

container or packaging, for which a utility model has not been registered or for which a utility model application is not pending;

- (ii) assigning, leasing or displaying an article that has been marked with an indication referred to in subparagraph (i); or
- (iii) for the purpose of manufacturing, using, assigning or leasing an article referred to in subparagraph (i), marking with an indication upon advertisements, signboards or tags that a utility model has been registered for the article or that a utility model application has been filed, or marking with any sign likely to cause such confusion.

Article 77 *Mutatis Mutandis* Application of the Patent Act

Articles 216, 217, 217*bis*, 218 to 220, 222 and 224*bis* of the Patent Act apply *mutatis mutandis* to a utility model. In this case "examination" in Articles 217 and 217*bis* of the Patent Act reads "technical evaluation of a utility model".

CHAPTER XI

PENAL PROVISIONS

Article 78 Offense of Infringement

(1) A person who infringes a utility model right or exclusive license is liable to imprisonment with labor not exceeding seven years or to a fine not exceeding 100 million won.

(2) Prosecution for offenses under paragraph (1) are initiated upon the filing of a complaint by an injured party.

Article 79 Offense of Perjury

(1) Having taken an oath under this Act, a witness, expert witness or interpreter who makes a false statement, gives a false expert opinion or interprets falsely before the Intellectual Property Tribunal is liable to imprisonment with labor not exceeding five years or a fine not exceeding 10 million won.

(2) Having committed an offense under paragraph (1), a person who admits the offense before the decision of an opposition or a trial decision related to a utility model registration becomes final may be partially or totally exempted from the application of the sentence.

Article 80 Offense of False Marking

A person who violates Article 76 of this Act is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

Article 81 Offense of Fraud

A person who fraudulently or unjustly obtains a utility model registration, a decision on a technical evaluation, or an official or trial decision in an opposition to a utility model registration is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

Article 82 Offense of Divulging Secrets

Any present or former officials of the Korean Intellectual Property Office or the Intellectual Property Tribunal who have disclosed or appropriated a device disclosed in a pending utility model application to which they had access during the course of their duties are liable to imprisonment with labor not exceeding two years or to a fine not exceeding 3 million won.

Article 83 Officers and Employees of Specialized Search Organization etc. as Public Officials and Irrefutable Presumption

A person who is or was an officer or employee of a specialized search organization or any agency that digitizes patent documents under Article 217*bis* of the Patent Act as applied *mutatis mutandis* under Article 77 of this Act is deemed to be a present or former official of the Korean Intellectual Property Office for the purpose of applying Article 82 of this Act.

Article 84 Dual Liability

Where a representative of a legal entity or an agent, employee or other servant of a legal entity or natural person violates Articles 78(1), 80 or 81 with regard to the business of the legal or natural person, the legal person in addition to the offender is liable to a fine as prescribed in either of the following paragraphs, and the natural person is liable to a fine prescribed in the relevant Article:

- (i) under Article 78(1), a fine not exceeding 300 million won;
- (ii) under Article 80 or 81, a fine not exceeding 60 million won.

Article 85 Confiscation etc.

(1) Any goods that are the subject of an act of infringement under Article 78(1) or any goods arising out of the act of infringement must be confiscated or, upon the request of the injured party, a judgment must be made requiring the goods to be delivered to the injured party.

(3) Where goods are delivered to the injured party under paragraph(1), the injured party may claim compensation of damages in excess of the value of the goods.

Article 86 Administrative Fine

(1) A person who commits any of the following acts is liable to an administrative fine not exceeding 500,000 won:

- (i) making a false statement before the Intellectual Property Tribunal after having taken an oath under Articles 299(2) and 367 of the Civil Procedure Act;
- (ii) failing to comply, without justifiable reasons, with an order of the Intellectual Property Tribunal to submit or show documents or other materials related to taking or preserving evidence;
- (iii) failing to comply, without justifiable reasons, with an order to report under Article 125 of the Patent Act as applied *mutatis mutandis* under Article 42 of this Act on matters related to working a registered utility model; or
- (iv) failing to comply, without justifiable reasons, with a subpoena of the Intellectual Property Tribunal to appear as a witness, an expert witness or an interpreter, or refusing to take an oath, make a statement, testify, give an expert opinion or interpret.

(2) The Commissioner of the Korean Intellectual Property Office shall impose and collect the administrative fine referred to in paragraph(1) as prescribed by Presidential Decree.

(3) A person who objects to the imposition of an administrative fine under paragraph(2) may protest to the Commissioner of the Korean Intellectual Property Office within thirty days of being notified of the imposition.

(4) Where a person who has been notified of the imposition of an administrative fine under paragraph(2) raises an objection under paragraph(3), the Commissioner of the Korean Intellectual Property Office shall immediately notify the competent court, which shall adjudicate the case of the administrative fine according to the Noncontentious Case Litigation Procedure Act.

(5) Where no objection has been raised within the period prescribed in paragraph(3) and where the fine has not been paid, the Commissioner of the Korean Intellectual Property Office shall collect the fine in accordance with the rules of collecting national taxes in arrears through the head of a competent tax office.