

## CHAPTER VII

### TRIAL

#### **Article 132bis Intellectual Property Tribunal**

(1) The Intellectual Property Tribunal is established under the jurisdiction of the Commissioner of the Korean Intellectual Property Office to be responsible for trials and retrials for patents, utility models, designs and trademarks as well as the investigation and research for the trials and retrials.

(2) The Intellectual Property Tribunal is composed of the President and trial examiners.

(3) Matters necessary for the organization, personnel and operation of the Intellectual Property Tribunal are determined by Presidential Decree.

#### **Article 132ter Trial against a Decision to Refuse or Revoke a Patent etc.**

Where a person has received a decision to refuse or revoke a patent or a decision to refuse an application to extend the term of a patent right under Article 91, the person may request a trial within the thirty-day period immediately after the date on which the certified copy of the decision was received.

#### **Article 132quater Deleted**

#### **Article 133 Invalidation Trial of a Patent**

(1) In the following cases, an interested party or an examiner may request a trial to invalidate a patent and for patent containing two or more claims, a request for an invalidation trial may be made for each claim:

- (i) where a patent has been granted contrary to Articles 25, 29, 31, 32, 36(1) to (3), 42(3), (4), or 44;
- (ii) where a patent has been granted to a person who is not entitled to the patent under Article 33(1);
- (iii) where a patent has been granted in violation of a treaty;
- (iv) where, after the grant of a patent, the patentee is no longer capable of enjoying the patent right under Article 25, or the patent no longer complies with a treaty; or
- (ivbis) where an application has been amended beyond the scope of Article 47(2)
- (v) where a patent violates the proviso of Article 87(2).

(2) A trial under paragraph (1) of this Article may be requested even after the extinguishment of a patent right.

(3) Where a trial decision invalidating a patent has become final, the patent right is deemed never to have existed; however, where a patent falls under paragraph (1)(iv) of this Article and a trial decision invalidating the patent has become final, the patent right is deemed not to have existed when the patent first became subject to paragraph (1)(iv) of this Article.

(4) Where a trial under paragraph (1) of this Article has been requested, the presiding trial examiner shall notify the exclusive licensee of the patent right and any other persons with registered rights related to the patent of the contents of the request.

### **Article 133bis Correction of a Patent during an Patent Invalidation Trial**

(1) Under Article 133(1), a defendant may request a correction to the description or drawing(s) of a patented invention during the course of an validation trial for reasons provided under Article 47(3) within the period designated under Article 147(1) or 159(1).

(2) When a correction has been requested under paragraph (1), the presiding trial examiner shall transmit a copy of the written request to the defendant.

(3) Articles 136(2) to (5), (7) to (11), 139(3) and 140(1), (2), (5) apply *mutatis mutandis* to a request for a correction. In their application, the provision "before issuance of a notification of closure of the trial examination under Article 162(3) (where the trial examination is reopened under Article 162(4), before a subsequent notification of the closure of the trial examination is issued under Article 162(3)" in Article 136(9) reads "within the designated term where it would be noticed under Article 136(5)"

#### **Article 134 Invalidation Trial of Registration for Extension of the Term of a Patent Right**

(1) In the following cases, any interested party or examiner may request a trial to invalidate the registration of an extension of the term of a patent right:

- (i) where the extension was registered for an application that did not require any authorization and so on under Article 89 to work the patented invention;
- (ii) where the authorization under Article 89 was not obtained by the patentee, exclusive licensee or registered nonexclusive licensee;
- (iii) where the term extended by the registration of an extension exceeds the period during which the patented invention could not be worked;
- (iv) where the registration of an extension has been effected on an application made by a person other than the patentee;
- (v) where the registration of an extension has been effected on an application that violates Article 90(3); or
- (vi) deleted.

(2) Article 133(2) and (4) applies *mutatis mutandis* to a request for a trial under paragraph (1) of this Article.

(3) Where a trial decision invalidating the registration of extension has become final, the registration of extension of the term is deemed to have never existed. However, where the registration of extension falls under subparagraph (1)(iii), an extension of the term exceeding the period during which the patented invention could not be worked is deemed to be not effective.

### **Article 135 Trial to Confirm the Scope of a Patent Right**

(1) A patentee or an interested person may request a trial to confirm the scope of a patent right.

(2) When requesting a trial under paragraph(1) to confirm the scope of a patent right, if the patent right contains two or more claims, the patentee may request a trial for each claim.

### **Article 136 Trial for a Correction**

(1) A patentee may request a trial to correct the description or drawing(s) for reasons provided under Article 47(3), unless an opposition to the patent or an invalidation trial against the patent is pending before the Korean Intellectual Property Office or the Intellectual Property Tribunal.

(2) A correction to the description or drawing(s) under paragraph (1) must be limited in scope to the subject matter disclosed in the description or drawing(s) of the patented invention. However, where a clerical error is corrected under Article 47(3)(ii), the correction must be limited to the scope of the subject matter of the description or drawing(s) originally attached to the application.

(3) A correction to the description of a drawing under paragraph(1) may not substantially extend or modify the scope of a patent right.

(4) Where Article 47(3)(i) and (ii) applies under paragraph(1), the matters described in the claim after a correction are deemed to have been patentable when the patent application was filed.

(5) Where a request for a trial for a correction under paragraph(1) does not comply with any subparagraph of Article 47(3), extends beyond the scope of paragraph(2) or violates paragraphs (3) or (4), the trial examiner shall notify the petitioner of the reasons for refusing the request and give the petitioner an opportunity to submit a response within a designated period.

(6) A trial for a correction under paragraph (1) may be requested even after a patent right has been extinguished, unless the patent has been revoked or invalidated by a trial decision.

(7) A patentee may not request a trial for a correction under paragraph (1) without the consent of an exclusive licensee, a pledgee or a nonexclusive licensee under Articles 39(1), 100(4) or 102(1).

(8) Where a trial decision allowing the description or drawing(s) of a patented invention to be corrected becomes final, the patent application, the laying open of the decision and the registration of the patent right are deemed to have been made on the basis of the corrected description or drawing(s).

(9) A petitioner may amend the corrected description or drawing attached to the written request prescribed in Article 140(5) only before issuance of a notification of closure of the trial examination under Article 162(3) (where the trial examination is reopened under Article 162(4) before a subsequent notification of the closure of the trial examination is issued under Article 162(3)).

(10) Where a decision has been made to allow a correction of the description or drawing(s) of a patented invention, the President of the Intellectual Property Tribunal shall notify the Commissioner of Korean Intellectual Property Office of the corrected subject matter.

(11) Where a notification is issued under paragraph (10), the Commissioner of Korean Intellectual Property Office shall publish it in the Patent Gazette.

### **Article 137 Trial for Invalidation of Correction**

(1) An interested party or an examiner may request a trial for an invalidation

of a correction, where the correction of the description or drawing(s) of a patented invention under Articles 77(1), 133*bis*(1) or 136(1) violates either of the following:

- (i) any subparagraph of Article 47(3); or
- (ii) Article 136(2) to (4) (including an application under Articles 77(3) or 133*bis*(3)).

(2) Article 133(2) and (4) applies *mutatis mutandis* to a request for a trial under paragraph (1) of this Article.

(3) A defendant in an invalidation trial under paragraph(1) may request a correction to the description or drawing(s) of a patented invention under any subparagraph of Article 47(3) within the period designated under Article 159(1).

(4) Article 133*bis*(2) and (3) applies *mutatis mutandis* to a request for a correction under paragraph(3). In such cases, "Article 133(1)" in Article 133*bis*(2) reads "Article 137(1)".

(5) Where a trial decision to correct the description or drawing(s) is to be invalidated under paragraph(1) has become final, the correction is deemed never to have been made.

### **Article 138 Trial for Granting a Nonexclusive License**

(1) If a patentee, exclusive licensee or nonexclusive licensee seeks permission to exercise the right under Article 98, and if the other party concerned refuses permission without justifiable reasons or permission is impossible to obtain, the patentee, exclusive licensee or nonexclusive licensee may request a trial for the grant of a nonexclusive license with the scope necessary to work the patented invention.

(2) Where the request under paragraph(1) has been made, a nonexclusive license may be granted only where the patented invention of the later application constitutes an important technical advance with substantial

economical value in comparison with the other party's patented invention or registered utility model for which an application was filed before the filing date of the later application.

(3) If a person granted a nonexclusive license under paragraph(1) needs to work the patented invention of the person granted the nonexclusive license, and if the latter refuses to give permission or if obtaining permission is impossible, the former may request a trial for the grant of a nonexclusive license with the scope necessary to work the patented invention.

(4) A nonexclusive licensee who was granted a nonexclusive license under paragraphs (1) or (3) of this Article shall remunerate the patentee, the owner of the utility model right, the owner of the design right or the exclusive licensee, unless payment is not possible for unavoidable reasons, in which case the remuneration must be deposited.

(5) A nonexclusive licensee under paragraph(4) may not work a patented invention, registered utility model, registered design or similar design without paying remuneration or depositing the payment.

### **Article 139 Request for a Joint Trial etc.**

(1) Where two or more persons request an invalidation trial under Articles 133(1), 134(1) or 137(1) or a trial to confirm the scope of a patent right under Article 135(1), the request may be made jointly.

(2) Where a trial is requested against any of the joint owners of a patent right, all the joint owners are defendants.

(3) Where the joint owners of a patent right or of a right to obtain a patent request a trial concerning the right under joint ownership, the request must be made jointly by all the owners.

(4) Where grounds exist for the suspension of trial proceedings that apply to one of the requesters under paragraphs (1) or (3) or one of the defendants under paragraph (2), the suspension is effective against all of them.

### **Article 140 Formal Requirements of a Request for a Trial**

(1) A person requesting a trial shall submit a written request to the President of the Intellectual Property Tribunal, stating the following:

- (i) the names and addresses of the parties (and, if a legal entity, the name and address of the business);
- (*ibis*) 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 designated patent attorney);
- (ii) identification of the trial case; and
- (iii) the purpose and grounds of the request.

(2) The intent or purpose of a request for a trial submitted under paragraph (1) may not be amended; however, this provision does not apply to the reasons for the request under paragraph (1)(iii).

(3) When a trial is requested to confirm the scope of a patent right under Article 135(1), the explanation and the necessary drawing(s) that can be compared with the patented invention must be attached to the written request.

(4) In addition to stating the particulars referred to in paragraph (1), a written request for a trial under Article 138(1) must state the following:

- (i) the number and title of the patent required to be worked;
- (ii) the number, title and date of the other party's patent, registered utility model or registered design to be worked; and
- (iii) the scope, duration and remuneration for the nonexclusive license on a patented invention, a registered utility model or a design.

(5) When a trial for amendment under Article 136(1) is requested, the amended description or drawing(s) must be attached to the written request for a trial.

**Article 140bis Formal Requirements of a Request for a Trial on a Decision to Refuse or Revoke a Patent etc.**

(1) Notwithstanding Article 140(1), a person who requests a trial against a decision to refuse or revoke a patent under Article 132<sup>ter</sup> shall submit a written request to the President of the Intellectual Property Tribunal and specify the following:

- (i) the name and address of the petitioner (if the petitioner is a legal entity, the name and address of the business);
- (*ibis*) 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 designated patent attorney);
- (ii) the filing date and file number of the application (and, for dissatisfaction with a decision to revoke a patent, the registration date and number of the patent);
- (iii) the title of the invention;
- (iv) the date of the decision;
- (v) identification of the trial case; and
- (vi) the purpose and grounds of the request.

However, under Article 173, the grounds of the request under subparagraph (vi) must not be specified.

(2) Where a request for a trial is made against a decision to revoke a patent under Article 132<sup>ter</sup>, the President of the Intellectual Property Tribunal shall notify the opponent regarding the purpose of the request.

(3) If notification of a request for a trial has been given under Article 175(2) for a request that does not specify the grounds of the request under paragraph(1)(vi) of this Article, the President of the Intellectual Property Tribunal shall designate a period in which the grounds of the request may be amended.

### **Article 141 Rejection of a Request for a Trial**

(1) When either of the following subparagraphs applies, a presiding trial examiner shall instruct the applicant to make a written amendment within a designated period:

- (i) where a request for a trial does not comply with Articles 140(1) and (3) to (5) or 140*bis*(1);
- (ii) where a trial-related procedure falls under any of the following cases:
  - (a) where the procedure does not comply with Articles 3(1) or 6;
  - (b) where the fees required under Article 82 have not been paid; or
  - (c) where the procedure does not comply with the formalities prescribed in this Act or by Presidential Decree.

(2) Where a person instructed to make a written amendment under paragraph(1) fails to do so within the designated period, the presiding trial examiner shall reject the request for a trial by decision.

(3) A decision to reject a request for a trial under paragraph (2) must be in writing and must state the reasons for the decision.

### **Article 142 Rejection of a Request for a Trial Containing Incurable Defects**

Where a request for a trial contains unlawful defects that cannot be corrected by amendment, the request may be rejected by a ruling without giving the defendant an opportunity to submit a written reply.

### **Article 143 Trial Examiners**

(1) When a trial is requested, the President of the Intellectual Property Tribunal shall direct the trial examiners to hear the case.

(2) The qualifications of trial examiners are prescribed by Presidential Decree.

(3) A trial examiners shall conduct official trial duties for a trial in an independent manner.

#### **Article 144 Designation of Trial Examiners**

(1) For each trial, the President of the Intellectual Property Tribunal shall designate trial examiners to constitute a collegial body under Article 146.

(2) Where a trial examiner designated under paragraph(1) is ineligible to participate in a trial, the President of the Intellectual Property Tribunal may appoint another trial examiner to replace the designated trial examiner.

#### **Article 145 Presiding Trial Examiner**

(1) The President of the Intellectual Property Tribunal shall select one of the trial examiners designated under Article 144(1) as the presiding trial examiner.

(2) A presiding trial examiner shall preside over all matters related to the trial.

#### **Article 146 Collegial Body for a Trial**

(1) A trial must be conducted by a collegial body of three or five trial examiners.

(2) The collegial body referred to in paragraph(1) shall make its decisions by a majority vote.

(3) The consultations of trial examiners are not open to the public.

#### **Article 147 Submission of a Response etc.**

(1) When a trial has been requested, the presiding trial examiner shall transmit a copy of the written request to the defendant and shall give the defendant an opportunity to submit a response within a designated period.

(2) Upon receipt of the response under paragraph (1), the presiding trial examiner shall transmit a copy of the response to the petitioner.

(3) The presiding trial examiner may directly examine the parties in relation to the trial.

### **Article 148 Exclusion of a Trial Examiner**

A trial examiner is excluded from a trial when:

- (i) the trial examiner or the present or former spouse of the trial examiner is a party, intervener or opponent;
- (ii) the trial examiner is or was a blood relative or a member of the household of a party, intervener or opponent;
- (iii) the trial examiner is or was a legal representative of a party, intervener or opponent;
- (iv) the trial examiner has become a witness or expert witness or was an expert witness;
- (v) the trial examiner is or was an agent of a party, intervener or opponent;
- (vi) the trial examiner participated as an examiner or trial examiner in a decision to grant a patent, a decision on an opposition or a trial decision related to the case; or
- (vii) the trial examiner has a direct interest.

### **Article 149 Request for Exclusion**

Where grounds exist for exclusion under Article 148, a party or intervener may request that a trial examiner be excluded.

### **Article 150 Recusal of a Trial Examiner**

(1) In circumstances where the participation of a trial examiner would prejudice the fairness of a trial, a party or intervener may present a motion to recuse the trial examiner.

(2) After a party or intervener has made a written or oral statement with regard to a case before a trial examiner, the party or intervener may not present a motion to recuse the trial examiner, except when the party or intervener did not know grounds for recusal existed or the grounds for recusal arose later.

### **Article 151 Indication of Grounds for Exclusion or Recusal**

(1) A person who presents a motion for exclusion or recusal under Articles 149 or 150 shall submit a document to the President of the Intellectual Property Tribunal stating the grounds for the motion. However, in an oral trial examination, an oral challenge may be made.

(2) The underlying causes for exclusion or recusal must be substantiated within three days of the date on which the motion was presented.

### **Article 152 Decision on a Request to Exclude or Recuse**

(1) A trial shall decide on a request for exclusion or recusal.

(2) A trial examiner subject to a motion for exclusion or recusal may not participate in the trial of the request but may, however, give an opinion.

(3) A decision made under paragraph(1) must be in writing and must state the reasons for the decision.

(4) An appeal may not be made against a decision made under paragraph (1) of this Article.

### **Article 153 Suspension of Trials**

When a motion for exclusion or recusal has been presented, trial proceedings must be suspended until a decision has been made, except when the motion requires urgent attention.

### **Article 153bis Trial Examiners Recusing Themselves**

Where Articles 148 or 150 apply to trial examiners, the trial examiners may recuse themselves from trial proceedings related to the case with the consent of the President of the Intellectual Property Tribunal.

### **Article 154 Trial Proceedings etc.**

(1) Trial proceedings are conducted by oral hearing or documentary examination. However, when a concerned party requests an oral hearing, the trial proceedings must be conducted by oral hearing unless a decision can obviously be made on the basis of documentary examination alone.

(2) Deleted.

(3) Except when public order or morality is likely to be injured, oral hearings are conducted in public.

(4) Where trial proceedings are conducted by oral hearings in accordance with paragraph (1), the presiding trial examiner shall designate the date and place of the hearings and transmit a document containing such information to the parties and interveners of the case unless the parties or interveners have already been notified.

(5) Where trial proceedings are conducted by oral hearings under paragraph (1), an official designated by the President of the Intellectual Property Tribunal shall, under the direction of the presiding trial examiner, prepare a protocol setting forth the essence of the proceedings and other necessary matters in time for the date of each trial proceeding.

(6) The presiding trial examiner and the official who has prepared the protocol under paragraph(5) shall sign the protocol and affix their seals to the protocol.

(7) Articles 153, 154 and 156 to 160 of the Civil Procedure Act apply *mutatis mutandis* to the protocol under paragraph (5).

(8) Articles 143, 299 and 367 of the Civil Procedure Act apply *mutatis mutandis* to a trial.

### **Article 155 Intervention**

(1) A person with the right to request a trial under Article 139(1) may intervene in the trial before the conclusion of the trial examination.

(2) An intervener under paragraph(1) may continue a trial even after the request for the trial has been withdrawn by the original party.

(3) A person with an interest in the result of a trial may intervene in the trial before the conclusion of the trial examination to assist one of the parties.

(4) An intervener under paragraph (3) may initiate and take part in any trial-related procedure.

(5) Where grounds for suspending a trial proceeding apply to an intervener under paragraphs (1) or (3), the suspension is also effective against the original party.

### **Article 156 Request for an Intervention and Decision**

(1) To intervene in a trial, a person shall submit a written request for an intervention to the presiding trial examiner.

(2) The presiding trial examiner shall transmit copies of a request for an intervention to the parties and other interveners and give them an opportunity to submit written opinions within a designated period.

(3) Where a request for an intervention is made, the decision must be made by a trial.

(4) A decision under paragraph(3) must be in writing and must state the reasons for the decision.

(5) An appeal may not be made against a decision under paragraph (3).

### **Article 157 Taking and Preserving Evidence**

(1) For a trial, evidence may be taken or preserved upon the request of a party, intervener, interested person or *ex officio*.

(2) The provisions of the Civil Procedure Act related to taking and preserving evidence apply *mutatis mutandis* to any taking and preserving of evidence under paragraph(1). However, the trial examiner may not impose a fine for negligence, order a person to appear or require the deposit of money as security.

(3) A request to preserve evidence must be made to the President of the Intellectual Property Tribunal before a request for a trial and to the presiding trial examiner of the case while the trial is pending.

(4) Where a motion for preservation of evidence has been made under paragraph(1) before a request for a trial, the President of the Intellectual Property Tribunal shall designate a trial examiner to be responsible for the motion.

(5) Where evidence has been taken or preserved *ex officio* under paragraph(1), the presiding trial examiner shall notify the parties, interveners and interested persons and shall give them an opportunity to submit written opinions within a designated period.

### **Article 158 Continuation of Trial Proceedings**

Notwithstanding the failure of a party or intervener to take any proceedings

within the period prescribed by law or designated under this Act, or the failure to appear on the date designated under Article 154(4), the presiding trial examiner may proceed with the trial proceedings.

### **Article 159 *Ex Officio* Trial Examination**

(1) Grounds that have not been pleaded by a party or intervener in a trial may be examined; however, in such cases, the parties and interveners must be given an opportunity within a designated period to state their opinions regarding the grounds.

(2) In a trial, an examination may not be made on the purpose of a claim not requested by the petitioner.

### **Article 160 Combination or Separation of a Trial or Ruling**

When examining two or more trial proceedings where one or both parties are the same, a trial examiner may either combine the examinations or examine the cases separately.

### **Article 161 Withdrawal of a Request for a Trial**

(1) A request for a trial may be withdrawn by the petitioner before the trial decision has become final; however, the consent of the defendant for the withdrawal must be obtained where a response has already been submitted.

(2) Where a request for a trial for invalidating a patent under Article 133(1) or for confirming the scope of a patent right under Article 135 has been made with regard to two or more claims, the request may be withdrawn for each of the claims.

(3) Where a request for a trial or a request for each claim is withdrawn under paragraphs (1) or (2), the request is deemed never to have been made.

### **Article 162 Ruling on a Trial**

(1) Except as otherwise stipulated, when a trial ruling has been given, the trial is closed.

(2) A trial ruling under paragraph(1) must be in writing, and it must be signed and sealed by the trial examiners who made the ruling; the ruling must state the following:

- (i) the number of the trial;
- (ii) the name and address of the parties and interveners (and, if a legal entity, the name and address of the business);  
*(iibis)* 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 designated patent attorney);
- (iii) the identification of the trial case;
- (iv) the text of the ruling (including the scope, duration and remuneration in trial cases under Article 138);
- (v) the reasons for the decision (including the purpose and a summary of the reason for the request); and
- (vi) the date of the ruling.

(3) When ready to make a ruling after thoroughly examining a case, the presiding trial examiner shall notify the parties and interveners of the closure of the trial examination.

(4) After giving notification of the closure of a trial examination under paragraph(3), if necessary, the presiding trial examiner may reopen the examination upon the motion of a party or an intervener or *ex officio*.

(5) A decision must be made within twenty days of the date on which the notification of the closure of a trial examination is served under paragraph (3).

(6) When a trial decision or a ruling has been made, the presiding trial examiner shall transmit a certified copy of the trial decision or the ruling to the parties, interveners, and persons who have requested intervention to the trial, but have been rejected.

### **Article 163 *Res Judicata***

Where a trial decision has become final under this Act, a person may not demand a retrial on the basis of the same facts and evidence, unless the final trial decision is a rejection.

### **Article 164 Trials and Litigation**

(1) Proceedings of a trial may, if necessary, be suspended until the decision on a patent opposition relevant to the trial or a trial decision of another trial becomes final or litigation proceedings of another trial are concluded.

(2) The court may, if considered necessary in the litigation proceedings, suspend the litigation proceedings until a trial decision on the patent becomes final.

(3) Where an action related to the infringement of a patent right or exclusive license is started and when litigation proceedings have been terminated, the relevant Court must notify the President of the Intellectual Property Tribunal accordingly.

(4) Where a trial for invalidating a patent and so on is requested in response to a legal action against an infringement of a patent right or exclusive license under paragraph (3) and, when a decision to reject, a request for a trial or a withdrawal of a request has occurred, the President of the Intellectual Property Tribunal must notify the relevant Court under paragraph (3) accordingly.

### **Article 165 Costs of a Trial**

(1) The imposition of costs of a trial under Articles 133(1), 134(1), 135 and

137(1) is decided either by a trial decision if a trial is terminated by a trial decision, or by a decision in the trial if the trial is terminated in a manner other than by a trial decision.

(2) Articles 98 to 103, 107(1) and (2), 108, 111, 112 and 116 of the Civil Procedure Act apply *mutatis mutandis* to the costs of trials under paragraph (1).

(3) The petitioner or opponent shall bear the costs of trials under Article 132<sup>ter</sup> and 136 or 138.

(4) Article 102 of the Civil Procedure Act applies *mutatis mutandis* to the costs borne by the requester or the opponent under paragraph (3).

(5) Upon the request of an interested party, the President of the Intellectual Property Tribunal shall determine the total costs of a trial after the trial decision or ruling has become final.

(6) The extent, amount and payment of the costs of a trial, as well as the payment of the costs for performing any procedural acts in the trial, are governed by the relevant provisions of the Act of Civil Procedure Costs, unless they are incompatible.

(7) The payment that a party has paid or will pay to a patent attorney who represents the party in a trial is considered an element of the trial costs in determining the extent of the costs by the Commissioner of the Korean Intellectual Property Office. If two or more patent attorneys represent a person in a trial, the person is deemed to have been represented by a single patent attorney.

### **Article 166 Title of Enforcement of Costs or Remuneration**

A final ruling on the costs of a trial decided by the President of the Intellectual Property Tribunal or on the compensation to be paid under this Act, as decided by the trial examiner, has the same effect as an enforceable title of liability; an official of the Intellectual Property Tribunal shall give the legal writ, which has the force of execution.

**Article 167 Deleted**

**Article 168 Deleted**

**Article 169 Deleted**

**Article 170 *Mutatis Mutandis* Application of Provisions on Examination to Trial against a Ruling of Refusal to Grant a Patent**

(1) Articles 47(1)(i),(ii), 51, 63 and 66 apply *mutatis mutandis* to a trial against a ruling of refusal to grant a patent by an examiner. In such cases, in Article 51(1) the expressions "Article 47(1)(ii)" reads "Article 47(1)(ii) or (iii)", and "an amendment" reads "an amendment (under Article 47(2), excluding an amendment filed before a request for a trial against a ruling of refusal to grant a patent under Article 132*ter*)"; and "under 47(1)(ii)" in Article 63 reads "under 47(1)(ii) or (iii) (under 47(2), excluding that which was submitted before a request for a trial against a ruling of refusal to grant a patent under Article 132*ter*)".

(2) Article 63, which applies *mutatis mutandis* under paragraph (1), applies if grounds for rejection have been found that differ from those in the examiner's original refusal to grant a patent.

**Article 171 Special Provisions for a Trial against a Ruling of Refusal to Grant a Patent**

(1) The selection of the trial examiners for a trial against a ruling of refusal to grant a patent under Article 173 is made only when notification has been given under Article 175(2).

(2) Articles 147(1) and (2), 155 and 156 do not apply to a trial against a ruling of refusal to grant a patent, a ruling of refusal to extend the term of a registered patent or revocation by an examiner.

### **Article 172 Effect of Examination or Opposition Proceedings**

Proceedings previously taken during the course of an examination or an opposition remain effective in a trial against a ruling of refusal to grant a patent, a ruling of refusal to extend the term of a registered patent or a revocation issued by an examiner.

### **Article 173 Reexamination Before a Trial**

(1) Where a person who has received a ruling of refusal to grant a patent under Article 62 requests a trial under Article 132<sup>ter</sup> and amends the description or drawing(s) attached to the application that is the subject of the request within thirty days of the request, the President of the Intellectual Property Tribunal shall notify the Commissioner of the Korean Intellectual Property Office before proceeding with the trial.

(2) Where a notification referred to in paragraph(1) is given, the Commissioner of the Korean Intellectual Property Office shall order the examiner to reexamine the application that is the subject of the request.

### **Article 174 *Mutatis Mutandis* Application of Provisions on Examination to the Reexamination Before a Trial**

(1) Articles 51, 57(2), 78 and 148(i) to (v) and (vii) apply *mutatis mutandis* to the reexamination under Article 173. In such cases, in Article 51(1), the expression "Article 47(1)(ii)" reads "Article 47(1)(ii) or (iii)", and "an amendment" reads "an amendment (under Article 47(2), excluding an amendment filed before a request for a trial against a ruling of refusal to grant a patent under Article 132<sup>ter</sup>)".

(2) Articles 47(1)(i) and (ii) and 63 apply *mutatis mutandis* to a reexamination under Article 173 if grounds for rejection have been found that differ from those of the examiner's original refusal to grant a patent. In such cases, "under 47(1)(ii)" in Article 63 reads "under 47(1)(ii) or (iii) (in cases under 47(2), excluding those submitted before a request for a trial against a refusal to grant a patent under Article 132<sup>ter</sup>)".

(3) Articles 66 and 67 apply *mutatis mutandis* to the reexamination under Article 173 if the request for a trial is considered to have merit.

#### **Article 175 Termination of a Reexamination**

(1) If the reason for refusing an application is resolved by a reexamination under Article 173(2), the examiner shall reverse the ruling of refusal to grant a patent, and grant the patent. In such cases, a request for a trial against a ruling of refusal to grant a patent is deemed to be extinguished.

(2) If an examiner cannot decide to grant a patent as a result of a reexamination under Article 173(2), the examiner shall report the reexamination result to the Commissioner of the Korean Intellectual Property Office without issuing another ruling of refusal to grant a patent. The Commissioner of the Korean Intellectual Property Office shall notify the President of the Intellectual Property Tribunal after receiving the report.

#### **Article 176 Reversal of a Ruling of Refusal etc.**

(1) Where a trial examiner considers that a request for a trial under Articles 132<sup>ter</sup> is well grounded, the trial examiner shall reverse the examiner's ruling of refusal to grant a patent, refusal to extend the term of a registered patent or revocation of a patent.

(2) Where a ruling of refusal, refusal to extend the term of a registered patent or revocation of a patent is reversed in a trial, a trial decision may remand the case to the Examination Division.

(3) In ruling on a trial under paragraphs (1) and (2) of this Article, the reasons constituting the basis for the reversal are binding on the examiner.

#### **Article 177 Deleted**