

CHAPTER VIII

RETRIAL

Article 178 Request for a Retrial

- (1) Any party may request a retrial against a trial decision that has become final.
- (2) Articles 451 and 453 of the Civil Procedure Act apply *mutatis mutandis* to a request for a retrial under paragraph (1).

Article 179 Request for a Retrial on Account of Collusion

- (1) Where the parties in a trial colluded to bring about a trial decision that damages the rights or interests of a third party, the third party may request a retrial against the final trial decision.
- (2) In a request for a retrial under paragraph (1), the parties of the trial must be joint defendants.

Article 180 Period for Requesting a Retrial

- (1) A retrial must be requested within thirty days of the date on which the petitioner becomes aware of the grounds for a retrial after the trial ruling has become final.
- (2) Where a retrial is requested because of defects in a power of attorney, the period designated in paragraph (1) is counted from the day after the date on which the petitioner or the petitioner's legal representative becomes aware, by means of a transmittal of a certified copy of the ruling, that the trial ruling has been given.
- (3) A person may not request a retrial more than three years after the date on which the trial ruling became final.

(4) Where grounds for a retrial arise after a trial ruling becomes final, the period prescribed in paragraph (3) is counted from the day after the date on which the grounds first arose.

(5) Paragraphs (1) and (3) do not apply to a request for a retrial made on the grounds that the trial ruling conflicts with an earlier trial ruling that is final.

**Article 181 Restriction on Effects of a Patent Right
Restored by a Retrial**

(1) In any of the following cases, a patent right is not effective for any product imported into the Republic of Korea, or manufactured or acquired in good faith in the Republic of Korea, after a trial ruling has become final but before a request for a retrial is registered:

- (i) where the patent right whose patent or registration of the term extension was concluded to be invalid (including a patent right, the revocation of which was concluded by a trial decision to revoke a patent), has been restored by a retrial;
- (ii) after a trial ruling that a product was outside the scope of the patent right became final, where a ruling to the contrary at a retrial has become final;
or
- (iii) where the establishment of a patent right or the extension of a patent term for a patent application or application to register the extension of a patent term previously refused by a trial ruling has been registered through a retrial.

(2) A patent right under paragraph(1) of this Article does not extend to the following acts:

- (i) working an invention in good faith after a trial ruling has become final but before the registration of a request for a retrial;
- (ii) acts of manufacturing, assigning, leasing, importing or offering for assignment or lease articles to be used exclusively for manufacturing an

invented product in good faith after a trial decision has become final but before the registration of a request for a retrial; and

- (iii) acts of manufacturing, assigning, leasing, importing or offering for assignment or lease articles to be used exclusively for working of an invented process in good faith after a trial decision has become final but before the registration of a request for a retrial.

Article 182 Nonexclusive License for Prior User of a Patent Right Restored by a Retrial

For cases that fall under any subparagraph of Article 181(1), when a person has, in good faith, commercially or industrially worked an invention in the Republic of Korea, or has been making preparations to work the invention, after a trial ruling became final but before the registration of a request for a retrial, the person is entitled to have a nonexclusive license on the patent right limited to the purpose of the business and the scope of the invention being worked or for which preparations for working are being made.

Article 183 Nonexclusive License for Person Deprived of a Nonexclusive License by a Retrial

(1) Where, after a decision to grant a nonexclusive license under Article 138(1) or (3) has become final, a decision to the contrary is made at a retrial, a person who has, in good faith, commercially or industrially worked the invention in the Republic of Korea or has been making preparations to work the invention under a nonexclusive license, before the registration of a request for a retrial, the person is entitled to have a nonexclusive license on the patent right or on the exclusive license existing at the time the decision at the retrial becomes final, the license being limited to the purpose of the person's business and to the scope of the invention under the original nonexclusive license.

(2) Article 104(2) applies *mutatis mutandis* to the case referred to in paragraph (1).

**Article 184 *Mutatis Mutandis* Application of Provisions on
Trial to Retrial**

The trial-related provisions apply *mutatis mutandis* to a request for a retrial against the decision of a trial decision, unless they are incompatible.

Article 185 *Mutatis Mutandis* Application of the Civil Procedure Act

Article 459(1) of the Civil Procedure Act applies *mutatis mutandis* to a request for a retrial.

CHAPTER IX

LITIGATION

Article 186 Action on a Trial Decision etc.

- (1) The Patent Court of Korea has original jurisdiction over any action against a trial decision or dismissal of a request for a trial or retrial.
- (2) The action prescribed in paragraph(1) may be brought by a person who is a party or intervener in the trial or by any person who has requested an intervention in the trial but has had the request rejected.
- (3) The action prescribed in paragraph(1) may be brought within the thirty-day period immediately after the date on which a certified copy of the trial decision or ruling was received.
- (4) The period prescribed in paragraph (3) may not be changed.
- (5) For the peremptory period referred to in paragraph (4) of this Article, a presiding trial examiner may *ex officio* determine any additional period for the benefit of a person residing in an area that is remote or difficult to access.