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PATENT ACT

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Wholly Amended by Act No. 4207, Jan. 13, 1990
Amended by Act No. 4541, Mar. 6, 1993
Act No. 4594, Dec. 10, 1993
Act No. 4757, Mar. 24, 1994
Act No. 4892, Jan. 5, 1995
Act No. 5080, Dec. 29, 1995
Act No. 5329, Apr. 10, 1997
Act No. 5576, Sep. 23, 1998
Act No. 6024, Sep. 7, 1999
Act No. 6411, Feb. 3, 2001
Act No. 6582, Dec. 31, 2001
Act No. 6626, Jan. 26, 2002
Act No. 6768, Dec. 11, 2002
Act No. 7289, Dec. 31, 2004
Act No. 7427, Mar. 31, 2005
Act No. 7554, May31, 2005
Act No. 7869, Mar. 3, 2006
Act No. 7871, Mar. 3, 2006
Act No. 8171, Jan. 3, 2007
Act No. 8197, Jan. 3, 2007
Act No. 8357, Apr. 11, 2007
Act No. 8462, May17, 2007
Act No. 8852, Mar. 29, 2008
Act No. 9249, Dec. 26, 2008
Act No. 9381, Jan. 30, 2009
Act No. 9985, Jan. 27, 2010
Act No. 10012, Feb. 4, 2010
Act No. 10716, May 24, 2011
Act No. 11117, Dec. 2, 2011
Act No. 11654, Mar. 22, 2013
Act No. 11690, Mar. 23, 2013

Act No. 11848, May 28, 2013

Act No. 11962, Jul. 30, 2013

Act No. 12313, Jan. 21, 2014

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to encourage, protect and utilize inventions, thereby promoting the development of technology, and to contribute to the development of industry.

Article 2 (Definitions)

The terms used in this Act shall be defined as follows: *<Amended by Act No. 5080, Dec. 29, 1995>*

1. The term "invention" means the highly advanced creation of technical ideas utilizing laws of nature;
2. The term "patented invention" means an invention for which a patent has been granted;
3. The term "working" means any of the following acts:
 - (a) In cases of an invention of a product, acts of manufacturing, using, assigning, leasing, importing, or offering for assigning or leasing (including displaying for the purpose of assignment or lease; hereinafter the same shall apply) the product;
 - (b) In cases of an invention of a process, acts of using the process;
 - (c) In cases of an invention of a process of manufacturing a product, acts of using, assigning, leasing, importing, or offering for assigning or leasing the product manufactured by the process, in addition to the acts mentioned in item (b).

Article 3 (Capacity of Minors, etc.)

- (1) Minors, wards of limited guardians and wards of adult guardians shall not initiate the procedure for filing an application, request, or any other patent-related procedure (hereinafter referred to as "patent-related procedure") unless they have legal representation: Provided, That this shall

not apply where a minor or a ward of limited guardian is entitled to perform a legal act independently. <Amended by Act No. 12313, Jan. 21, 2014>

(2) The legal representative referred to in paragraph (1) may, without the consent of the supervisor of guardianship, engage in any trial or retrial procedures initiated by the other party. <Amended by Act No. 4892, Jan. 5, 1995; Act No. 5329, Apr. 10, 1997; Act No. 7871, Mar. 3, 2006; Act No. 12313, Jan. 21, 2014>

(3) Deleted. <by Act No. 7871, Mar. 3, 2006>

Article 4 (Associations, etc. which are not Juristic Persons)

A representative or an administrator, who has been so designated by an association or a foundation which is not a juristic person, may request the examination of a patent application or appear as a plaintiff or defendant in a trial or a retrial in its association or foundation name. <Amended by Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>

Article 5 (Patent Administrators for Overseas Residents)

(1) A person who has neither an address nor a business office in the Republic of Korea (hereinafter referred to as "overseas resident") is not, except in cases where an overseas resident (or a representative thereof if a juristic person) is sojourning in the Republic of Korea, entitled to initiate any patent-related procedure, nor appeal any decision taken by an administrative agency in accordance with this Act or any order thereunder, unless he/she is represented by an agent with respect to his/her patent, who has an address or a business office in the Republic of Korea (hereinafter referred to as "patent administrator"). <Amended by Act No. 6411, Feb. 3, 2001>

(2) A patent administrator shall, within the scope of authority conferred on him/her, represent the principal in all patent-related procedures and in any appeal against a decision taken by an administrative agency under this Act or any order thereunder. <Amended by Act No. 6411, Feb. 3, 2001>

(3) and (4) Deleted. <by Act No. 6411, Feb. 3, 2001>

Article 6 (Scope of Agency Authority)

An agent who is entrusted with the authority to initiate a patent-related procedure before the Korean Intellectual Property Office by a person who has an address or a business office in the Republic of Korea shall not, unless expressly delegated by the delegation of authority, modify, abandon or withdraw an application for a patent, withdraw an application for registration of an extended term of a patent right, abandon a patent right, withdraw a petition, withdraw a request, make or withdraw a priority claim under Article 55 (1), request a trial under Article 132-3, or appoint a subagent. *<Amended by Act No. 4594, Dec. 10, 1993; Act No. 4892, Jan. 5, 1995; Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*

Article 7 (Proof of Agency Authority)

The agent (including a patent administrator; hereinafter the same shall apply) of a person who initiates a patent-related procedure shall present a document verifying his/her agency authority. *<Amended by Act No. 6411, Feb. 3, 2001>*

Article 7-2 (Ratification of Acts by Persons Lacking Capacity, etc.)

Patent-related procedures, initiated by a person who lacks capacity, legal representation or the delegated authority necessary to initiate any such procedures, shall take effect retroactively to the time when such procedures are performed, if the relevant procedures are ratified by the principal or the legal representative after he/she has gained capacity to proceed.

[This Article Newly Inserted by Act No. 7871, Mar. 3, 2006]

Article 8 (Non-extinction of Agency Authority)

No authority of an agent delegated by a person initiating a patent-related procedure shall be extinguished upon the decease or loss of legal capacity of the principal, the extinction of a juristic person who is the principal due to a merger, the termination of fiduciary duty of a trustee who is the principal, the decease or loss of legal capacity of the legal representative, or the modification or extinction of his/her agency authority.

Article 9 (Individual Representation)

Where two or more agents of a person initiating a patent-related procedure

have been designated, each of them shall severally represent the principal before the Korean Intellectual Property Office or the Intellectual Property Tribunal. *<Amended by Act No. 4892, Jan. 5, 1995>*

Article 10 (Agent Replacement, etc.)

- (1) When the Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge deems that a person initiating a patent-related procedure is not qualified to conduct such procedure smoothly or to make oral statements, etc., he/she may order the appointment of an agent to conduct such procedure. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (2) When the Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge deems that the agent of a person initiating a patent-related procedure is not qualified to conduct such procedure smoothly or to make oral statements, etc., he/she may order the replacement of the agent. *<Amended by Act No. 6411, Feb. 3, 2001>*
- (3) The Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge may order the appointment of a patent attorney to conduct the procedure, in cases referred to in paragraph (1) or (2).
- (4) The Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge may invalidate any patent-related action taken against the Korean Intellectual Property Office or the Intellectual Property Tribunal by the person initiating the patent-related procedure referred to in paragraph (1) or by the agent referred to in paragraph (2) prior to the appointment or replacement of the agent under paragraph (1) or (2), after the issuance of an order under paragraph (1) or (2). *<Amended by Act No. 4892, Jan. 5, 1995>*

Article 11 (Representation of Two or More Persons)

- (1) Where two or more persons jointly initiate a patent-related procedure, each of them shall represent the joint initiators except for actions falling under any of the following subparagraphs: Provided, That this shall not

apply where those persons have appointed a common representative and have notified the Korean Intellectual Property Office or the Intellectual Property Tribunal thereof: <Amended by Act No. 4892, Jan. 5, 1995; Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>

1. Conversion, abandonment or withdrawal of a patent application or withdrawal of an application to register an extension of term of a patent right;
2. Withdrawal of a petition, claim or withdrawal of a priority claim under Article 55 (1);
3. Withdrawal of a request;
4. Request for a trial under Article 132-3.

(2) Where the common representative has been appointed and notified under the proviso to paragraph (1), written proof indicating that the representative has been appointed shall be presented.

Article 12 (Application Mutatis Mutandis of the Civil Procedure Act)

Unless otherwise provided in this Act, the provisions of Part I Chapter II Section 4 of the Civil Procedure Act shall apply mutatis mutandis to agents under this Act. <Amended by Act No. 7871, Mar. 3, 2006>

Article 13 (Venue of Overseas Residents)

If an overseas resident has appointed a patent administrator with respect to his/her patent right or other rights relating to a patent, the domicile or place of business of the patent administrator shall be deemed that of the overseas resident. Where there is no such patent administrator, the location of the Korean Intellectual Property Office shall be deemed the seat of property under Article 11 of the Civil Procedure Act. <Amended by Act No. 6626, Jan. 26, 2002; Act No. 7871, Mar. 3, 2006>

Article 14 (Calculation of Periods)

The periods provided for in this Act or any orders thereunder shall be calculated as follows: <Amended by Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>

1. The first day of the period shall not be counted: Provided, That this

shall not apply to cases where the period starts at midnight;

2. When the period is expressed in months or years, it shall be counted according to the calendar;
3. When the start of the period does not coincide with the beginning of a month or year, the period shall expire on the day preceding the date in the last month or year of the period corresponding to the date on which the period started: Provided, That where a month or year is used and there is no corresponding day in the last month, the period shall expire on the last day of that month;
4. If the last day of the period for executing a patent-related procedure falls on an official holiday (including the Workers' Day designated by the Designation of Workers' Day Act and Saturdays), the said period shall expire on the working day following such holiday.

Article 15 (Extension, etc. of Periods)

- (1) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may, upon request or ex officio, extend the period of request for trial referred to in Article 132-3 only once up to 30 days: Provided, That he/she may additionally extend the number and period of such request for the benefit of a person residing in an area with poor transportation. *<Amended by Act No. 9381, Jan. 30, 2009>*
- (2) When the Commissioner of the Korean Intellectual Property Office, the President of the Intellectual Property Tribunal, a presiding administrative patent judge or an examiner has designated a period for a patent-related procedure under this Act, he/she may extend or reduce such period upon request or may extend such period ex officio. In such cases, the Commissioner of the Korean Intellectual Property Office, etc. shall decide to extend or reduce such period so that any interest of an interested person for the relevant procedure is unduly violated. *<Amended by Act No. 8197, Jan. 3, 2007>*
- (3) When a presiding administrative patent judge or an examiner has

designated a date for initiating a patent-related procedure under this Act, he/she may change the date upon request or ex officio.

Article 16 (Invalidation of Procedure)

- (1) When a person who has been ordered to make an amendment in accordance with Article 46 fails to do so within the designated period, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may invalidate the patent-related procedure: Provided, That where a person who has been ordered to make an amendment for not paying the fees for filing a request for examination under Article 82 (2) fails to pay the said fees within the designated period, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may invalidate the amendment to the specification attached to the patent application.
- (2) Where a patent-related procedure has been invalidated under paragraph (1), if the failure to make an amendment within the designated period is deemed to have been made due to a cause not imputable to the person who has been ordered to do so, the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may revoke the disposition of invalidation, at the request of the person ordered to make the amendment, within two months from the date the relevant cause is eliminated: Provided, That this shall not apply where one year has elapsed since the designated period expired. *<Amended by Act No. 11654, Mar. 22, 2013>*
- (3) When the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal imposes a disposition of invalidation under the main sentence of and proviso to paragraph (1) or revokes a disposition of invalidation under the main sentence of paragraph (2), he/she shall send a notification of such measure to a person who received an amendment order. *<Newly Inserted by Act No. 8197, Jan. 3, 2007>*

[This Article Wholly Amended by Act No. 6411, Feb. 3, 2001]

Article 17 (Subsequent Completion of Procedure)

If a person who initiated a patent-related procedure has failed to comply with the period for requesting a trial under Article 132-3 or the period for demanding a retrial under Article 180 (1) due to a cause not imputable to the person, he/she may subsequently complete the procedure that he/she failed to conduct within 14 days after the said reason ceases to exist: Provided, That this shall not apply where one year has elapsed after the said period expires. <Amended by Act No. 4892, Jan. 5, 1995; Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001>

Article 18 (Succession of Procedural Effects)

The effects of a procedure taken in relation to a patent or other rights relating to a patent shall extend to the successor in title.

Article 19 (Continuation of Procedure)

Where a patent right or other rights relating to a patent is transferred while a patent-related procedure is pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal, the Commissioner of the Korean Intellectual Property Office or the presiding administrative patent judge may require the successor in title to continue the patent-related procedure. <Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>

Article 20 (Interruption of Procedure)

If any patent-related procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal falls under any of the following subparagraphs, it shall be interrupted: Provided, That this shall not apply where there is an agent delegated with the authority to conduct the procedure: <Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>

1. When the party involved deceases;
2. When the juristic person involved ceases to exist by merger;
3. When the party involved loses the ability to conduct the procedure;
4. When the legal representative of the party involved deceases or loses his/her authority;

5. When the duties of a trustee conferred under the trust of the party involved terminates;
6. When the representative provided in the proviso to Article 11 (1) deceases or loses his/her qualification;
7. When persons such as a trustee in bankruptcy, etc. who met certain qualifications and acted on behalf of the party involved in his/her own name loses his/her qualification or deceases.

Article 21 (Resumption of Interrupted Procedure)

When a procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal has been interrupted pursuant to Article 20, the procedure shall be resumed by any person who falls under any of the following subparagraphs: *<Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001; Act No. 7871, Mar. 3, 2006>*

1. In cases referred to in subparagraph 1 of Article 20, the deceased person's successor, administrator of inheritance, or any other person authorized to pursue the procedure under other Acts: Provided, That the deceased person's successor may not resume the procedure until his/her right to succession is subject to renunciation;
2. In cases referred to in subparagraph 2 of Article 20, the juristic person established by a merger or survived a merger;
3. In cases referred to in subparagraphs 3 and 4 of Article 20, the party whose ability to take necessary procedure has been restored or any person who becomes the legal representative of the party;
4. In cases referred to in subparagraph 5 of Article 20, a new trustee;
5. In cases referred to in subparagraph 6 of Article 20, a new representative or each party;
6. In cases referred to in subparagraph 7 of Article 20, a new trustee in bankruptcy, etc. who meets the same qualification.

Article 22 (Request for Resumption)