made or before a trial decision on the case becomes final may be partially or completely exempted from the penalty.

Article 84 Offense of False Marking

A person who violates Article 80 is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

Article 85 Offense of Fraud

A person who fraudulently or unjustly obtains a design registration or a trial

decision is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

Article 86 Offense of Divulging Secrets

Any present or former officials of the Korean Intellectual Property Office or the Intellectual Property Tribunal who have divulged or appropriated secrets related to a design contained in a design application, or a design requested to be kept secret under Article 13(1), to which they had access during the course of their duties are liable to imprisonment with labor not exceeding two years or to a fine not exceeding 3 million won.

Article 87 Dual Liability

Where a representative of a legal entity or an agent, employee or any other servant of a legal entity or natural person has violates Articles 82(1), 84 or 85 with regard to the business of the legal entity or natural person, in addition to the offender, the legal entity is liable to a fine as prescribed in either of the following subparagraphs, and the natural person is liable to a fine as prescribed in the relevant Article:

- (i) under Article 82(1), a fine not exceeding 300 million won; or
- (ii) under Articles 84 or 85, a fine not exceeding 60 million won.

Article 88 Administrative Fine

(1) A person who commits any of the following acts is liable to an administrative fine not exceeding 500,000 won:

- (i) making a false statement before the Intellectual Property Tribunal after having taken an oath under Articles 299(2) and 367 of the Civil Procedure Act;

- (ii) failing to comply, without justifiable reasons, with an order of the Intellectual Property Tribunal to submit or show documents or other materials related to taking or preserving evidence;
- (iii) failing to comply, without justifiable reasons, with an order to report under Article 60 on matters related to working a registered design; or
- (iv) failing to comply, without justifiable reasons, with a subpoena of the Intellectual Property Tribunal to appear as a witness, expert witness or interpreter, or refusing to take an oath, make a statement, testify, give an expert opinion or interpret.

(2) The Commissioner of the Korean Intellectual Property Office shall impose and collect the administrative fine referred to in paragraph(1) as prescribed by Presidential Decree.

(3) A person who objects to the imposition of an administrative fine under paragraph(2) may protest to the Commissioner of the Korean Intellectual Property Office within thirty days of being notified of the imposition.

(4) Upon receipt of a protest under paragraph (3), the Commissioner of the Korean Intellectual Property Office shall immediately notify the competent court, which shall adjudicate the case of the administrative fine according to the Noncontentious Case Litigation Procedure Act.

(5) Where no opposition has been raised within the period prescribed in paragraph(3) and where the fine has not been paid, the Commissioner of the Korean Intellectual Property Office shall collect the fine in accordance with the rules of collecting national taxes in arrears through the head of the competent tax office.

Article 89 *Mutatis Mutandis* Application of the Patent Act

Article 229bis 231 of the Patent Act applies *mutatis mutandis* to penal provisions related to designs.