

drawing(s) of a patented invention, the Commissioner of the Korean Intellectual Property Office shall publish the contents of the correction in the Patent Gazette.

### **Article 78 Suspension of Examination or Litigation Trials**

(1) The examination procedure of a patent application or an opposition to the grant of a patent may, if necessary, be suspended until a decision on an opposition or a trial becomes conclusive or litigation trials have been completed.

(2) The court may, if necessary, suspend the trials until the examiner's decision on a patent application or an opposition to the grant of a patent becomes final.

(3) An appeal may not be made against a suspension under paragraphs (1) and (2).

### **Article 78bis *Mutatis Mutandis* Application of Provisions Concerning Trials to Opposition**

Articles 142, 148(i) to (v), (vii), 154(8), 157, 165(3) to (6) and 166 apply *mutatis mutandis* to the examination and decision of oppositions.

## **CHAPTER IV**

### **PATENT FEES AND PATENT REGISTRATIONS ETC.**

#### **Article 79 Patent Fees**

(1) A patentee or a person seeking to register a patent right under Article 87(1) shall pay the patent fees.

(2) The patent fees under paragraph(1) as well as the method and period for payment and other necessary matters are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 80 Payment of Patent Fees by Interested Party**

(1) Regardless of the intent of a person liable to pay patent fees, any interested party may pay the patent fees.

(2) An interested party who has paid the patent fees under paragraph (1) may demand reimbursement of expenses to the extent that the person liable to pay is currently making a profit.

### **Article 81 Late Payment of Patent Fees etc.**

(1) A patentee or a person seeking to register a patent right has a period of six months after the expiry of the payment period prescribed under Article 79(2) to pay the late patent fees.

(2) Where patent fees are paid late under paragraph(1), an amount equivalent to twice the patent fees must be paid.

(3) Where a patentee or a person seeking to register a patent right fails to pay the additional patent fees within the period under paragraph (1) (or fails to pay the remaining portion within the period of remaining payment when the period of remaining payment designated in Article 81*bis*(2) has not expired but the period for late payment has expired), the patent application is deemed to have been abandoned and the patent right concerned is deemed to have been extinguished retroactively from the expiry date of the period for paying the patent fees.

### **Article 81*bis* Remaining Payment of Patent Fees**

(1) Where a patentee or a person seeking to register a patent right fails to pay any portion of the patent fees within the period of payment under

Articles 79(2) or 81(1), the Commissioner of the Korean Intellectual Property Office shall order payment of the remaining balance.

(2) A person ordered to pay the remaining balance under paragraph (1) has a period of one month after the date on which the order was received to pay the remaining portion of the patent fees.

(3) A person who pays the remaining portion under paragraph (2) shall pay an amount equivalent to twice the remaining balance when the remaining payment falls under either of the following subparagraphs:

- (i) where the remaining portion of the patent fees is paid after the expiry of the payment period under Article 79(2); or
- (ii) where the remaining portion of the patent fees is paid after the expiry of the late payment period under Article 81(1).

**Article 81ter Restoration etc. of a Patent Application and Patent Right  
by Late Payment or Remaining Payment of Patent Fees**

(1) Where a patentee or a person seeking to register a patent right fails to pay the patent fees within the period of late payment under Article 81(1) or fails to pay the remaining portion within the period of remaining payment under Article 81*bis*(2) for unavoidable reasons, the patentee or the person may pay late patent fees or pay the remaining balance within fourteen days of the date on which the reasons for the delay cease to exist, but not later than six months after the expiry date for either the period of late payment or the period of remaining payment, whichever comes later.

(2) Notwithstanding Article 81(3), a person who has paid late or remaining patent fees under paragraph (1) is considered not to have abandoned the patent application, and the concerned patent right is considered to have existed retroactively on the date on which the period for paying the patent fees expired.

(3) The effects of a patent application or a patent right under paragraph (2) do not extend to another person's working of the patented invention in the

period from the date on which the period for late payment of the patent fees expires to the date of the payment or remaining payment of the patent fees (referred to as "the period of limited effect").

(4) During the period of limited effect, a person who has been commercially or industrially working or preparing to work an invention in good faith in the Republic of Korea under a patent application or patent right under paragraph (2) is entitled to have a nonexclusive license for that patent under the patent application, within the scope of the object of the invention or the purpose of the business related to the invention that the person is working or preparing to work.

(5) A person granted a nonexclusive license under paragraph (4) shall pay reasonable remuneration to the patentee or exclusive licensee.

### **Article 82 Official Fees**

(1) A person initiating a patent-related procedure shall pay the official fees.

(2) Where the number of claims is increased because of amendments to the description after a request for an examination made by a person other than the applicant, the applicant shall pay the fees for the request for an examination corresponding to the increased number of claims.

(3) The official fees under paragraph (1), the method and period for payment and other necessary matters are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 83 Reduction or Exemption of Patent Fees or Official Fees**

(1) Notwithstanding Articles 79 and 82, the Commissioner of the Korean Intellectual Property Office shall grant an exemption from the payment of patent fees or official fees in the following cases:

- (i) official fees or patent fees that correspond to patent applications or patent rights belonging to the State; or

- (ii) fees related to requests for an invalidation trial made by an examiner under Articles 133(1), 134(1) or 137(1).

(2) Notwithstanding Articles 79 and 82, where a patent application related to the invention of an entitled person under Article 5 of the National Basic Livelihood Security Law or a person prescribed by ordinance of the Ministry of Commerce, Industry and Energy has been filed, the Commissioner of the Korean Intellectual Property Office may reduce or exempt from payment the fees prescribed by ordinance of the Ministry of Commerce, Industry and Energy and the patent registration fees for the first three years.

(3) A person taking advantage of the reduction or exemption of patent fees or official fees under paragraph (2) shall submit the documents prescribed by ordinance of the Ministry of Commerce, Industry and Energy to the Commissioner of the Korean Intellectual Property Office.

#### **Article 84 Refund of Patent Fees etc.**

(1) Patent fees and official fees that have been paid may not be refunded unless requested by a person who has paid the fees in the following cases:

- (i) the patent fees or official fees were paid by mistake;
- (ii) a portion corresponding to the patent fees for the years after the year in which a decision to revoke the patent or a decision to invalidate the patent became final; or
- (iii) a portion corresponding to the patent fees for the years after the year in which a decision to invalidate the registration of the patent term extension became final.

(2) Where patent fees and official fees have been paid by mistake, the Commissioner of the Korean Intellectual Property Office shall issue a notification to the party who paid the patent fees and official fees.

(3) A refund of patent fees and official fees under paragraph (1)(i) may be claimed not later than one year after the date of being notified of the incorrect

payment, and a refund of the portions corresponding to the patent fee under subparagraphs (ii) and (iii) of paragraph (1) may be claimed not later than one year after the date on which a decision to revoke or invalidate the patent became final.

### **Article 85 Patent Register**

(1) The Commissioner of the Korean Intellectual Property Office shall keep the Patent Register at the Korean Intellectual Property Office and shall register the following matters:

- (i) the establishment, transfer, extinguishment, restoration, restriction on disposal or extension of the term of a patent right;
- (ii) the establishment, maintenance, transfer, modification, extinguishment, or restriction on disposal of an exclusive or nonexclusive license; and
- (iii) the establishment, transfer, modification, extinguishment or restriction on the disposal of a pledge on a patent right or on an exclusive or nonexclusive license.

(2) All or parts of the Patent Register under paragraph(1) may be stored on magnetic tapes and so on.

(3) Necessary information related to the matters, procedures and so on of registration not stipulated in paragraphs (1) or (2) are prescribed by Presidential Decree.

(4) The description and drawing(s) of a patent application and documents prescribed by Presidential Decree are considered to be part of the Patent Register.

### **Article 86 Issuance of a Patent Registration Certificate**

(1) When a patent right has been registered, the Commissioner of the Korean Intellectual Property Office shall issue a patent registration certificate to the patentee.

(2) Where a patent registration certificate does not coincide with the patent register or other documents, the Commissioner of the Korean Intellectual Property Office shall reissue the patent registration certificate with amendments, or issue new letters patent upon request or *ex officio*.

(3) When a decision on a trial for amendment under Article 136(1) has become final, the Commissioner of the Korean Intellectual Property Office shall issue a new patent registration certificate in accordance with the trial decision.

## CHAPTER V

### PATENT RIGHT

#### **Article 87 Registration of the Establishment of a Patent Right and the Publication of Registration**

(1) A patent right enters into effect upon the establishment of the patent registration.

(2) Where patent fees have been paid under Article 79(1), late payment of the fees has been paid under Article 81(1), the remaining portion of the fees has been paid under Article 81*bis*(2), the patent fees or the remaining portion of the fees has been paid under Article 81*ter*(1) or where an exemption from the payment of patent fees has been granted under Article 83(1)(i) and (2), the Commissioner of the Korean Intellectual Property Office shall register the patent to establish a patent right. However, in either of the following subparagraphs, a patent right may be registered only if the utility model right concerned is abandoned:

- (i) where a utility model right has been registered for a utility model application that forms the basis of a dual application; or
- (ii) where a dual application for a utility model registration has been filed under Article 17 of the Utility Model Act on the basis of an application