

Korean Intellectual Property Office shall give the legal writ, which has the force of execution.

CHAPTER VI

PROTECTION OF PATENTEE

Article 126 Injunction etc. against an Infringement

(1) A patentee or exclusive licensee may demand a person who is infringing or is likely to infringe on a patent right of the patentee or exclusive licensee to discontinue or refrain from the infringement.

(2) A patentee or an exclusive licensee acting under paragraph (1) may demand the destruction of articles by which an act of infringement was committed (including products obtained by the act of infringement in cases of a process invention for manufacturing the products), the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

Article 127 Acts of Infringement

Either of the following acts is considered to infringe a patent right or an exclusive license:

- (i) an act of making, assigning, leasing, importing or offering for assignment or lease articles used exclusively for producing an invented product; or
- (ii) an act of making, assigning, leasing, importing or offering for assignment or lease articles used exclusively for working an invented process.

Article 128 Presumption etc. of the Amount of Damages

(1) Where a patentee or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a patent right or exclusive license by transferring infringing articles, the amount of damages is calculated as the number of transferred articles multiplied by the profit per unit of the articles that the patentee or exclusive licensee might have sold in the absence of the infringement. The compensation may not exceed the amount calculated as follows: the estimated profit per unit multiplied by the number of products that the patentee or exclusive licensee could have produced subtracted by the number of articles sold. However, where the patentee or exclusive licensee was unable to sell the product for circumstances other than infringement, a sum based on the number of articles subject to these circumstances must be deducted.

(2) Where a patentee or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a patent right or exclusive license, the profits gained by the infringer as a result of the infringement are presumed to be the amount of damage suffered by the patentee or exclusive licensee.

(3) Where a patentee or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a patent right or exclusive license, the pecuniary amount that the patentee would normally be entitled to receive for working the patented invention may be claimed as the amount of damage suffered by the patentee.

(4) Notwithstanding paragraph(3), where the amount of actual damages exceeds the amount referred to in paragraph(3), the amount in excess may also be claimed as compensation for damage. When awarding damages, the court may consider whether the person who infringed the patent right or the exclusive license acted with willfulness or gross negligence.

(5) In litigation related to a patent right or exclusive license, where the court recognizes that the nature of the case makes it difficult to provide evidence proving the amount of damage that has occurred, notwithstanding paragraphs (1) to (4), the court may determine a reasonable amount based on an examination of the evidence and on a review of all the arguments.

Article 129 Presumption of the Patented Process to Manufacture

Where a product is identical to another product manufactured by a patented process, the former is presumed to have been manufactured by the patented process of the latter unless the invention falls under either of the following subparagraphs:

- (i) an invention publicly known or worked in the Republic of Korea before the filing of the patent application; or
- (ii) an invention described in a publication distributed in the Republic of Korea or in a foreign country or an invention made available to the public through electronic telecommunication lines prescribed by Presidential Decree before the filing of the patent application.

Article 130 Presumption of Negligence

A person who has infringed a patent right or exclusive license of another person is presumed to have been negligent regarding the act of infringement.

Article 131 Recovery of the Reputation of a Patentee etc.

Upon the request of a patentee or exclusive licensee, the court may, in lieu of damages or in addition to the damages, order the person who has injured the business reputation of the patentee or exclusive licensee by intentionally or negligently infringing the patent right or exclusive license to take necessary measures to restore the business reputation of the patentee or exclusive licensee.

Article 132 Submission of Documents

In litigation related to the infringement of a patent right or exclusive license, the court may, upon the request of a party, order the other party to submit documents necessary for assessing the damages caused by the infringement, unless the person possessing the documents has a justifiable reason for refusing to submit them.