

well as displaying for assignment or lease) the article to which the design has been applied.

Article 3 Persons Entitled to Obtain Design Registration

(1) A person who creates a design or the person's successor is entitled to obtain design registration under this Act; however, employees of the Korean Intellectual Property Office and the Intellectual Property Tribunal may not obtain design registration during their employment except in the case of inheritance or a bequest.

(2) If two or more persons jointly create a design, the right to obtain design registration is jointly owned.

Article 4 *Mutatis Mutandis* Application of the Patent Act

Articles 3 to 26 and 28 to 28^{quinqies} of the Patent Act apply *mutatis mutandis* to designs. In such cases, "Article 132^{ter}" in Article 6, 11(1)(iv), 15(1) and 17 of the same Act reads "Article 67^{bis} or 67^{ter}".

CHAPTER II

REQUIREMENTS FOR DESIGN REGISTRATION AND DESIGN APPLICATIONS

Article 5 Requirements for Design Registration

(1) Designs that are industrially applicable may be registered unless they fall under any of the following subparagraphs:

- (i) the design was publicly known or publicly worked in the Republic

of Korea or in a foreign country before the filing of the design application;

- (ii) the design was described in a publication distributed in the Republic of Korea or in a foreign country before the filing of the design application; or
- (iii) the design is similar to a design referred to in subparagraph (i) or (ii).

(2) Notwithstanding paragraph (1), where a person with ordinary skill in the art to which a design pertains could easily have created the design on the basis of a shape, pattern, color or a combination of these widely known in the Republic of Korea (other than a design referred to in any subparagraph of paragraph (1)) before the filing of the design application, design registration may not be granted for the design.

(3) Notwithstanding paragraph (1), design registration may not be granted where a design for which a registration application has been filed is identical or similar to a part of a design indicated in a description, represented in a drawing, photograph or sample attached to another application for design registration filed before and laid open or published after the filing date of the design application.

Article 6 Unregistrable Designs

Notwithstanding Article 5, the following designs are unregistrable:

- (i) designs that are identical or similar to the national flag, national emblem, military flags, decorations, orders of merit, badges and medals of public organizations, national flags and national emblems of foreign countries, or characters or indications of international organizations;
- (ii) designs liable to contravene public order or morality;
- (iii) designs liable to give rise to confusion over articles connected with another person's business; and

- (iv) designs consisting solely of a shape that is essential to secure the functions of the article.

Article 7 Similar Designs

(1) The owner of a design right or an applicant for design registration is entitled to obtain design registration for a design that is similar only to the owner's registered design (referred to as "the principal design") or a design for which a registration application has been filed as a similar design (referred to as "a similar design").

(2) Paragraph (1) does not apply to a design that is similar only to a similar design that is registered or for which registration has been applied for under paragraph (1).

Article 8 Exception to Loss of Novelty

(1) Where a design owned by a person entitled to design registration falls under any subparagraph of Article 5(1), Article 5(1)(i) or (ii) does not apply to the design or a similar design application filed by the design owner within six months of the date prescribed in the applicable subparagraph under Article 5(1).

(2) When applying for design registration, a person intending to take advantage of paragraph (1) shall submit an application for design registration specifying the purport of such intention to the Commissioner of the Korean Intellectual Property Office, and submit documents proving the relevant facts within thirty days of the date of application for design registration; however, this does not apply where the designs concerned fall under each subparagraph of Article 5(1) against the person's will.

Article 9 Applications for Registration

(1) A person seeking to register a design shall file a request for an application

for examined design registration or a request for an application for unexamined design registration with the Commissioner of the Korean Intellectual Property Office, stating the following:

- (i) the name and address of the applicant (and, if a legal entity, the name and address of the business);
- (ii) 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);
- (iii) deleted;
- (iv) the article that is the object of the design;
- (*ivbis*) whether the application is an application for independent design registration or similar design registration;
- (v) the registration or application number of the principal design (only where the applicant seeks design registration as a similar design under Article 7(1));
- (vi) the name and address of the creator of the design; and
- (vii) matters prescribed in Article 23(3) (only when claiming a priority right).

(2) An application for examined design registration or an application for unexamined design registration under paragraph (1) must be accompanied by a drawing or drawings in which the following matters are indicated for each design:

- (i) the article that is the object of the design;
- (ii) an explanation of the design and the essentials of the creation; and
- (iii) serial numbers of the design (only if the application is for multiple design registration under Article 11*bis*).

(3) An applicant for design registration may submit a photograph or a sample of the design instead of the drawing(s) referred to in paragraph (2).

(4) A person applying for unexamined design registration shall indicate in a request for an application for unexamined design registration whether the application is an application for multiple design registration under Article 11*bis*, the number of designs and the matters referred to in the subparagraphs of paragraph (1).

(5) A person applying for multiple design registration under Article 11*bis* shall indicate in an application for unexamined design registration the particulars prescribed under paragraph (1)(i) and (ii) and in the following subparagraphs:

- (i) the serial numbers of the designs; and
- (ii) the particulars prescribed under subparagraphs (iv) to (vii) of paragraph (1).

(6) Designs that qualify for unexamined design registration are limited to the goods designated by ordinance of the Ministry of Commerce, Industry and Energy among the goods classified by Article 11*bis*. For the designated goods, an application may be made only for unexamined design registration.

(7) Matters other than those as prescribed in paragraphs (1) to (6), which are necessary for the application for design registration, are determined by ordinance of the Ministry of Commerce, Industry and Energy.

Article 10 Joint Application

Where the right to obtain design registration is jointly owned under Article 3(2), the owners shall jointly file an application for design registration.

Article 11 A Single Application for a Single Design

- (1) An application for examined design registration must relate to a single design only.
- (2) A person applying for design registration may do so only for the classes of articles prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

Article 11bis Application for Multiple Design Registration

- (1) An application for unexamined design registration may be made for twenty designs or less (referred to as "an application for multiple design registration"). In such cases, each design must be represented separately.
- (2) The scope of designs that qualify for an application for multiple design registration is limited to designs applied to goods under the same classification as the classification of goods prescribed by ordinance of the Ministry of Commerce, Industry and Energy.
- (3) A person applying for multiple design registration may file, with the principal design, an application for a similar design registration that falls within the category of a principal design.
- (4) Notwithstanding paragraph (3), where a person files an application for multiple design registration of designs similar to the person's registered design or a design for which the person has applied for design registration, the person may file an application for multiple design registration only for similar designs belonging to one principal design.

Article 12 Design of a Set of Articles

- (1) Where two or more articles are used together as a set of articles, the design of the set may be registered if the set constitutes a coordinated whole.
- (2) The set of articles referred to in paragraph (1) is governed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) Deleted.

Article 13 Secret Designs

(1) An applicant for design registration may request that the design be kept secret for a period designated in the request not exceeding three years after the date on which the establishment of the design right was registered. When applying for multiple design registration, a request must be made for each design for which design registration is sought.

(2) When applying for design registration, a person making a request under paragraph (1) shall state the designated period in the request and submit it to the Commissioner of the Korean Intellectual Property Office.

(3) An applicant for design registration or the owner of a design right may reduce or extend the period designated under paragraph (1) by a request. The period may not be extended by more than three years after the registration date of the establishment of the design right.

(4) In any of the following cases, the Commissioner of the Korean Intellectual Property Office shall allow persons to have access to a confidential design under paragraph (1):

- (i) where the request is made by a person who has obtained the consent of the owner of the design right;
- (ii) where the request is made by a party or an intervener in examination, opposition to registration of an unexamined design, trial, retrial or litigation proceedings related to a design identical or similar to the design kept secret;
- (iii) where the request is made by a person who clearly claims to have been warned of infringing the registered design; or
- (iv) where the request is made by a court or the Intellectual Property Tribunal.

(5) When requesting the laying open of an application under Article 23(2), the request referred to paragraph (1) is deemed to have been withdrawn.

Article 14 Application for Design Registration Filed by an Unentitled Person and Protection of the Lawful Holder of a Right

If design registration is granted on the grounds that an application has been filed by a person who has not succeeded to the right to obtain design registration or who has laid a false claim to the right (referred to as "the unentitled person"), a subsequent application filed by the lawful holder of the right is deemed to have been filed on the date of the application previously filed by the unentitled person. However, this provision does not apply where the subsequent application is filed by the lawful holder of the right more than thirty days after the application by the unentitled person was rejected.

Article 15 Design Registration Granted to an Unentitled Person and Protection of the Lawful Holder of a Right

If design registration is revoked or invalidated by a trial decision for the lack of entitlement to obtain design registration under Article 3(1), a subsequent application for design registration filed by the lawful holder of the right is deemed to have been filed on the date of filing the application that led to the grant of the design registration that was revoked or invalidated; however, this provision does not apply if the subsequent application is filed more than thirty days after the decision to revoke or to invalidate it became final.

Article 16 First-to-File Rule

(1) Where two or more applications for design registration related to the same or a similar design are filed on different dates, only the applicant with the earlier filing date may obtain design registration for the design.

(2) Where two or more applications for design registration related to the same or a similar design are filed on the same date, only the person agreed upon by all applicants after consultation may obtain design registration for the design.

If no agreement is reached or no consultation is possible, none of the applicants may obtain design registration.

(3) Where an application for design registration is withdrawn or invalidated, the application, for the purposes of paragraphs (1) and (2), is deemed to have never been filed.

(4) Where a person who is not the creator of a design or the successor in title to the right to obtain design registration files an application for design registration, the application is deemed never to have been filed, for the purposes of paragraphs (1) and (2).

(5) In the case referred to in paragraph (2), the Commissioner of the Korean Intellectual Property Office shall instruct the applicants to give notice of the results of the consultation within a designated period. If the notice is not submitted within the designated period, the applicants are deemed not to have reached an agreement within the meaning of paragraph (2).

Article 17 Amendment of Procedure

The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may order the correction of a design-related procedure within a designated period:

- (i) where the requirements of Article 3(1) or (6) of the Patent Act as applied under Article 4 of this Act have not been complied with;
- (ii) where the procedure does not comply with the formalities prescribed in this Act or by Presidential Decree; or
- (iii) where the fees required under Article 34 have not been paid.

Article 18 Amendment to Application and Change of Gist

(1) An applicant for design registration may amend the particulars of a request, a description or a drawing attached to the request for an application

if the gist of the request, the description and the drawing attached to the original application has not been changed before transmittal of the examiner's first decision to either grant design registration under Article 28 or refuse design registration under Article 26 (referred to as "a decision to grant or refuse design registration"). However, if a request for a trial against the examiner's decision to refuse design registration is filed, the applicant may amend the description or the drawing within thirty days of the filing date of the request.

(2) Where an amendment under paragraph(1) is recognized as a change of gist of a request, a description or a drawing originally attached to the request for an application after the date on which the establishment of the design right was registered, the application for registration of the design is deemed to have been filed on the filing date of the amendment.

Article 18bis Rejection of Amendment

(1) Where an amendment to a description or drawing attached to an application under Article 18 changes the gist of the application, the examiner shall reject the amendment by decision.

(2) Where a decision to reject an amendment under paragraph(1) has been made, the examiner's decision to grant or refuse design registration for the concerned application may not be given until more than thirty days after the date on which the certified copy of the decision was transmitted.

(3) Where an applicant has requested a trial under Article 67bis against a decision to reject an amendment under paragraph(1), the examiner shall suspend examination of the application for design registration until the trial decision has become final.

(4) The decision to reject an amendment under paragraph(1) must be in writing and must state the reasons for the decision.

Article 19 Division of Applications for the Registration of Designs

(1) A person falling under any of the following subparagraphs may divide a

part of an application for design registration into one or more new applications:

- (i) a person who has applied for registration of two or more designs in contravention of Article 11;
- (ii) a person who has applied for multiple design registration; or
- (iii) deleted.

(2) Except under Articles 8(2) or 23(3) and (4), divisional applications are deemed to have been filed at the time of filing the original application.

(3) The division of an application for design registration under paragraph (1) may be made within the period for amendment under Article 18(1).

(4) Deleted.

Article 20 Conversion of an Application

(1) An applicant may convert an application for a similar design registration into an application for an independent design registration. In such a case, the application for an independent design registration is deemed to have been filed at the time of filing the application for a similar design registration. However, this provision does not apply to Article 8(2) or Article 23(3) and (4).

(2) An applicant may convert an application for an independent design registration into an application for a similar design registration. In such a case, the application for a similar design registration is deemed to have been filed at the time of filing the application for an independent design registration. However, this provision does not apply to Article 8(2) or Article 23(3) and (4).

(3) The conversion of an application under paragraphs (1) and (2) may not be made after an examiner's decision to grant or refuse design registration or a trial decision on the earlier application for the design or a similar design registration becomes final.

(4) Deleted.

Article 20bis Conversion of an Application for Unexamined Design Registration etc.

(1) Where a person applies for unexamined design registration for articles subject to an examined design registration or vice versa, in contravention of Article 9(6), the person may convert the application for design registration into an application for examined design registration or unexamined design registration.

(2) An application for design registration converted in accordance with paragraph(1) is deemed to have been made when an earlier application for design registration is made. However, this does not apply to Article 8(2) or Article 23(3) and (4).

(3) A conversion of an application under paragraph(1) may not be made after a decision to grant or refuse design registration or a trial decision on the earlier application for design registration has been made.

(4) Deleted.

Article 21 Deleted

Article 22 Deleted

Article 23 Priority Claim under a Treaty

(1) Where a national of a member country of a treaty that recognizes the right of priority for an application filed by a national of the Republic of Korea claims a right of priority for an application for design registration in the Republic of Korea based on an earlier application for the same design filed in the national's country or in one of the treaty countries, the filing date of the earlier application in the foreign country is deemed to be the filing date in the

Republic of Korea under Articles 5 and 16. Where a national of the Republic of Korea has applied for design registration in a country that recognizes, under a treaty, the right of priority for an application for design registration filed by nationals of the Republic of Korea and claims the right of priority for the application for design registration in the Republic of Korea based on an earlier application for the same design in a treaty country, this provision also applies.

(2) A person claiming a right of priority shall file an application for design registration within six months of the filing date of the earlier application that serves as the basis for claiming the right of priority.

(3) When applying for design registration, a person claiming a right of priority under paragraph(1) shall specify the claim, the name of the country in which the earlier application was filed and the filing date of the application.

(4) A person who has claimed a right of priority under paragraph(3) shall submit a written statement setting forth the filing date of the application, certified by the government of the country where the earlier application was filed, and a certified copy of the drawing of the design, to the Commissioner of the Korean Intellectual Property Office within three months of the filing date of the application for design registration.

(5) Where a person who has claimed a right of priority under paragraph(3) fails to submit the document prescribed in paragraph(4) within the required period, the claim to the right of priority loses its effect.

Article 23bis Laying Open an Application

(1) Applicants for an examined design registration may request the laying open of their application by ordinance of the Ministry of Commerce, Industry and Energy.

(2) Where the laying open of an application is requested under paragraph(1), the Commissioner of the Korean Intellectual Property Office shall lay open the design application in the Design Gazette in accordance with Article 78. However, the Commissioner of the Korean Intellectual Property Office may

not lay open the application under either of the following circumstances:

- (i) the design is liable to contravene public order or morality; or
- (ii) the design must be kept secret under Article 41 of the Patent Act applied *mutatis mutandis* under Article 24 of this Act.

(3) When initial certified copies of a decision to grant or refuse design registration on an application for design registration have been transmitted, a person may not request the laying open of an application prescribed in paragraph (1).

(4) Deleted.

Article 23ter Effect of Laying Open an Application

(1) After an application is laid open, the applicant may give a written warning indicating that an application for design registration has been filed to any person who has commercially or industrially worked the filed design or a design similar to the filed design.

(2) An applicant may demand a person who has been warned under paragraph (1) or who has worked a filed design or a design similar to a filed design knowing that the design has been laid open to pay compensation equivalent to the amount the applicant would normally receive for working the registered design or a design similar to the registered design from the date of warning or the date on which the person became aware that the design application had been filed to the date of registration of the filed design.

(3) The right to demand compensation under paragraph (2) may be exercised only after registration of the filed application.

(4) Exercising the right to demand compensation under paragraph (2) does not preclude exercising the design right.

(5) Articles 63 and 67 of this Act and Articles 760 and 766 of the Civil Act apply *mutatis mutandis* to the exercise of the right to demand compensation

under paragraph (2). In such a case, "the time when the damaged party or his legal representative became aware of such damage and of the identity of the person causing it" in Article 766 of the Civil Act reads "the date of registration of the design right".

(6) Where an application for design registration is abandoned, invalidated or withdrawn after the laying open of the application, a decision to refuse design registration, a decision to revoke design registration under Article 29*quinquies*(3) or a trial decision to invalidate a design registration under Article 68 (unless Article 68(1)(iv) applies) has become final, the right under paragraph (2) is deemed to have never existed.

Article 23*quater* Transfer etc. of the Right to Obtain Design Registration

(1) The right to obtain registration of a design may be transferable. However, the right to obtain a principal design and the right to obtain a similar design must be transferred together.

(2) The right to obtain registration of a design may not be pledged.

(3) Where the right to obtain registration of a design is jointly owned, the owners may not assign their individual share without the consent of the other owners.

Article 23*quinquies* Furnishing of Information

Any person may furnish the Commissioner of the Korean Intellectual Property Office with information about a design for which an application for design registration has been filed with evidence that the concerned design is unregistrable under any subparagraph of Article 26(1).

Article 24 *Mutatis Mutandis* Application of the Patent Act

Articles 38 to 41 of the Patent Act apply *mutatis mutandis* to the registrability of designs and to applications for design registration.