

(2) Paragraph (1) applies *mutatis mutandis* when a right is exercised or a warning is given for that portion of a right excluded from the scope of a device described in the claim(s) when a utility model application was registered because of a correction to the description and drawing(s) attached to the utility model application in accordance with a request and trial for a correction.

#### **Article 46 *Mutatis Mutandis* Application of the Patent Act**

Articles 126, 128, 130, 131 and 132 of the Patent Act apply *mutatis mutandis* to protection of the owner of a utility model right. In such cases, "a person who has infringed a patent right or exclusive license of another person" in Article 130 of the Patent Act is deemed "a person who has infringed a utility model right or exclusive license of another person who has been granted a decision to maintain a utility model registration under Article 25(2) of this Act".

### **CHAPTER VII**

#### **OPPOSITION TO REGISTRATION OF A UTILITY MODEL**

##### **Article 47 *Opposition to Registration of a Utility Model***

(1) Within three months of the publication of a utility model registration, any person may file an opposition to the utility model registration with the Commissioner of the Korean Intellectual Property Office on the grounds that the utility model registration falls under any of the following subparagraphs. Where the registered utility model contains two or more claims, an opposition may be filed for each claim:

- (i) where the utility model has been registered contrary to Article 25

of the Patent Act as applied *mutatis mutandis* under Article 4 of this Act, Articles 5, 7, 8(1) to (4) of this Act, Articles 44 of the Patent Act as applied *mutatis mutandis* under Article 20 of this Act;

- (ii) where a person is not entitled to a patent under Article 33(1) of the Patent Act as applied *mutatis mutandis* under Article 20 of this Act or where a patent may not be granted under the proviso of Article 33(1) of the Patent Act;
- (iii) where the registration of a utility model violates a treaty;
- (iv) where the registration of a utility model violates Article 9(3) or (4); or
- (ivbis) where the amendment is beyond the scope of Article 14.
- (v) where the registration of a utility model violates the proviso of Article 35(2).

(2) When filing an opposition, the opponent (referred to as "the opponent filing the opposition") shall file a written opposition with the relevant evidence before the Commissioner of the Korean Intellectual Property Office. The opposition must state the following:

- (i) the name and address of the opponent (and, if a legal entity, the name and address of the business);
- (ii) 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) identification of the utility model registration to which the opposition pertains; and
- (iv) the grounds for the opposition and identification of relevant evidence.

(3) Article 49(4) of this Act applies *mutatis mutandis* to an opposition to the registration of a utility model.

#### **Article 48 *Mutatis Mutandis* Application of the Patent Act**

Articles 70 to 78*bis* of the Patent Act apply *mutatis mutandis* to an opposition to a utility model registration. In Article 77(3) of the Patent Act, "Articles 136(2) to 136(5)" reads "Articles 136(2), (3) and (5)", and in Article 78(1) of the Patent Act "a decision on an opposition" reads "a decision on a request for technical evaluation or a decision on an opposition".

### **CHAPTER VIII**

#### **TRIALS, RETRIALS AND LITIGATION**

##### **Article 49 Trial for Invalidation of Utility Model Registration**

(1) Any interested party or an examiner may request a trial to invalidate a utility model registration under any of the following subparagraphs; when the registered utility model contains two or more claims, a request for an invalidation trial may be made for each claim:

- (i) where the registration of a utility model violates Article 25 of the Patent Act as applied *mutatis mutandis* under Article 4 of this Act, Articles 5, 7, 8(1) to (4) and 9(3) and (4) of this Act, or Article 44 of the Patent Act as applied *mutatis mutandis* under Article 20 of this Act;
- (ii) where the utility model has been registered to a person who is not entitled to the utility model right under Article 33(1) of the Patent Act as applied *mutatis mutandis* under Article 20 of this Act, or who may not obtain a patent under the proviso of Article 33(1) of the Patent Act;