

- (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

- (iv) a person who meets the requirements prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

Article 193 International Application

(1) A person filing an international application shall submit to the Commissioner of the Korean Intellectual Property Office an application, description, claim(s), drawing(s) (if any), and an abstract prepared in the Korean language or any language prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(2) A request must contain the following:

- (i) an indication that the international application is to be processed according to the Patent Cooperation Treaty;
- (ii) the designation of the contracting States in which protection for the invention is sought on the basis of the international application;
- (iii) if the applicant is seeking a regional patent referred to in Article 2(iv) of the Patent Cooperation Treaty, an indication to that effect;
- (iv) the name, or title, the residential or business address and the nationality of the applicant;
- (v) the name and residential or business address of the agent (if any);
- (vi) the title of the invention; and
- (vii) the name and residential or business address of the inventor (where the national law of a designated State requires that these indications be furnished).

(3) The description under paragraph (1) must disclose the invention in a manner sufficiently clear and complete for the invention to be carried out easily by a person skilled in the art to which the invention pertains.

(4) The claim(s) under paragraph (1) must clearly and concisely define the matter for which protection is sought and be fully supported by the description.

(5) Other necessary matters not prescribed in paragraphs (1) to (4) concerning an international application are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

Article 194 Recognition etc. of the Filing Date of an International Application

(1) The Commissioner of the Korean Intellectual Property Office shall deem the date of receiving the international application as the international filing date under Article 11 of the Patent Cooperation Treaty (referred to as "an international filing date"); however, this provision does not apply to any of the following cases:

- (i) the applicant does not meet the requirements prescribed in Article 192;
- (ii) the international application is not in the language prescribed under Article 193(1);
- (iii) the international application does not contain a description or claim(s); or
- (iv) the elements listed in Article 193(2)(i) and (ii) or the name or title of the applicant are not indicated.

(2) Where an international application falls under any subparagraph of paragraph(1), the Commissioner of the Korean Intellectual Property Office shall instruct the applicant to amend the defect in writing within a designated period.

(3) Where an international application refers to a drawing or drawings not included in the application, the Commissioner of the Korean Intellectual Property Office shall notify the applicant accordingly.

(4) The Commissioner of the Korean Intellectual Property Office shall deem

the international filing date as the date of receiving the amendment in writing when the instructed applicant under paragraph(2) has complied with the instruction within the designated period, or the date of receiving the drawing(s) when the instructed applicant under paragraph(3) has furnished the drawing(s) within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy. If the instructed applicant under paragraph(3) does not furnish the drawing(s) within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy, reference to the drawing(s) is considered nonexistent.

Article 195 Invitation to Amendment

The Commissioner of the Korean Intellectual Property Office shall instruct the applicant to make written amendments within a designated period if the international application does not:

- (i) contain the title of the invention;
- (ii) contain an abstract;
- (iii) comply with Articles 3 or 197(3); or
- (iv) comply with the requirements prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

Article 196 International Application Considered to have been Withdrawn

- (1) An international application is considered to be withdrawn if:
- (i) an applicant fails to make an amendment within the period designated under Article 195;
 - (ii) the fee is not paid within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy, and Article 14(3)(a) of the Patent Cooperation Treaty therefore applies; or

(iii) it is an international application with an international filing date recognized under Article 194, and it falls under any subparagraph of Article 194(1) within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(2) If part of a fee has not been paid within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy, and Article 14(3)(b) of the Patent Cooperation Treaty therefore applies, the designation of the State or States for which the fee has not been paid is considered to have been withdrawn.

(3) If an international application, or part of the States designated, is considered to have been withdrawn under paragraphs (1) or (2), the Commissioner of the Korean Intellectual Property Office shall notify the applicant accordingly.

Article 197 Representative etc.

(1) Where two or more applicants jointly file an international application, the procedure under Articles 192 to 196 and 198 may be initiated by a common representative of the applicants.

(2) Where two or more applicants jointly file an international application and do not designate a common representative, a representative may be designated as their common representative as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) An applicant who intends to use an agent to initiate a procedure under paragraph(1) shall appoint a patent attorney as the agent unless the procedure is initiated by a legal representative under Article 3.

Article 198 Fees

(1) An applicant for an international application shall pay the required fees.

(2) Fees, proceedings and payment period under paragraph(1) are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

Article 198bis International Search and International Preliminary Examination

(1) The Korean Intellectual Property Office shall perform duties as an international searching authority and as an international preliminary examining authority for an international application in accordance with the convention concluded with the International Bureau as prescribed in Article 2(xix) of the Patent Cooperation Treaty.

(2) Details concerning the performance of duties under paragraph (1) are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

Part II. Special Provisions on International Patent Applications

Article 199 Patent Application Based on an International Application

(1) Where the international filing date of an international application is recognized under the Patent Cooperation Treaty and the Republic of Korea is a designated State for obtaining a patent, the international application is considered to be a patent application filed on its international filing date.

(2) Article 54 does not apply to an international application considered to be a patent application under paragraph (1) (referred to as "an international patent application").

Article 200 Special Provision Concerning Presumption of Novelty of Inventions

Notwithstanding Article 30(2), a person applying Article 30(1)(i) or (iii) to the invention claimed in an international patent application may submit to the Commissioner of the Korean Intellectual Property Office a written statement to that effect and a document proving that the invention falls under Article 30(1)(i) or (iii) within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

Article 201 Translation of International Patent Applications

(1) An applicant who has filed an international patent application in a foreign language shall submit to the Commissioner of the Korean Intellectual Property Office a Korean translation of the description, claim(s), textual matter of the drawing(s) and the abstract filed on the international filing date within two years and six months (referred to as "the domestic period for submitting documents") of the priority date as defined in Article 2(xi) of the Patent Cooperation Treaty (referred to as "the priority date"). However, when an applicant who has filed an international patent application in a foreign language amends the claim(s) under Article 19(1) of the Patent Cooperation Treaty, only the Korean translation of the amended claim(s) need be submitted.

(2) Where a translation of the description and claim(s) under paragraph (1) is not submitted within the domestic period, the international patent application is deemed to be withdrawn.

(3) An applicant who has submitted the translation referred to in paragraph (1) may submit a new translation to replace the earlier translation only within the domestic period for submitting documents, unless the applicant requested an examination.

(4) Matters disclosed in the description, claim(s) and textual matter of the drawing(s) of an international patent application filed on the international filing date but not disclosed in the translation under paragraphs (1) or (3) (referred to as "the translated version") that was submitted within the domestic period for submitting documents (or the date of the request for an examination where the applicant has made the request within the period, which is referred to as "the relevant date") are deemed not to have been disclosed in the description, claim(s) and textual matter of the drawing(s) of the international patent application filed on the international filing date.

(5) An international patent application submitted on the international filing date is deemed to be an application submitted under Article 42(1).

(6) A translated version of the description, claim(s), drawing(s) and abstract of an international patent application (and the description, claim(s), drawing(s)

and abstract submitted on the international filing date for an international patent application in the Korean language) is deemed to be the description, claim(s), drawing(s) and abstract submitted under Article 42(2).

(7) Article 204(1) and (2) does not apply when a Korean translation of the amended claim(s) is submitted in accordance with paragraph (1).

(8) Where a Korean translation has been submitted under paragraph (1) only for the amended claim(s), the claim(s) submitted at the international filing date are not recognized.

Article 202 Special Provisions on Claim of Priority

(1) Articles 55(2) and 56(2) do not apply to an international patent application.

(2) In Article 55(4), "description or drawing(s) originally attached to the earlier application" reads "description, claim(s) and textual matter of the drawing(s) submitted on the international filing date under Article 201(1), and the translated version of the documents under Article 201(4) or the textual matter of the drawing(s) of the international application submitted on the international filing date", and "laying open for public inspection" reads "international publication under Article 21 of the Patent Cooperation Treaty".

(3) In Articles 55(1), (3) and (4) and 56(1), where the earlier application under Article 55(1) of this Act is the international patent application or international utility model application under Article 57(2) of the Utility Model Act, "description or drawing(s) originally attached to a patent or utility model application" in Article 55(1) and (3) reads "description, claim(s) and drawing(s) of an international application submitted on the international filing date under Article 201(1) of this Act or Article 59(1) of the Utility Model Act," "description or drawing(s) originally attached to the earlier application" in Article 55(4) reads "description, claim(s) or drawing(s) of an international application concerning an earlier application submitted on the international filing date under Article 201(1) or Article 59(1) of the Utility Model Act," "laying open of the earlier application" for public inspection in Article 55(4) reads "international publication concerning the earlier application under Article 21 of the Patent Cooperation Treaty" and "when

more than one year and three months has elapsed after the filing date" in Article 56(1) reads "at the relevant date under Article 201(4) of this Act or Article 59(4) of the Utility Model Act or more than one year and three months after the international filing date under Article 201(1) of this Act or Article 59(1) of the Utility Model Act, whichever date expires later," respectively.

(4) In Articles 55(1), (3) and (4) or 56(1), where the earlier application under Article 55(1) is an international patent application recognized as a patent application or a utility model application under Article 214(4) of this Act or Article 71(4) of the Utility Model Act, "description or drawing(s) originally attached to the application" in Article 55(1) and (3) reads "description, claim(s) or drawing(s) of an international application as of the date regarded as the international filing date under Article 214(4) of this Act or Article 71(4) of the Utility Model Act" and "description or drawing(s) originally attached to the earlier application" in Article 55(4) reads "description, claim(s) or drawing(s) of an international application concerning an earlier application as of the date regarded as the international filing date under Article 214(4) of this Act or Article 71(4) of the Utility Model Act" and "when more than one year and three months has elapsed after the filing date of the earlier application" in Article 56(1) reads "within one year and three months of the date regarded as the international filing date under Article 214(4) of this Act or Article 71(4) of the Utility Model Act or at the time of making a decision under Article 214(4) of this Act or Article 71(4) of the Utility Model Act, whichever date expires later," respectively.

Article 203 Submission of Documents

(1) An applicant for an international patent shall submit a document within the domestic period for submitting documents to the Commissioner of the Korean Intellectual Property Office, stating the items in the following subparagraphs; an applicant who has filed an international patent application in a foreign language shall submit the document with a Korean translation in accordance with Article 201(1):

- (i) the name and address of the applicant (and, if the applicant is 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 the agent is a patent legal entity, the name and address of the business and the name of the appointed patent attorney);
 - (iii) deleted;
 - (iv) the title of the invention;
 - (v) the name and residential or business address of the inventor; and
 - (vi) the international filing date and the international application number.
- (2) The Commissioner of the Korean Intellectual Property Office shall instruct an applicant to make amendments within a designated period if the submission of documents falls under either of the following subparagraphs:
- (i) where the document prescribed in paragraph(1) was not submitted within the domestic period for submitting documents; or
 - (ii) where the document prescribed in paragraph(1) does not comply with the formalities prescribed in this Act or any order under this Act.
- (3) Where a person instructed to make an amendment under paragraph(2) fails to make an amendment within the designated period, the Commissioner of the Korean Intellectual Property Office may invalidate the international patent application.

Article 204 Amendment after Receipt of the International Search Report

- (1) Where an applicant amends the claim(s) of an international patent application after receiving an international search report under Article 19(1) of the Patent Cooperation Treaty, the applicant shall submit a Korean translation of the amendment to the Commissioner of the Korean Intellectual Property Office no later than the relevant date.

(2) Where a translation of an amendment is submitted under paragraph (1), the claim(s) are deemed to have been amended under Article 47(1) by the translation.

(3) Where an applicant of an international patent application submits a statement under Article 19(1) of the Patent Cooperation Treaty to the International Bureau under Article 2(xix) of the Patent Cooperation Treaty (referred to as "the International Bureau"), the applicant shall submit a Korean translation of the statement to the Commissioner of the Korean Intellectual Property Office.

(4) Where an applicant of an international patent application does not follow the procedure under paragraphs (1) or (3) before the relevant date, an amendment or statement under Article 19(1) of the Patent Cooperation Treaty is deemed not to have been made.

(5) Deleted.

Article 205 Amendment before Establishment of the International Preliminary Examination Report

(1) Where an applicant amends the description, claim(s) or drawing(s) of an international patent application under Article 34(2) of the Patent Cooperation Treaty, the applicant shall submit a Korean translation of the amendment to the Commissioner of the Korean Intellectual Property Office no later than the relevant date.

(2) Where a translation of an amendment is submitted under paragraph (1), the description and drawing(s) are deemed to have been amended under Article 47(1) by the translation.

(3) Where an applicant of an international patent application has not followed the procedure under paragraph (1) before the relevant date, the amendment under Article 34(2)(b) of the Patent Cooperation Treaty is deemed not to have been made.

(4) Deleted.

Article 206 Special Provision on Patent Administrator for Nonresidents

(1) Notwithstanding Article 5(1), a nonresident applicant of an international patent application may, before the relevant date, initiate a patent-related procedure without a patent administrator.

(2) Nonresidents who have submitted a translation of an application under paragraph(1) shall appoint a patent administrator and report that fact to the Commissioner of the Korean Intellectual Property Office within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) An international application is deemed to have been withdrawn if the appointment of a patent administrator is not reported within the period prescribed under paragraph (2).

**Article 207 Special Provision on the Time and Effect of Laying
Open an Application**

(1) For the laying open of an international patent application, "after one year and six months of the date falling under any of the following subparagraphs" in Article 64(1) reads "within the period under Article 201(1) (where the applicant has requested an examination of the international patent application within the designated period and the international publication under Article 21 of the Patent Cooperation Treaty has been made, within one year and six months of the priority date or the date of the request for an examination, whichever date expires later)".

(2) The applicant of an international patent application may, after the domestic laying open and after having given a warning in the form of a document describing the contents of the invention claimed in the international patent application, demand of a person who has commercially or industrially worked the invention, after the warning but before the registration of a patent right, the payment of compensation equivalent to what the applicant would normally receive for working the invention. Even in the absence of a warning, the same demand may be made of a person who commercially or industrially worked the invention before the domestic laying open and who had known that the invention was the one claimed in the

international patent application. However, the applicant may not exercise the right to demand compensation until the patent has been registered.

Article 208 Special Provision on Amendment

(1) Notwithstanding Article 47(1), no amendment to an international patent application (except an amendment under Article 204(2) and 205(2)) may be made until the fees prescribed under Article 82(1) have been paid, a translation of the application (except for an international patent application made in the Korean language) under Article 201(1) has been submitted, and the relevant date has passed.

(2) Deleted.

(3) With regard to the scope of an amendment made to an international patent application, "the features disclosed in the description or drawing(s) originally attached to the application" in Article 47(2) reads "the features disclosed in the description, claim(s) or textual matter of the drawing(s) (only the textual matter therein) of the international patent application submitted on the international filing date and in the translated version or the features disclosed in the drawing(s) (except in the textual matter of the drawing(s)) of the international patent application".

(4) Deleted.

(5) Deleted.

Article 209 Restriction on Timing of Dual Application

Notwithstanding Article 53(1) of this Act, a dual application that is a patent application based on an international application is deemed to be a utility model application filed on the international application date under Article 57(1) of the Utility Model Act. The dual application may not be filed until the fees under Article 30(1) of the Utility Model Act have been paid and a translation of the application under Article 59(1) of the Utility Model Act (except for an international utility model registration application made in the

Korean language) has been submitted (and an international application deemed to be a utility model application under Article 71(4) of the Utility Model Act may not be filed until a decision under Article 71(4) has been made).

Article 210 Time Restriction on a Request for an Examination

Notwithstanding Article 59(2), an applicant of an international patent application may not request an examination of the application until the proceedings (except for international patent applications made in the Korean language) under Article 201(1) have been taken and the fees under Article 82(1) have been paid. A person other than the applicant of an international patent application may not request an examination of the international patent application until the period under Article 201(1) has elapsed.

Article 211 Regulation Concerning Submission of Documents Cited in the International Search Report etc.

The Commissioner of the Korean Intellectual Property Office may require an applicant of an international patent application to submit within a designated period copies of the references cited in the international search report under Article 18 of the Patent Cooperation Treaty and the International Preliminary Examination Report under Article 35 of the Patent Cooperation Treaty.

Article 212 Special Provisions on Oppositions Against Grant of Patent

Any person may file an opposition to the grant of a patent for an international patent application on the grounds that the invention does not fall under either of the following subparagraphs nor under any subparagraph of Article 69(1):

- (i) the invention disclosed in the description, claim(s) or textual matter of the drawing(s) of an international application submitted on the international filing date and in the translated version; or
- (ii) the invention disclosed in the drawing(s) (excluding the textual matter of the drawing(s)) of an international application submitted on the international filing date.

Article 213 Special Provisions on an Invalidation Trial of a Patent

Any person may request a trial to invalidate a patent for an international application on the grounds that the invention does not fall under either of the following subparagraphs nor under any subparagraph of Article 133(1):

- (i) the invention disclosed in the description, claim(s) or textual matter of the drawing(s) of an international application submitted on the international filing date and in the translated version; or
- (ii) the invention disclosed in the drawing(s) (excluding the textual matter of the drawing(s)) of an international application submitted on the international filing date.

Article 214 International Application Considered to be a Patent Application by Decision

(1) Where the receiving office referred to in Article 2(xv) of the Patent Cooperation Treaty has made a refusal referred to in Article 25(1)(a) of the Treaty or has made a declaration referred to in Article 25(1)(a) or (b) of the Treaty or the International Bureau has made a finding referred to in Article 25(1)(a) of the Treaty on an international patent application in which the Republic of Korea is a designated State referred to in Article 4(1)(ii) of the Treaty, an applicant of an international application may request the Commissioner of the Korean Intellectual Property Office as provided by ordinance of the Ministry of Commerce, Industry and Energy to make the decision referred to in Article 25(2)(a) of the Treaty within the period prescribed by the ordinance.

(2) A person who makes a request under paragraph (1) shall submit to the Commissioner of the Korean Intellectual Property Office a Korean translation of the description, claim(s) and textual matter of the drawing(s) as well as other documents related to the international application prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) Where a request is made under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall decide whether the refusal,

declaration or finding referred to in the request is justified under the Patent Cooperation Treaty and its Regulations.

(4) Where the Commissioner of the Korean Intellectual Property Office decides under paragraph(3) that the refusal, declaration or finding under paragraph(1) is not justified under the Patent Cooperation Treaty and its Regulations, the international application concerned is considered to be a patent application filed on the date that would have been recognized as the international filing date if the refusal, declaration or finding had not been made.

(5) Articles 199(2), 200, 201(4) to (8), 202(1) and (2), 208, 210, 212 and 213 apply *mutatis mutandis* to an international application considered to be a patent application under paragraph (4).

(6) For the laying open of an international application considered to be a patent application under paragraph (4), "filing date of an application for a patent" in Article 64(1) reads "priority date referred to in Article 201(1)".

CHAPTER XI

SUPPLEMENTARY PROVISIONS

Article 215 Special Provisions for a Patent or Patent Right with Two or More Claims

Where Articles 65(6), 74(4), 84(1)(ii), 85(1)(i) (only for extinguishment), 101(1)(i), 104(1)(i), (iii) or (v), 119(1), 133(2) or (3), 136(6), 139(1), 181 and 182 of this Act and Article 40(1)(ii), (iv) or (v) of the Utility Model Act apply to a patent or patent right with two or more claims, a patent is deemed to have been granted, or a patent right is deemed to have been established, for each claim.