

ENFORCEMENT DECREE OF THE PATENT ACT

Wholly Amended by Presidential Decree No. 13078, Aug. 28, 1990
Amended by Presidential Decree No. 13744, Oct. 27, 1992
Presidential Decree No. 13870, Mar. 6, 1993
Presidential Decree No. 14059, Dec. 31, 1993
Presidential Decree No. 15009, Jun. 3, 1996
Presidential Decree No. 15408, Jun. 26, 1997
Presidential Decree No. 16417, Jun. 30, 1999
Presidential Decree No. 16725, Feb. 28, 2000
Presidential Decree No. 16852, Jun. 23, 2000
Presidential Decree No. 17246, Jun. 27, 2001
Presidential Decree No. 17995, Jun. 13, 2003
Presidential Decree No. 18312, Mar. 17, 2004
Presidential Decree No. 18694, Jan. 31, 2005
Presidential Decree No. 19513, Jun. 12, 2006
Presidential Decree No. 19697, Sep. 28, 2006
Presidential Decree No. 20127, Jun. 28, 2007
Presidential Decree No. 20137, Jun. 29, 2007
Presidential Decree No. 20729, Jun. 29, 2008
Presidential Decree No. 21053, Sep. 30, 2008
Presidential Decree No. 21567, Jun. 26, 2009
Presidential Decree No. 21917, Dec. 30, 2009

CHAPTER I GENERAL PROVISIONS AND PATENT APPLICATION

Article 1 (Purpose)

The purpose of this Decree is to provide for matters delegated by the Patent Act and those necessary for its enforcement. *<Amended by Presidential Decree No. 18694, Jan. 31, 2005>*

[This Article Wholly Amended by Presidential Decree No. 17246, Jun. 27, 2001]

Article 1-2 (Scope of Telecom Circuits)

The term “telecom circuits that are prescribed by Presidential Decree” in Article 29 (1) 2 of the Patent Act (hereinafter referred to as the “Act”) and subparagraph 2 of Article 129 of the Act means the telecom circuits operated by persons falling under any of the following subparagraphs:

ENFORCEMENT DECREE OF THE PATENT ACT

1. The Government, local governments, the governments or local governments of foreign countries, or international organizations;
2. National and public schools provided for in Article 3 of the Higher Education Act or national and public universities of foreign countries;
3. Domestic and foreign national and public research institutions; and
4. Corporations incorporated to run the patent information business which are designated and publicly notified by the Commissioner of the Korean Intellectual Property Office.

[This Article Wholly Amended by Presidential Decree No. 19697, Sep. 28, 2006]

Article 2 (Deposit of Micro-Organisms)

(1) Any person who desires to make a patent application for an invention related to a micro-organism, shall deposit such micro-organism with a depository determined by the Commissioner of the Korean Intellectual Property Office or an organization which has acquired a status as an international depository under Article 7 of the Budapest Treaty on the International Recognition of the Deposit of Micro-Organisms for the Purposes of Patent Procedure (hereinafter referred to as “international depository”), and append documents certifying the fact (in cases of deposit with the international depository, a copy of the latest deposit certificate of those issued under Article 7 of the Budapest Treaty on the International Recognition of the Deposit of Micro-Organisms for the Purposes of Patent Procedure) to the patent application: *Provided*, That if a person who has ordinary knowledge in the field of technology to which the invention belongs, can easily obtain such micro-organism, it need not to be required to deposit such micro-organism. *<Amended by Presidential Decree No. 18694, Jan. 31, 2005>*

(2) If a new deposit number is issued to the micro-organism deposited under paragraph (1) after a patent application is filed, a patent applicant or a patentee shall report it, without delay, to the Commissioner of the Korean Intellectual Property Office. *<Amended by Presidential Decree No. 14059, Dec. 31, 1993>*

Article 3 (Matters to be Entered in Patent Specifications of Invention related to Micro-Organism)

Any person who intends to file a patent application for an invention related to a micro-organism shall enter in the specifications prescribed in Article 42 (2) of the Act, the deposit number issued by the depository or the international depository when he/she has deposited the micro-

organism pursuant to the main sentence of Article 2 (1), and the method of acquisition of the micro-organism when he/she did not deposit it pursuant to the proviso to Article 2 (1).

[This Article Wholly Amended by Presidential Decree No. 21567, Jun. 26, 2009]

Article 4 (Apportionment of Samples of Micro-Organism)

(1) A person who intends to practice an invention related to a micro-organism deposited under Article 2 for the purpose of a test or research, may have samples of such micro-organism apportioned by the depository or international depository, in any of the following cases: *<Amended by Presidential Decree No. 15408, Jun. 26, 1997; Presidential Decree No. 17995, Jun. 13, 2003; Presidential Decree No. 20127, Jun. 28, 2007; Presidential Decree No. 21567, Jun. 26, 2009>*

1. Where a patent application for the invention related to the micro-organism is published or the registration of establishment is filed; and
2. Where it is required to prepare a written opinion prescribed in Article 63 (1) of the Act (including the cases where Article 170 (2) of the Act is applicable *mutatis mutandis*).

(2) No person who has samples of a micro-organism apportioned under paragraph (1), shall allow another person to use the micro-organism.

Article 5 (Descriptive Method of Scope of Patent Claim)

(1) When the claim (hereinafter referred to as “claim”) within the scope of the patent claim provided for in Article 42 (8) of the Act is to be entered, the independent claim (hereinafter referred to as “independence”) shall be entered and the dependent claim (hereinafter referred to as “dependence”) that substantiates the independence by limiting or adding to it may be entered. In such cases, if it is deemed necessary, other dependence that shapes up the dependence by limiting or adding to it may be entered. *<Amended by Presidential Decree No. 19697, Sep. 28, 2006; Presidential Decree No. 20127, Jun. 28, 2007>*

(2) The claim shall be entered in a proper number according to the nature of the invention. *<Amended by Presidential Decree No. 17995, Jun. 13, 2003>*

(3) Deleted. *<by Presidential Decree No. 16417, Jun. 30, 1999>*

(4) When the dependence is entered, one or more paragraphs from among independence or other dependence shall be quoted and the number of paragraphs quoted shall be entered. *<Amended by Presidential Decree No. 16417, Jun. 30, 1999>*

(5) The claim that quotes not less than two claims shall mention alternatively the numbers of the quoted claims. *<Amended by Presidential Decree No. 17995, Jun. 13, 2003>*

ENFORCEMENT DECREE OF THE PATENT ACT

(6) In the claim that quotes not less than two claims, the quoted claim shall be prohibited from quoting two or more other claims again. The same shall apply to the formula by which in the claim that quotes not less than two claims, the quoted claim quotes one claim that results in quoting not less than two claims after quoting one claim again. *⟨Amended by Presidential Decree No. 19697, Sep. 28, 2006⟩*

(7) The claim that is quoted shall be entered ahead of the claim that quotes other claim. *⟨Amended by Presidential Decree No. 17995, Jun. 13, 2003⟩*

(8) Each claim shall be entered after changing the line of each paragraph and the serial number in the Arabic figure shall be given in the order of the entries.

Article 6 (Requirements for Single Patent Application for Group of Inventions)

A single patent application for a group of inventions as prescribed in the proviso to Article 45 (1) of the Act shall meet the following requirements:

1. The inventions described in the application shall have mutual relationship in adopted technology; and
2. The inventions described in the application shall have the same or corresponding technological features. In such cases, the technological features shall be improved in respect of the inventions at large when compared with prior arts.

[This Article Wholly Amended by Presidential Decree No. 17995, Jun. 13, 2003]

Article 7 (Invention subject to Application for Registration of Patent Right Duration Extension)

For the purpose of Article 89 of the Act, the term “invention prescribed by Presidential Decree” means any of the following inventions: *⟨Amended by Presidential Decree No. 15009, Jun. 3, 1996; Presidential Decree No. 16852, Jun. 23, 2000; Presidential Decree No. 18694, Jan. 31, 2005; Presidential Decree No. 20127, Jun. 28, 2007; Presidential Decree No. 21053, Sep. 30, 2008⟩*

1. Invention of medicines which is subject to the item license under Article 31 (2) or (3) or 42 (1) of the Pharmaceutical Affairs Act for purposes of embodying the patented invention; and
2. Invention of agricultural chemicals or raw materials thereof which are to be registered under Articles 8 (1), 16 (1) and 17 (1) of the Agrochemicals Control Act for purposes of embodying the patented invention.

CHAPTER II EXAMINATION AND TRIAL EXAMINATION

Article 8 (Qualification for Examiners, etc.)

(1) A person eligible to become a trial examiner shall be any public official falling under any of the following subparagraphs of the Korean Intellectual Property Office or agencies under its control, who has completed the prescribed education and training course for trial examiners conducted by the International Intellectual Property Training Institute: *⟨Amended by Presidential Decree No. 21917, Dec. 30, 2009⟩*

1. A public official of Grade V or higher in general service;
2. A public official in general service who belongs to the Senior Civil Service; and
3. A specialized contract-based public official who satisfies the qualification criteria of Grade A or B pursuant to attached Table 1 of the Contract-based Public Officials Regulations.

(2) A person eligible to become a trial examiner shall be any state public official of Grade IV or higher in general service or a public official in general service who belongs to the Senior Civil Service assigned to the administrative post of the Korean Intellectual Property Office or its agencies, who has completed the prescribed education and training course for trial examiners conducted by the International Intellectual Property Training Institute and who falls under any of the following subparagraphs: *⟨Amended by Presidential Decree No. 16417, Jun. 30, 1999; Presidential Decree No. 18694, Jan. 31, 2005; Presidential Decree No. 19513, Jun. 12, 2006; Presidential Decree No. 19697, Sep. 28, 2006⟩*

1. A person who has served as an examiner at the Korean Intellectual Property Office for two or more years;
2. Deleted; and *⟨by Presidential Decree No. 19697, Sep. 28, 2006⟩*
3. A person whose total term of office is not less than two years having served as an examiner at the Korean Intellectual Property Office, having been engaged in affairs of trial as a state public official of Grade V or higher in the general service or a public official in the general service who belongs to the Senior Civil Service at the Patent Tribunal and having served as a technical examiner in the Patent Court.

(3) A person eligible to become a presiding trial examiner shall be a state public official of Grade III in the general service or a public official in the general service who belongs to the Senior Civil Service of the Korean

ENFORCEMENT DECREE OF THE PATENT ACT

Intellectual Property Office or any agency affiliated therewith, who falls under any of the following subparagraphs: *Provided*, That a presiding trial examiner the position of which is open to the private sector pursuant to the provisions of Article 28-4 (1) of the State Public Officials Act or the position of which is publically offered pursuant to the provisions of Article 28-5 (1) of the same Act shall be appointed from among persons who meet the requirements for performing duties under the provisions of paragraph (2) of the same Article or fall under any of the following subparagraphs: *⟨Amended by Presidential Decree No. 16725, Feb. 28, 2000; Presidential Decree No. 18694, Jan. 31, 2005; Presidential Decree No. 19513, Jun. 12, 2006; Presidential Decree No. 19697, Sep. 28, 2006⟩*

1. A person who has served as a trial examiner at the Patent Tribunal for two or more years; and
 2. A person who is qualified as a trial examiner provided for in paragraph (2) and has worked for the Korean Intellectual Property Office or its affiliated agency for not less than three years while rendering clerical services for examination or a trial.
- (4) Any person eligible to become a Director of the Patent Tribunal shall be a person qualified as a trial examiner.
- (5) Notwithstanding the provisions of paragraphs (1) through (4), any person who is a public official falling under the grade of position (including any public official in the general service who belongs to the Senior Civil Service and any specialized contract-based public official under paragraph (1) 3) as an examiner, trial examiner, presiding trial examiner or Director of the Patent Tribunal as referred to in paragraphs (1) through (4), and is qualified for a patent attorney, may be appointed as an examiner, trial examiner, presiding trial examiner or Director of the Patent Tribunal: *Provided*, That a specialized contract-based public official referred to in paragraph (1) 3 shall only be eligible to become an examiner. *⟨Amended by Presidential Decree No. 21917, Dec. 30, 2009⟩*
- (6) Matters necessary for training of an examiner and a trial examiner under paragraphs (1) and (2) shall be determined by the Commissioner of the Korean Intellectual Property Office.

[This Article Wholly Amended by Presidential Decree No. 15408, Jun. 26, 1997]

Article 8-2 (Standards for Designating Specialized Institutions)

- (1) The Commissioner of the Korean Intellectual Property Office may designate corporations that fully meet the requirements falling under

each of the following subparagraphs as a specialized institution provided for in Article 58 (1) of the Act (hereinafter referred to as “specialized institution”) pursuant to Article 58 (3) of the Act: *⟨Amended by Presidential Decree No. 19697, Sep. 28, 2006⟩*

1. They are required to secure documents and equipment necessary to perform the work of searching prior art or conducting a patent classification under the International Patent Classification;
 2. They are required to secure the manpower and the organization exclusively responsible for performing the work of searching prior art or conducting a patent classification under the International Patent Classification;
 3. They are required not to have persons on their payrolls who concurrently work for other institutions as its officer or employee, which perform the work provided for in Article 2 of the Patent Attorney Act or are required not to have patent attorneys on their payrolls who are registered pursuant to Article 5 of the same Act from among their officers and employees; and
 4. They are required to have officers and employees in charge of the work of searching prior art or conducting a patent classification under the International Patent Classification and to have the security system for their facilities and equipment.
- (2) In cases where any specialized institution designated pursuant to paragraph (1) performs any other work than the work of searching prior art or conducting a patent classification under the International Patent Classification, the work of searching prior art or conducting a patent classification under the International Patent Classification shall not be performed in an unfair manner on the grounds of such other work. *⟨Amended by Presidential Decree No. 19697, Sep. 28, 2006⟩*
- (3) Any person who desires to be designated as a specialized institution shall file an application for designating him/her as a specialized institution with the Commissioner of the Korean Intellectual Property Office together with documents proving the fact that all requirements under each subparagraph of paragraph (1) are satisfied. *⟨Amended by Presidential Decree No. 18694, Jan. 31, 2005; Presidential Decree No. 19697, Sep. 28, 2006⟩*
- (4) Matters necessary for the detailed criteria concerning the securing of documents, equipment, exclusively charged manpower and organiza-

ENFORCEMENT DECREE OF THE PATENT ACT

tion, the operation of a specialized institution, and the detailed criteria of security systems under each subparagraph of paragraph (1) shall be provided and publicly notified by the Commissioner of the Korean Intellectual Property Office. *<Newly Inserted by Presidential Decree No. 18694, Jan. 31, 2005; Presidential Decree No. 19697, Sep. 28, 2006>*

[This Article Newly Inserted by Presidential Decree No. 13744, Oct. 27, 1992]

Article 8-3 (Entrustment, etc. of Searching Prior Art)

(1) With respect to the patent applications or international applications that are deemed to require searching prior art or conducting a patent classification under the International Patent Classification pursuant to Article 58 (1) of the Act, the Commissioner of the Korean Intellectual Property Office may commission any specialized institution to search prior art or conduct a patent classification under the International Patent Classification. *<Amended by Presidential Decree No. 19697, Sep. 28, 2006; Presidential Decree No. 21567, Jun. 26, 2009>*

(2) In cases where any specialized institution is commissioned by the Commissioner of the Korean Intellectual Property Office to search prior art or conduct a patent classification under the International Patent Classification pursuant to paragraph (1), the head of such institution shall notify without delay the Korean Intellectual Property Office of the result of the search and the classification. *<Amended by Presidential Decree No. 19697, Sep. 28, 2006>*

(3) In cases where the Commissioner of the Korean Intellectual Property Office recognizes that the result of the search and the classification referred to in paragraph (2) is insufficient to figure out existence of prior art and the patent classification under the International Patent Classification in connection with the relevant patent application or international application, he/she may recommission the head of the relevant specialized institution to search prior art and conduct a patent classification under the International Patent Classification after defining the scope of the search, etc. *<Amended by Presidential Decree No. 19697, Sep. 28, 2006; Presidential Decree No. 21567, Jun. 26, 2009>*

(4) Paragraph (2) shall be applicable *mutatis mutandis* to recommission referred to in paragraph (3). *<Amended by Presidential Decree No. 21567, Jun. 26, 2009>*

[This Article Newly Inserted by Presidential Decree No. 13744, Oct. 27, 1992]

Article 9 (Object of Prior Examination)

The term “patent application prescribed by Presidential Decree” in subparagraph 2 of Article 61 of the Act means a patent application falling under any of the following subparagraphs, which is designated by the Commissioner of the Korean Intellectual Property Office: *(Amended by Presidential Decree No. 16852, Jun. 23, 2000; Presidential Decree No. 17246, Jun. 27, 2001; Presidential Decree No. 18694, Jan. 31, 2005; Presidential Decree No. 19697, Sep. 28, 2006; Presidential Decree No. 20127, Jun. 28, 2007; Presidential Decree No. 20137, Jun. 29, 2007; Presidential Decree No. 21053, Sep. 30, 2008; Presidential Decree No. 21567, Jun. 26, 2009)*

1. A patent application in the area of the defense industry;
2. A patent application directly related to green technology (referring to such technology that minimizes emissions of greenhouse gases and pollutants by saving energy and resources and making use of them efficiently throughout the whole process of social and economic activities, such as technology related to reducing greenhouse gases, raising the efficiency of energy utilization, pollution-free production, clean energy, recycling resources, and eco-friendliness (including related convergence technology) or such);
3. A patent application which is directly related to the promotion of exports;
4. A patent application concerning the official duties of the State or local governments (including any patent application concerning the duties of the national and public schools provided for in the Higher Education Act, which is filed by the organization in charge of the technology transfer and industrialization established within the national and public schools pursuant to Article 11 (1) of the Technology Transfer and Commercialization Promotion Act);
5. A patent application filed by an enterprise confirmed as a venture business under Article 25 of the Act on Special Measures on the Promotion of Venture Business;
- 5-2. A patent application filed by an enterprise selected as a technology-innovative small and medium enterprise under Article 15 of the Technical Renovation of Small and Medium Enterprises Act;
6. A patent application concerning the results of the State’s project for supporting the development of new technology or quality certification;
7. A patent application which is based on a priority right claim under treaties (limited to cases where a foreign patent office, upon receiving such priority right claim based on the relevant patent application, is in the process of taking procedures for such patent);
8. A patent-applied invention for which the applicant is in process of commercializing or is preparing to do so;
9. A patent application which is directly related to the electronic trans-

ENFORCEMENT DECREE OF THE PATENT ACT

action;

10. A patent application on which the Commissioner of the Korean Intellectual Property Office has agreed with the commissioner of any foreign intellectual property office to preferentially examine it; and
11. A patent application for which a person who intends to file an application for prior examination retained a specialized institution under Article 58 (1) of the Act to search prior arts with respect to the invention for which the patent application is pending, and requested the specialized institution to notify the results of the search to the Commissioner of the Korean Intellectual Property Office.

[This Article Wholly Amended by Presidential Decree No. 16417, Jun. 30, 1999]

Article 10 (Decision on Prior Examination)

(1) Any person who applies for a prior examination, shall file an application for prior examination prescribed by Ordinance of the Ministry of Knowledge Economy, with the Commissioner of the Korean Intellectual Property Office. *<Amended by Presidential Decree No. 13870, Mar. 6, 1993; Presidential Decree No. 15009, Jun. 3, 1996; Presidential Decree No. 16417, Jun. 30, 1999; Presidential Decree No. 20729, Feb. 29, 2008>*

(2) The Commissioner of the Korean Intellectual Property Office shall, upon receiving an application for prior examination under paragraph (1), decide on whether the prior examination is conducted.

(3) Matters necessary for the decision on prior examination as referred to in paragraph (2) shall be determined by the Commissioner of the Korean Intellectual Property Office.

CHAPTER III CONFIDENTIAL TREATMENT, ETC. OF PATENT APPLICATION RELATED TO NATIONAL DEFENSE

Article 11 (Criteria for Classification of Patent Application Related to National Defense)

The Commissioner of the Korean Intellectual Property Office shall determine the criteria for classification necessary for selection of inventions to be treated as confidential ones under Article 41 (1) of the Act (hereinafter referred to as the "criteria for classification") after consulting with the Commissioner of the Defense Acquisition Program Administration. *<Amended by Presidential Decree No. 19697, Sep. 28, 2006>*

Article 12 (Procedure for Confidential Treatment)

(1) If a patent application filed by a person having a domicile or business place in Korea is conformed to the criteria for classification as prescribed in Article 11, the Commissioner of the Korean Intellectual Property Office shall refer the Commissioner of the Defense Acquisition Program Administration to whether or not it is required to classify and treat such application as confidential one. *⟨Amended by Presidential Decree No. 19697, Sep. 28, 2006⟩*

(2) In case where the Commissioner of the Korean Intellectual Property Office has made a reference to the Commissioner of the Defense Acquisition Program Administration under paragraph (1), he shall notify it to the inventor, the applicant and the attorney of the patent application, and a person who is deemed to be learned of the invention (hereinafter referred to as the “inventor, etc.”), and request them to maintain the confidence thereof. *⟨Amended by Presidential Decree No. 19697, Sep. 28, 2006⟩*

(3) The Commissioner of the Defense Acquisition Program Administration shall, upon receiving a reference under paragraph (1), make a reply within two months, and if it is deemed necessary to treat the patent application as confidential one, he shall request the Commissioner of the Korean Intellectual Property Office to classify and treat it as confidential one. *⟨Amended by Presidential Decree No. 19697, Sep. 28, 2006⟩*

(4) The Commissioner of the Korean Intellectual Property Office shall, upon receiving a request to classify and treat any patent application as confidential one under paragraph (3), take any necessary measures in conformity with the confidential service rules, and order the inventor, etc. of the patent application to classify and treat it as confidential one, and if he is not requested so, he shall notify the inventor, etc. of the patent application of a cancellation of the request for maintenance of confidence as referred to in paragraph (2). *⟨Amended by Presidential Decree No. 18694, Jan. 31, 2005⟩*

(5) The Commissioner of the Korean Intellectual Property Office shall, upon receiving a reply of the Commissioner of the Defense Acquisition Program Administration under paragraph (3), issue without delay an order to classify and treat the patent application as confidential one, or notify a cancellation of the request for maintenance of confidence under paragraph (4). *⟨Amended by Presidential Decree No. 19697, Sep. 28, 2006⟩*

Article 13 (Cancellation, etc. of Confidential Treatment)

ENFORCEMENT DECREE OF THE PATENT ACT

(1) With respect to a patent application which is ordered to be classified and treated as confidential one under Article 12 (4), the Commissioner of the Korean Intellectual Property Office shall take necessary measures after consulting twice or more times each year with the Commissioner of the Defense Acquisition Program Administration on the cancellation of confidence, extension of confidential maintenance period or whether or not the confidential classification is modified. *<Amended by Presidential Decree No. 19697, Sep. 28, 2006>*

(2) The inventor, etc. who is ordered to classify and treat the patent application as confidential one under Article 12 (4), may request the Commissioner of the Korean Intellectual Property Office to release it from confidential treatment, to modify the confidential classification or to publish or license the invention for which a patent is applied, in a specified limit.

Article 14 (Compensation)

(1) A patent applicant may request to the Commissioner of the Defense Acquisition Program Administration for a compensation for any loss sustained by the prohibition from any patent application to foreign countries or by being treated as a secret (hereinafter referred to as the “compensation”) under Article 41 (3) of the Act. *<Amended by Presidential Decree No. 17246, Jun. 27, 2001; Presidential Decree No. 19697, Sep. 28, 2006>*

(2) If a patent applicant requests a compensation under paragraph (1), he shall submit a written request for compensation and documentary evidence establishing the loss.

(3) The Commissioner of the Defense Acquisition Program Administration shall, upon receiving a request for compensation under paragraph (1) from a patent applicant, determine and pay the amount of compensation, and he may, if necessary, consult with the Commissioner of the Korean Intellectual Property Office. *<Amended by Presidential Decree No. 19697, Sep. 28, 2006>*

Article 15 (Prohibition on, or Permission for, Patent Application to Foreign Country)

(1) If an invention for which a patent is applied by a person having the domicile or business office in Korea, is demanded by the Commissioner of the Korean Intellectual Property Office to be maintained as confidential one under Article 12 (2), or is ordered to be classified and treated

as confidential one under paragraph (4) of the said Article, it may be applied for patent in any foreign country only in case where it is permitted by the Commissioner of the Korean Intellectual Property Office.

(2) A person who desires to be granted a permission for the filing of a patent application with a foreign country shall submit to the Commissioner of the Korean Intellectual Property Office a written application therefor as prescribed by the Ordinance of the Ministry of Knowledge Economy. *<Amended by Presidential Decree No. 13870, Mar. 6, 1993; Presidential Decree No. 15009, Jun. 3, 1996; Presidential Decree No. 16417, Jun. 30, 1999; Presidential Decree No. 20729, Feb. 29, 2008>*

Article 16 (Consultations With Commissioner of Defense Acquisition Program Administration)

If the Commissioner of the Korean Intellectual Property Office desires to grant permission falling under any of the following subparagraphs, he shall consult in advance with the Commissioner of the Defense Acquisition Program Administration: *<Amended by Presidential Decree No. 19697, Sep. 28, 2006>*

1. Permission on a publication or license of an invention classified and treated as confidential one under Article 13 (2) in a specified limit; and
2. Permission on a patent application to a foreign country under Article 15 (2).

CHAPTER IV SUPPLEMENTARY PROVISIONS

Article 17 Deleted. *<by Presidential Decree No. 20127, Jun. 28, 2008>*

Article 18 (Service, etc. of Documents)

(1) Except in case where the documents to be served under the Act are directly received by the party or his representative at the Korean Intellectual Property Office or the Patent Tribunal or received by utilizing the information communication network, such documents shall be sent by a registered mail. *<Amended by Presidential Decree No. 14059, Dec. 31, 1993; Presidential Decree No. 15408, Jun. 26, 1997; Presidential Decree No. 17246, Jun. 27, 2001; Presidential Decree No. 20127, Jun. 28, 2008>*

(2) The Commissioner of the Korean Intellectual Property Office or the head of the Patent Tribunal shall, where he has served the documents pursuant to paragraph (1), keep the receipt or its details under the conditions as defined under any of the following subparagraphs: *<Amended*

ENFORCEMENT DECREE OF THE PATENT ACT

by Presidential Decree No. 17246, Jun. 27, 2001

1. In case where a party or his representative receives the documents directly at the Korean Intellectual Property Office or the Patent Tribunal, the receipt specifying the date of receipt and the name of recipient;
 2. In case where a party or his representative receives the documents by utilizing the information communication network, the details recorded on the files of the electronic data processing system for transmitting which is operated by the Korean Intellectual Property Office or the Patent Tribunal; and
 3. In case where the documents are sent by a registered mail, the receipt of registered mail.
- (3) If an adjudication or decision on trial, review, ruling on the establishment of ordinary license and revocation of patent right is to be served, it shall be made by a special service method as prescribed by the Postal Service Act and the Enforcement Decree thereof. *<Amended by Presidential Decree No. 14059, Dec. 31, 1993; Presidential Decree No. 15408, Jun. 26, 1997; Presidential Decree No. 16417, Jun. 30, 1999; Presidential Decree No. 19697, Sep. 28, 2006>*
- (4) Except as otherwise provided by the Act or this Decree, a copy of the document concerned shall be delivered to the person to whom it is to be served, and if a protocol is prepared in lieu of presentation of the document to be served, a copy or abstract of such protocol shall be delivered.
- (5) Any service to a person falling under the text of Article 3 (1) of the Act shall be made to his legal representative.
- (6) If several persons exercise jointly the attorneyship, it shall be sufficient to serve it to one of them. *<Amended by Presidential Decree No. 14059, Dec. 31, 1993>*
- (7) Any service to a person who is put in a prison or detention house, shall be made to the head of such prison or detention house. *<Amended by Presidential Decree No. 14059, Dec. 31, 1993>*
- (8) The place to be served shall be the domicile or business office of the person to be served: *Provided*, That where a person intending to receive a service has made a report on the place where he want receive it (limited to the domestic place) in advance to the Commissioner of the Korean Intellectual Property Office or the Director of Patent Tribunal, it shall be the said place. *<Amended by Presidential Decree No. 14059, Dec. 31, 1993; Presidential Decree No. 18694, Jan. 31, 2005>*

(9) If the person who receives the service, changes his place, he shall report it without delay to the Commissioner of the Korean Intellectual Property Office. *<Newly Inserted by Presidential Decree No. 14059, Dec. 31, 1993>*

(10) If the person to be served refuses to receive the service without any justifiable reason and it is thereby impossible to make a service, the service shall be considered to have been made on the day of sending.

(11) Sending, etc. of documents other than those to be served under the Act shall be made under the conditions as prescribed by the Commissioner of the Korean Intellectual Property Office. *<Newly Inserted by Presidential Decree No. 14059, Dec. 31, 1993; Presidential Decree No. 20127, Jun. 28, 2008>*

Article 19 (Patent Gazette)

(1) The Patent Gazette as prescribed in Article 221 of the Act shall be classified into the patent gazette for the public notice of registration and the patent gazette for the disclosure of patent application. *<Amended by Presidential Decree No. 15408, Jun. 26, 1997>*

(2) The patent gazette for the public notice of registration shall contain the matters falling under each of the following subparagraphs: *<Amended by Presidential Decree No. 16417, Jun. 30, 1999; Presidential Decree No. 17246, Jun. 27, 2001; Presidential Decree No. 17995, Jun. 13, 2003; Presidential Decree No. 19697, Sep. 28, 2006; Presidential Decree No. 21567, Jun. 26, 2009>*

1. Name and address of a patentee (in case of a corporation, its title and the location of its place of business);
 2. Numbers of application and classification as well as the date of application;
 3. Name and address of the inventor;
 4. Patent number and the date of its registration of establishment;
 5. The date of the public notice of registration;
 6. Matters concerning priority right claim;
 7. Matters concerning a patent application resulting from conversion or a divisional application;
 8. Detailed description, design drawings and a summary attached to a patent application;
 9. The publication number of patent application and the date of its publication;
 10. Matters concerning *ex officio* correction under Article 66-2 of the Act;
 11. The details of revisions made pursuant to Article 133-2, 136 or 137 of the Act; and
 12. Other matters prescribed as necessary by the Commissioner of the Korean Intellectual Property Office.
- (3) The patent gazette for the disclosure of patent application shall con-

ENFORCEMENT DECREE OF THE PATENT ACT

tain the matters falling under each of the following subparagraphs: *Provided*, That matters deemed to disrupt public order or good morals or harm public sanitation shall be excluded: *Amended by Presidential Decree No. 16417, Jun. 30, 1999; Presidential Decree No. 17246, Jun. 27, 2001; Presidential Decree No. 17995, Jun. 13, 2003; Presidential Decree No. 19697, Sep. 28, 2006*

1. The name and address of an applicant (in cases of a corporation, its title, and the location of its place of business);
2. The number of patent application, the classification code and the date of patent application;
3. The name and address of the inventor;
4. The publication number and the date of such publication;
5. Detailed description, design drawings and a summary attached to a patent application;
6. Matters concerning priority right claim;
7. Matters concerning a patent application resulting from conversion or a divisional application;
8. The fact of requesting the examination of a patent application under the provisions of Article 60 (2) of the Act: *Provided*, That if the fact is not included in the publication of such patent application when such publication is made, the number of publication, the classification code and the number of such patent application as well as the fact of requesting such examination shall be included in the next patent gazette for the disclosure of patent application;
9. The intent to the effect that anyone claim to the Commissioner of the Korean Intellectual Property Office against any patent application concerned with information and proof substantiating his claim under the provisions of Article 63-2 of the Act; and
10. Other matters concerning the publication of patent application.

Article 20 (Imposition of Fine for Negligence)

The guidelines for the imposition of a fine for negligence under Article 232 (1) of the Act are as provided for in the Table annexed hereto: *Provided*, That the Commissioner of the Korean Intellectual Property Office may abate or aggravate a fine for negligence within the extent of one half of the amount specified therein, taking into consideration the degree, frequency, motive, and consequences of the relevant offense, and other relevant facts, but the amount of a fine for negligence after aggravated may not exceed the maximum limit of the amount under Article 232 (1) of the Act.

[This Article Wholly Amended by Presidential Decree No. 21053, Sep. 30, 2008]

ADDENDUM

This Decree shall enter into force on September 1, 1990.

ADDENDUM *<Presidential Decree No. 13744, Oct. 27, 1992>*

This Decree shall enter into force on November 1, 1992.

ADDENDA *<Presidential Decree No. 13870, Mar. 6, 1993>*

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Articles 2 through 4 Omitted.

ADDENDA *<Presidential Decree No. 14059, Dec. 31, 1993>*

(1) (Enforcement Date) This Decree shall enter into force on January 1, 1994.

(2) (Transitional Measures for Object of Prior Examination) With respect to another person's patent application for which the Government or local government and its contributed research institute requested the examination, before this Decree enters into force, the former provisions shall apply.

(3) (Special Case concerning Request for Compensation) The amended provisions of Article 14 (1) shall also apply to any patent application classified into and treated as confidential one, before this Decree enters into force.

(4) Omitted.

ADDENDA *<Presidential Decree No. 15009, Jun. 3, 1996>*

Article 1 (Enforcement Date)

This Decree shall enter into force on July 1, 1996: *Provided*, That the amended provisions of subparagraph 2 of Article 7 shall enter into force on December 7, 1996.

Article 2 Omitted.

ADDENDA *<Presidential Decree No. 15408, Jun. 26, 1997>*

Article 1 (Enforcement Date)

This Decree shall enter into force on July 1, 1997: *Provided*, That the revised provisions of Article 19 (3) 2 (e) through (j) shall enter into

ENFORCEMENT DECREE OF THE PATENT ACT

force on February 1, 1998 and the amended provisions of Articles 4 (1) 2, 8, and 18 (1) and (2) shall enter into force on March 1, 1998.

Article 2 (Transitional Measures on Calculation, etc. of Period for Qualification of Trial Examiners, etc.)

(1) The term of office which any person has served as a state public official of Grade IV or V in the general service in the affairs of appellate trial at the appellate trial tribunal and the term of completion which he has completed the training courses for a technical examiner and trial examiner as a state public official of Grade IV in the general service at the International Patent Training center prior to entry into force of the amended provisions of Article 8 (2) shall be considered the term of office which he has served as examiner as referred to in subparagraph 1 of the same paragraph.

(2) The term of office which any person has served as examiner at the Korean Intellectual Property Office prior to entry into force of the amended provisions of Article 8 (3) shall be considered the term of office which he has served as referred to in subparagraph 1 of the same paragraph.

(3) Any person qualified as a trial examiner or appellate examiner pursuant to the previous provisions at the time of the entry into force of the amended provisions of Article 8 (2) and (3) shall be considered to be a trial examiner or a presiding trial examiner under this Decree, respectively.

Article 3 (Special Cases on Special Service of Adjudication, etc.)

In applying previous provisions of Article 18 (3), the term “trial” in the same paragraph of the same Article shall be considered to be “trial, appellate trial and immediate appeal” until February 28, 1998.

ADDENDA <Presidential Decree No. 16417, Jun. 30, 1999>

(1) (Enforcement Date) This Decree shall enter into force on July 1, 1999.

(2) (Application Example) The amended provisions of Article 9 shall apply starting with the first patent application for which an application is filed for prior examination after the enforcement of this Decree.

ADDENDA <Presidential Decree No. 16725, Feb. 28, 2000>

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Articles 2 and 3 Omitted.

ADDENDA *〈Presidential Decree No. 16852, Jun. 23, 2000〉*

- (1) (Enforcement Date) This Decree shall enter into force on July 1, 2000.
- (2) (Applicability to Application for Prior Examination) The amended provisions of subparagraph 9 of Article 9 shall apply starting with the first patent application for which an application is filed for prior examination after the enforcement of this Decree.

ADDENDUM *〈Presidential Decree No. 17246, Jun. 27, 2001〉*

This Decree shall enter into force on July 1, 2001.

ADDENDUM *〈Presidential Decree No. 17995, Jun. 13, 2003〉*

This Decree shall enter into force on the date of its promulgation.

ADDENDUM *〈Presidential Decree No. 18312, Mar. 17, 2004〉*

This Decree shall enter into force on the date of its promulgation.

ADDENDUM *〈Presidential Decree No. 18694, Jan. 31, 2005〉*

This Decree shall enter into force on February 11, 2005.

ADDENDA *〈Presidential Decree No. 19513, Jun. 12, 2006〉*

Article 1 (Enforcement Date)

This Decree shall enter into force on July 1, 2006.

Articles 2 through 4 Omitted.

ADDENDA *〈Presidential Decree No. 19697, Sep. 28, 2006〉*

- (1) (Enforcement Date) This Decree shall enter into force on October 1, 2006: *Provided*, That the amended provisions of Articles 8 (2), and (3) 2, 18 (3) and 19 (2) 10 shall enter into force on July 1, 2007.
- (2) (Applicability to Priority Examination) The amended provisions of Article 9 shall apply to the priority examination application that is filed on or after the date when this Decree enters into force.
- (3) (Transitional Measure concerning Qualification Requirements for Trial Examiners) Anyone qualified as a trial examiner or a presiding trial examiner pursuant to the previous provisions at the time of the enforcement of the amended provisions of Article 8 (2) and (3) shall be deemed qualified as a trial examiner or a presiding trial examiner, respectively, pursuant to this

ENFORCEMENT DECREE OF THE PATENT ACT

Decree.

(4) (Transitional Matters concerning Publication of Patent Gazette) The publication of the patent gazette concerning the patent application filed pursuant to the previous provisions at the time of the enforcement of the amended provisions of Article 19 (2) 7 and (3) 7 and 9 shall be governed by the previous provisions.

ADDENDUM *⟨Presidential Decree No. 20127, Jun. 28, 2007⟩*

This Decree shall enter into force on July 1, 2008.

ADDENDA *⟨Presidential Decree No. 20137, Jun. 29, 2007⟩*

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Articles 2 through 5 Omitted.

ADDENDA *⟨Presidential Decree No. 20729, Feb. 29, 2008⟩*

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Articles 2 and 3 Omitted.

ADDENDA *⟨Presidential Decree No. 21053, Sep. 30, 2008⟩*

Article 1 (Enforcement Date)

This Decree shall enter into force on October 1, 2008.

Article 2 (Applicability to Cases Eligible for Prior Examination)

The amended provisions of Article 9 shall apply beginning from the first application filed for prior examination after this Decree enters into force.

ADDENDA *⟨Presidential Decree No. 21567, Jun. 26, 2009⟩*

Article 1 (Enforcement Date)

This Decree shall enter into force on July 1, 2009: *Provided*, That the amended provisions of Article 8-3 shall enter into force on the date of its promulgation, those of subparagraph 2 of Article 9 on October 1, 2009, and those of Article 3 on January 1, 2010.

Article 2 (Applicability to Matters Entered in Patent Specifications of Invention related to Micro-Organism)

The amended provisions of Article 3 shall apply to the patent application,

divisional application, patent application resulting from conversion, and application made by a lawful holder of the right after an application made by an unentitled person, on or after the date when the amended provisions of Article 3 under the proviso to Article 1 of the Addenda enter into force.

Article 3 (Transitional Measures)

Notwithstanding the amended provisions of Article 4 (1) 2, the previous provisions shall apply to any patent application made before this Decree enters into force.

ADDENDUM *〈Presidential Decree No. 21917, Dec. 30, 2009〉*

This Decree shall enter into force on the date of its promulgation.