

The Government of the Republic of Korea



Patent Act

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TABLE OF CONTENTS

[CHAPTER I GENERAL PROVISIONS](#)

[CHAPTER II REQUIREMENTS FOR PATENTS AND PATENT APPLICATION](#)

[CHAPTER III EXAMINATION](#)

[CHAPTER IV PATENT FEES AND PATENT REGISTRATIONS, ETC.](#)

[CHAPTER V PATENT RIGHT](#)

[CHAPTER VI PROTECTION OF PATENTEE](#)

[CHAPTER VII TRIAL](#)

[CHAPTER VIII RETRIAL](#)

[CHAPTER IX LITIGATION](#)

[CHAPTER X INTERNATIONAL APPLICATIONS UNDER PATENT COOPERATION TREATY](#)

[SECTION 1 International Application Procedure](#)

[SECTION 2 Special Provisions on International Patent Applications](#)

[CHAPTER XI SUPPLEMENTARY PROVISIONS](#)

[CHAPTER XII PENAL PROVISIONS](#)

[ADDENDA](#)

[ADDENDA \(Act No. 4541, Mar. 6, 1993\)](#)

[ADDENDA \(Act No. 4594, Dec. 10, 1993\)](#)

[ADDENDA \(Act No. 4757, Mar. 24, 1994\)](#)

[ADDENDA \(Act No. 4892 Jan. 5, 1995\)](#)

[ADDENDA \(Act No. 5080, Dec. 29, 1995\)](#)

[ADDENDA \(Act No. 5329, Apr. 10, 1997\)](#)

[ADDENDA \(Act No. 5576, Sep. 23, 1998\)](#)

[ADDENDA \(Act No. 6024, Sep. 7, 1999\)](#)

[ADDENDA \(Act No. 6411, Feb. 3, 2001\)](#)

[ADDENDA \(Act No. 6582, Dec. 31, 2001\).](#)

[ADDENDA \(Act No. 6626, Jan. 26, 2002\).](#)

[ADDENDA \(Act No. 6768, Dec. 11, 2002\).](#)

[ADDENDA \(Act No. 7289, Dec. 31, 2004\).](#)

[ADDENDA \(Act No. 7427, Mar. 31, 2005\).](#)

[ADDENDUM \(Act No. 7554, May 31, 2005\).](#)

CHAPTER I GENERAL PROVISIONS

[Table of Contents](#)

Article 1 (Purpose)

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

Article 2 (Definitions)

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

1. The term "invention" means the highly advanced creation of technical ideas utilizing rules of nature;
2. The term "patented invention" means an invention for which a patent has been granted; and
3. The term "working" means any act falling under any of the following items:

(a) In the case 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) the product;

(b) In the case of an invention of a process, acts of using the process; and

(c) In the case 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, quasi-incompetents and incompetents shall not initiate the procedure for filing an application, requesting an examination, or any other patent-related procedure (hereinafter referred to as "patent-related procedure") unless represented by their legal representatives: Provided, That this provision shall not apply where a minor or a quasi-incompetent may perform a legal act independently.

(2) The legal representative as referred to in paragraph (1) may, without the consent of the family council, act in any patent-related opposition, trial, or retrial procedures initiated by another party. <Amended by Act No. 4892, Jan. 5, 1995; Act No. 5329, Apr. 10, 1997>

(3) Patent-related procedures, initiated by a person who lacks the requisite power of legal representation or competence or authority necessary to initiate any such procedures, shall have retroactive effect if said procedures are ratified by a person having such power of representation or competence.

Article 4 (Associations, etc., Other than Legal Entity)

A representative or an administrator, who has been so designated by an association or a foundation which is not a legal entity, may make a request for examination of a patent application, file an opposition to the grant of a patent, 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>

Article 5 (Patent Administrator for Nonresidents)

(1) A person who has neither an address nor a place of business in the Republic of Korea (hereinafter referred to as a "nonresident") may not, except in cases where a

nonresident (or a representative thereof if a legal entity) is sojourning in the Republic of Korea, 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 is represented by an agent with respect to his patent, who has an address or a place of business in the Republic of Korea (hereinafter referred to as a "patent administrator"). <Amended by Act No. 6411, Feb. 3, 2001>

(2) The patent administrator shall, within the scope of powers conferred on him, represent the principal in all procedures relating to a patent and in any appeal against a decision taken by an administrative agency in accordance with 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 Powers of Attorney)

An agent who is instructed to initiate a patent-related procedure before the Korean Intellectual Property Office by a person who has an address or a place of business in the Republic of Korea shall not, unless expressly so empowered, abandon or withdraw an application for a patent, withdraw an application for registration of an extension of the term of a patent right, abandon a patent right, withdraw a petition, withdraw a request for a motion, make or withdraw a priority claim under Article 55 (1), request for a trial under Article 132-3, or appoint a sub-representative. <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>

Article 7 (Proof of Powers of Attorney)

An agent (including a patent administrator; hereinafter the same shall apply) of a person who is initiating a patent-related procedure before the Korean Intellectual Property Office shall present written proof of his power of attorney. <Amended by Act No. 6411, Feb. 3, 2001>

Article 8 (Non-extinguishment of Powers of Attorney)

A power of attorney of an agent of a person initiating a patent-related procedure shall not be extinguished upon the death or loss of legal capacity of the principal, the extinguishment of a legal entity of the principal due to a merger, the termination of the duty of trust of the principal, the death or loss of legal capacity of the legal representative, or the modification or extinguishment of his power of attorney.

Article 9 (Independence of Representation)

Where two or more agents of a person initiating a patent-related procedure have been designated, each of them shall independently represent the principal before the Korean Intellectual Property Office or the Intellectual Property Tribunal. <Amended by Act No. 4892, Jan. 5, 1995>

Article 10 (Replacement of Agents, etc.)

(1) If the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner considers that a person initiating a patent-related procedure is not qualified to conduct such a procedure or make oral statements, etc. he may order, ex officio, the

appointment of an agent to conduct the procedure.

<Amended by Act No. 6411, Feb. 3, 2001>

(2) If the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner considers that the agent of a person initiating a patent-related procedure is not qualified to conduct such a procedure or make oral statements, etc. he may order, ex officio, 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 trial examiner may, in the case referred to in paragraph (1) or (2) of this Article, order the: appointment of a patent attorney to conduct the procedure.

(4) The Commissioner of the Korean Intellectual Property Office or the presiding trial examiner may invalidate any action taken before the Korean Intellectual Property Office or the Industrial Property Tribunal by the person initiating the patent-related procedure referred to in paragraph (1) of this Article or by the agent referred to in paragraph (2), of this Article prior to the appointment or the replacement of the agent, referred to under paragraph (1) or (2), respectively, after the issuance of an order referred to 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 provision shall not apply where those persons have appointed a common representative and have notified the Korean Intellectual Property Office or the Industrial Property Tribunal thereof: <Amended by Act No. 4892, Jan. 5,

1995; Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001>

1. Abandonment or withdrawal of a patent application or withdrawal of an application for registration of 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; and
4. Request for a trial under Article 132-3.

(2) Where the common representative has been appointed and notified under the provision of paragraph (1), a written proof of the fact that the representative has been appointed shall be presented.

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

Except where there are the special provisions relating to agents 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.

Article 13 (Venue of Nonresidents)

If a nonresident has appointed a patent administrator with respect to his patent right or other right relating to a patent, the domicile or place of business of the patent administrator shall be considered to be that of the nonresident. Where there is no such patent administrator, the location of the Korean Intellectual Property Office shall

be regarded as the seat of the property under Article 11 of the Civil Procedure Act. <Amended by Act No. 6626, Jan. 26, 2002>

Article 14 (Calculation of Time Limits)

The time limits provided for in the Act or any orders thereunder shall be calculated as follows: <Amended by Act No. 5080, Dec. 29, 1995; Act No. 6411, Feb. 3, 2001>

1. The first day of the period shall not be counted unless the period starts at midnight;
2. If the period is expressed in months or years, it shall be counted according to the calendar;
3. If 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 there is no corresponding day in the last month, the period shall expire on the last day of that month; and
4. If the last day of the period for executing a patent-related procedure falls on an official holiday (including Labor Day, designated by the Designation of Workers' Day Act), the said period shall expire on the working day following such holiday.

Article 15 (Extension of Time Limits, etc.)

(1) The Commissioner of the Korean Intellectual Property Office or the President of the Industrial Property Tribunal may extend, for the benefit of a person residing in an area that is remote or difficult to access, the period for submitting an amendment of grounds for opposition

according to Article 70 (1) or the period for demanding a trial under Article 132-3 upon a request or ex officio.

<Amended by Act No. 4892, Jan. 5, 1995; Act No. 5329, Apr. 10, 1997; Act No. 6411, Feb. 3, 2001>

(2) When the Commissioner of the Korean Intellectual Property Office, the President of the Industrial Property Tribunal, a presiding trial examiner or an examiner has designated a time limit for a patent-related procedure to be initiated under this Act, he may extend it upon a request or ex officio. <Amended by Act No. 5329, Apr. 10, 1997>

(3) When a presiding trial examiner or an examiner has designated a date for initiating a patent-related procedure under this Act, he may change the date upon a 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 time limit, the Commissioner of the Korean Intellectual Property Office or the President of the Industrial Property Tribunal may invalidate the procedure relating to the patent: Provided, That, where a person who has been ordered to make an amendment for not paying the fees for a request for examination under Article 82 (2) fails to pay said fees within the designated time limit, 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) When a patent-related procedure has been invalidated under paragraph (1), if the delay of the time is deemed to have been caused by reasons not imputable to a person who received an invitation to amend, the Commissioner of the Korean Intellectual

Property Office or the President of the Intellectual property Tribunal may revoke a disposition of invalidation at the request of a person who received an invitation to amend within fourteen days from the date on which the reasons for the delay ceases to exist: Provided, That this provision shall not apply where one year has elapsed after the designated period expires.

[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 observe the time limit for requesting a trial under Article 132-1 or the time limit for demanding a retrial under Article 180 (1) due to a cause not imputable to himself, he may subsequently complete the procedure that he failed to conduct within fourteen days after said reason ceases to exist: Provided, That this provision shall not apply in a case where one year has elapsed after 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 right relating to a patent shall extend to the successor in title.

Article 19 (Continuation of Procedure by Successor)

Where a patent right or other right relating to a patent is transferred while a procedure relating to the patent is

pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal, the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner may require the successor in title to continue the procedure relating to the patent. <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 authorized to conduct the procedure: <Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>

1. When the party involved has died;
2. When the legal entity involved has ceased to exist by reason of merger;
3. When the party involved has lost the ability to conduct the procedure;
4. When the legal agent of the party involved has died or lost his power;
5. When the commission of a trustee given by the trust of the party involved has terminated; or
6. Where the representative as provided in the provisions of Article 11 (1) has died or lost his qualification.

Article 21 (Resumption of Interrupted Procedure)

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

1. In the case of subparagraph 1 of Article 20, the deceased person's successor, administrator of inheritance, or other person authorized to pursue the procedure under other Acts: Provided, That the deceased person's successor may not resume the procedure until such time as his right to succession is no longer subject to renunciation;
2. In the case of subparagraph 2 of Article 20, the legal entity established by or existing after the merger;
3. In the cases of subparagraphs 3 and 4 of Article 20, the party whose ability to take the necessary procedure has been restored or any person who becomes the legal agent of the party, respectively;
4. In the case of subparagraph 4 of Article 20, a new trustee; and
5. In the case of subparagraph 5 of Article 20, a new representative or each joint initiator involved.

Article 22 (Request for Continuation)

- (1) The request for continuation of a procedure interrupted under Article 20 may be made by an opposing party.
- (2) When a request for continuation of a procedure interrupted under Article 20 is made, the Commissioner

of the Korean Intellectual Property Office or the presiding trial examiner shall notify the opposite party.

(3) The Commissioner of the Korean Intellectual Property Office or the trial examiner shall, if it has been deemed that there are no grounds for granting the request for continuation of the procedure interrupted under Article 20, dismiss the request by decision after examining the request, ex officio. <Amended by Act No. 4892, Jan. 5, 1995>

(4) The Commissioner of the Korean Intellectual Property Office or the trial examiner shall decide, upon request for continuation, whether to permit resumption of the interrupted procedure after a certified copy of the decision or trial decision was sent. <Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>

(5) If a person referred to in Article 21 does not take over the interrupted procedure, the Commissioner of the Korean Intellectual Property Office or the trial examiner shall, ex officio, designate a period within which he shall resume such procedure. <Amended by Act No. 4892, Jan. 5, 1995>

(6) If no request for continuation has been made within the designated period provided in paragraph (5), it is considered that the continuation has been made on the day following the expiration of such designated period.

(7) If the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner deems that the continuation made in accordance with paragraph (6), he shall so notify the parties involved.

Article 23 (Suspension of Procedure)

(1) If the Commissioner of the Korean Intellectual Property Office or the trial examiner is unable to carry out his duties due to a natural disaster or other unavoidable circumstances, the procedure pending in the Korean Intellectual Property Office or the Intellectual

Property Tribunal shall be suspended until such impediments cease to exist. <Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>

(2) If a party involved is unable to pursue a procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal on account of impediments of indefinite duration, the Commissioner of the Korean Intellectual Property Office or the trial examiner may order its suspension by decision. <Amended by Act No. 4892, Jan. 5, 1995; Act No. 6411, Feb. 3, 2001>

(3) The Commissioner of the Korean Intellectual Property Office or the trial examiner may cancel the decision issued under paragraph (2). <Amended by Act No. 4892, Jan. 5, 1995>

(4) If a procedure is suspended under paragraph (1) or (2), or a decision is canceled under paragraph (3), the Commissioner of the Korean Intellectual Property Office or the presiding trial examiner shall so notify the parties involved. <Amended by Act No. 6411, Feb. 3, 2001>

Article 24 (Effects of Interruption or Suspension)

The interruption or suspension of a patent-related procedure pending in the Korean Intellectual Property Office or the Intellectual Property Tribunal shall suspend the running of a term and the entire term shall start to run again from the time of the notification of the continuation or resumption of the procedure. <Amended by Act No. 4594, Dec. 10, 1993>

Article 25 (Capacity of Foreigners)

Foreigners who have neither an address nor a place of business in the Republic of Korea shall not enjoy patent

rights or other rights relating to a patent, except as provided for in any one of the following subparagraphs:

1. Where their countries allow nationals of the Republic of Korea to enjoy patent rights or other rights relating to a patent under the same conditions as their own nationals;
2. Where their countries allow nationals of the Republic of Korea to enjoy patent rights or other rights relating to a patent under the same conditions as their own nationals in the case that the Republic of Korea allows their countries' nationals to enjoy patent rights or other rights relating to a patent; or
3. Where they may enjoy patent rights or other rights relating to a patent according to a treaty or equivalents of a treaty (hereinafter referred to as "treaty").

Article 26 (Effects of Treaty)

Where a treaty contains special provisions relating to patents that are different from those of this Act, such special provisions shall prevail.

Article 27 Deleted.

<by Act No. 6411, Feb. 3, 2001>

Article 28 (Effective Date of Submitted Documents)

(1) Applications, demands or other documents (including articles; hereafter the same shall apply in this Article) submitted to the Korean Intellectual Property Office or the Intellectual Property Tribunal under the

provisions of this Act, or any order thereunder, shall be effective as of the date on which they are delivered to the Korean Intellectual Property Office or the Intellectual Property Tribunal. <Amended by Act No. 4892, Jan. 5, 1995>

(2) Where applications, demands or other documents are submitted by mail to the Korean Intellectual Property Office or the Intellectual Property Tribunal, they are deemed to be delivered to the Korean Intellectual Property Office or the Intellectual Property Tribunal on the date as stamped by the mail service if the stamped date is clear; however, if such stamped date is unclear they are deemed to be delivered on the date when the mail was submitted to a post office, provided that such date is proved by a receipt therefor. However, this provision shall not apply in cases where written applications for registration of a patent right and other rights related thereto and documents concerning an international application under Article 2 (vii) of the Patent Cooperation Treaty (hereinafter referred to as an "international application") are submitted by mail.

<Amended by Act No. 4892, Jan. 5, 1995; Act No. 5576, Sep. 23, 1998>

(3) Deleted. <by Act No. 5576, Sep. 23, 1998>

(4) Details concerning the submission of documents with regard to the delay of mail, loss of mail, or interruption of mail service, other than the provisions of paragraphs (1) and (2), shall be prescribed by the Ordinance of the Ministry of Commerce, Industry, and Energy. <Amended by Act No. 4541, Mar. 6, 1993; Act No. 5080, Dec. 29, 1995; Act No. 5576, Sep. 23, 1998; Act No. 6411, Feb. 3, 2001>

Article 28-2 (Entry of Identification Number)

(1) A person provided for by the Ordinance of the Ministry of Commerce, Industry and Energy from among