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## **UTILITY MODEL ACT**

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Wholly Amended by Act No. 7872, Mar. 3, 2006  
Amended by Act No. 8193, Jan. 3, 2007  
Act No. 8852, Feb. 29, 2008  
Act No. 9234, Dec. 26, 2008  
Act No. 9371, Jan. 30, 2009  
Act No. 10502, Mar. 30, 2011  
Act No. 11114, Dec. 2, 2011  
Act No. 11653, Mar. 22, 2013  
Act No. 11690, Mar. 23, 2013  
Act No. 11848, May 28, 2013  
Act No. 11962, Jul. 30, 2013

## CHAPTER I GENERAL PROVISIONS

### **Article 1 (Purpose)**

The purpose of this Act is to contribute to the industrial development by protecting and encouraging the creation of practical devices and promoting the utilization thereof to promote the development of technology.

### **Article 2 (Definitions)**

The terms used in this Act shall be defined as follows:

1. The term "device" means the creation of technical ideas applying the law of nature;
2. The term "registered utility model" means a device for which a utility model has been granted;
3. The term "working" means an act 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) an article to which a device has been applied.

### **Article 3 (Application Mutatis Mutandis of the Patent Act)**

Articles 3 through 7, 7-2, 8 through 25, 28, and 28-2 through 28-5 of the Patent Act shall apply mutatis mutandis to utility models. *<Amended by Act No.*

## CHAPTER II REQUIREMENTS FOR UTILITY MODELS AND APPLICATIONS THEREFOR

### **Article 4 (Requirements for Utility Model)**

- (1) A utility model may be granted for a device related to a shape or a structure of an article, or a combination of articles industrially practicable, unless the device falls under any of the following subparagraphs:  
<Amended by Act No. 11653, Mar. 22, 2013>
  1. A device publicly known or worked inside or outside the Republic of Korea prior to the filing of utility model registration;
  2. A device reported by a publication published and distributed inside or outside the Republic of Korea prior to the filing of utility model registration or made available to the public through one of telecommunication lines.
- (2) Notwithstanding paragraph (1), no utility model shall be granted for a device, if the device could easily have been made, prior to the filing of utility model registration, by a person with ordinary skills in the art to which the device pertains, on the basis of a device set forth in any subparagraph of paragraph (1).
- (3) Notwithstanding paragraph (1), no utility model shall be granted for a device, if the device for which utility model registration is filed is identical with a device or invention described in the description or drawings originally attached to another utility model registration or a patent application, and if another application for utility model or patent has been filed prior to the application at issue and either another application is laid open or utility model registration is published after the utility model registration for another application after the filing date of the application at issue: Provided, That this shall not apply where the person

who has devised or invented the subject matter of the application at issue is the very person who has devised or invented the subject matter of another application or where the applicant at the time of utility model registration at issue is the very person who has filed another application for either utility model or patent.

- (4) For the purposes of applying paragraph (3), where another filing of utility model registration or a patent application falls under any of the following subparagraphs, "laid open" in paragraph (3) shall be construed as "laid open for public inspection or internationally published pursuant to Article 21 of the Patent Cooperation Treaty"; and "device or invention described in the description or drawings originally attached to an application" shall be construed as "device or invention described in the description, claims or drawings submitted on the international filing date" if it is applied for in the Korean language, and shall be construed as "device or invention described in the description, claims or drawings submitted on the international filing date and the translated version of the said documents" if it is applied for in a foreign language:<Amended by Act No. 9371, Jan. 30, 2009>

1. Where another utility model registration is an international application (including an international application which shall be deemed utility model registration pursuant to Article 40 (4)) which is regarded as the utility model registration pursuant to Article 34 (1);
2. Where a patent application is an international application (including an international application which shall be deemed a patent application pursuant to Article 214 (4) of the Patent Act) which is deemed a patent application pursuant to Article 199 (1) of the Patent Act.

**Article 5 (Devices Deemed as Unknown, etc.)**

- (1) If a device created by a person eligible for utility model registration therefor falls under any of the following subparagraphs, and if the relevant application for utility model registration is filed within 12 months of the applicable date, such device shall not be deemed to fall under any

subparagraph of Article 4 (1) in applying Article 4 (1) or (2): <Amended by Act No. 11114, Dec. 2, 2011>

1. If a person eligible for utility model registration has caused his/her device to fall under any subparagraph of Article 4 (1): Provided, That the same shall not apply where the application is laid open or the registration of utility model is published under the relevant law or treaty inside or outside the Republic of Korea;
  2. If the device falls under any subparagraph of Article 4 (1) against the will of the person eligible for utility model registration.
- (2) A person who claims his/her eligibility for utility model registration under the provisions of paragraph (1) 1 shall submit to the Commissioner of the Korean Intellectual Property Office an application for utility model registration stating the grounds of his/her claim, attached with the documents supporting his/her assertion within 30 days from the filing date of utility model registration.

#### **Article 6 (Unregistrable Devices)**

A device shall not be registrable for utility model, if it falls under any of the following subparagraphs, notwithstanding the provisions of Article 4:

1. A device identical or similar to a national flag or decoration;
2. A device that is likely to cause a disturbance to public order or morals, or a harm to public health.

#### **Article 7 (First-to-File Rule)**

- (1) When two or more applications for utility model registration are filed for the same device on different dates, only the applicant who files his/her application on the earlier date shall be entitled to the utility model registration for the device.
- (2) Where two or more applications for utility model registration are filed for the same device on the same date, only the person agreed upon by all the applicants after consultation shall be entitled to the utility model registration for the device. When neither agreement is reached nor consultation is possible, none of those applicants shall be entitled to the

utility model registration for the device.

- (3) The provisions of paragraph (1) shall apply mutatis mutandis to cases where a utility model registration and a patent application for the same subject matter are filed on different dates respectively, while the provisions of paragraph (2) shall apply mutatis mutandis to cases where a utility model registration and a patent application for the same subject matter are filed on the same date.
- (4) When an application for utility model registration or patent is void, withdrawn, or renounced, or a decision or a trial decision to grant or reject the earlier application has become final and binding, it shall, in applying the provisions of paragraphs (1) through (3), be deemed that such application has never been filed: Provided, That this shall not apply where a decision or a trial decision to grant or reject the earlier application is finally confirmed on the ground the application for a utility model registration or patent shall be governed by the provisions of the latter part of paragraph (2) (including cases applied mutatis mutandis pursuant to the provisions of paragraph (3)).
- (5) In applying the provisions of paragraphs (1) through (3), it shall be deemed that an application for utility model registration or patent filed by any person other than a deviser, an inventor, or a successor eligible for utility model registration or patent has never been filed.
- (6) As to cases set forth in paragraph (2), the Commissioner of the Korean Intellectual Property Office shall order the applicants to report the result of their consultation within a prescribed period, and it shall be deemed that they have failed to reach agreement if they fail to report the result within such period.

**Article 8 (Application for Utility Model Registration)**

- (1) Any person who intends to obtain utility model registration shall file an application for an utility model registration with the Commissioner of the Korean Intellectual Property Office stating the following matters: *<Act No. 11962, Jul. 30, 2013>*

1. The name and address of an applicant (if the applicant is a juristic person, its title and place of business);
  2. The name, address, and place of business of an agent if the application is filed by an agent (if the agent is a patent corporation or patent corporation limited, its title, place of business, and designated patent attorney's name);
  3. The title of the device;
  4. The name and address of the deviser.
- (2) An application for utility model registration under paragraph (1) shall be accompanied by a description stating the following, a drawing and an abstract:
1. The title of the device;
  2. A brief explanation of the drawing;
  3. A detailed description of the device;
  4. The scope of claims for utility model registration.
- (3) The detailed description of a device referred to in paragraph (2) 3 shall meet the following requirements: *<Amended by Act No. 10502, Mar. 30, 2011; Act No. 11690, Mar. 23, 2013>*
1. The description shall be clearly and minutely made according to the method of description prescribed by Ordinance of the Ministry of Trade, Industry and Energy to encourage persons with ordinary knowledge in the field of technology of such device to easily make such device;
  2. The technology which is a basis for the device shall be described.
- (4) The scope of claims for utility model registration shall include at least one claim describing the subject matter for which protection is sought under paragraph (2) 4 (hereinafter referred to as "claim"), and each claim shall meet the following requirements:
1. Each claim shall be supported by a detailed description of the device;
  2. Each claim shall define the device clearly and concisely;
  3. Deleted. *<by Act No. 8193, Jan. 3, 2007>*

- (5) Any applicant for utility model registration may attach a description in which the scope of claims for utility model registration referred to in paragraph (2) 4 is not entered at the time of filing the application for utility model registration notwithstanding the provisions of paragraph (2). In such cases, the description shall be supplemented to contain the scope of claims for utility model registration by the deadline according to the following classification: <Newly Inserted by Act No. 8193, Jan. 3, 2007>
1. By the date on which one year and six months lapse from the date that falls under any subparagraph of Article 64 (1) of the Patent Act as applied *mutatis mutandis* pursuant to the provisions of Article 15 of this Act;
  2. By the date on which three months lapse from the date on which he/she is notified of the purport of the request for initiating an examination of utility model registration provided for in Article 60 (3) of the Patent Act as applied *mutatis mutandis* pursuant to Article 15 of this Act by the deadline referred to in subparagraph 1 (where he/she is notified thereof after the date on which one year and three months lapse from the date that falls under any subparagraph of Article 64 (1) of the Patent Act as applied *mutatis mutandis* pursuant to Article 15 of this Act, by the date on which one year and six months lapse from the date that falls under any subparagraph of Article 64 (1) of the Patent Act as applied *mutatis mutandis* pursuant to Article 15 of this Act).
- (6) The form, structure, combination, etc. that is deemed necessary to specify the device shall be described in the scope of claims for utility model registration under paragraph (2) 4 in order to make clear the subject matters for which protection is sought. <Newly Inserted by Act No. 8193, Jan. 3, 2007>
- (7) Where any applicant for utility model registration fails to supplement the description by the deadline set forth in each subparagraph of paragraph (5), the relevant application shall be deemed to have been withdrawn on



the date following the date on which the deadline expires. <Newly Inserted by Act No. 8193, Jan. 3, 2007>

- (8) Necessary matters concerning the methods to describe the scope of claims for utility model registration under paragraph (2) 4 shall be prescribed by Presidential Decree.
- (9) Necessary matters concerning the describing methods of the abstract, etc. under paragraph (2) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy. <Amended by Act No. 8193, Jan. 3, 2007; Act No. 8852, Feb. 29, 2008; Act No. 11690, Mar. 23, 2013>

**Article 9 (Scope of Single Application for Utility Model Registration)**

- (1) Each application for utility model registration shall relate to only a single device: Provided, That a group of devices so linked as to form a comprehensive concept of a single device may be the subject matter of a single application for utility model registration.
- (2) The requirements for a single application for utility model registration under paragraph (1) shall be prescribed by Presidential Decree.

**Article 10 (Converted Application)**

- (1) An applicant for patent may amend his/her application for patent to an application for utility model registration within the extent of the contents described in the description or drawings initially attached to the patent application: Provided, That a patent application may not be amended to a utility model registration after 30 days elapse since a certified copy of the initial decision of rejection is served in connection with the relevant patent application.
- (2) It shall be deemed that a converted application to that for utility model registration under paragraph (1) (hereinafter referred to as "converted application") was filed for the purpose of utility model registration at the time when the initial patent application was filed: Provided, That this shall not apply if the converted application falls under any of the following subparagraphs:

1. Cases where the provisions of Article 4 (3) of this Act or Article 29 (3) of the Patent Act shall apply to the application because it falls under another utility model registration set forth in Article 4 (3) of this Act or a utility model registration set forth in Article 29 (3) of the Patent Act;
  2. Cases where the provisions of Article 5 (2) shall apply to the application;
  3. Cases where the provisions of Article 54 (3) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act shall apply to the application;
  4. Cases where the provisions of Article 55 (2) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act shall apply to the application.
- (3) Any person who files for converted application in accordance with paragraph (1) shall, in his/her converted application, state his/her intention to do so and indicate the patent application, which is the basis of converted application.
- (4) The initial patent application shall be deemed to be withdrawn by filing a converted application.
- (5) The period of up to 30 days under the proviso to paragraph (1) shall, if the period under Article 132-3 of the Patent Act is extended pursuant to Article 15 (1) of the same Act, be deemed to be extended to such extended period accordingly.
- (6) A person who makes priority claims under Article 54 of the Patent Act in filing the converted application, may submit the documents prescribed in paragraph (4) of the same Article to the Commissioner of the Korean Intellectual Property Office within three months from the filing date of the converted application, even after the lapse of the period prescribed in paragraph (5) of the same Article. *<Amended by Act No. 11653, Mar. 22, 2013>*

**Article 11 (Mutatis Mutandis Application of the Patent Act)**

Articles 33 through 35, 37, 38, 41, 43, 44, 46, 47, 51, 52, and 54 through 56 of the Patent Act shall apply mutatis mutandis to the requirements for utility model registration and applications therefor.

*[This Article Wholly Amended by Act No. 9371, Jan. 30, 2009]*

## CHAPTER III EXAMINATION

### **Article 12 (Request for Examination of Utility Model Registration)**

- (1) The examination of utility model registration shall be initiated only upon request.
- (2) Any person may file a request for initiating an examination of utility model registration with the Commissioner of the Korean Intellectual Property Office within three years from the filing date of utility model registration: Provided, That any person who has filed for utility model registration may initiate a request for examining the application only when he/she has filed the application accompanied by a description in which the claim(s) is described. *<Amended by Act No. 8193, Jan. 3, 2007>*
- (3) As regards utility model registration falling under any of the following subparagraphs, a request for examination of the utility model may be filed during the period of each of the following subparagraphs even after the lapse of the period prescribed in paragraph (2). *<Amended by Act No. 11653, Mar. 22, 2013>*
  1. Converted application: Within 30 days from the filing date of such converted application.
  2. Application for utility model registration by a legitimate owner under Articles 34 and 35 of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act: Within 30 days from the filing date of such utility model registration by a legitimate owner
  3. Divisional application under Article 52 (2) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act: Within 30 days from the filing date of such divisional application
- (4) A request for examination of the application may not be withdrawn.

- (5) A utility model registration shall be deemed to have been withdrawn if there is no request for examination of the application filed within the period prescribed in paragraph (2) or (3).

**Article 13 (Decision to Reject Utility Model Registration)**

Any examiner defined in Article 57 (1) of the Patent Act (hereinafter referred to as "examiner") as applied mutatis mutandis pursuant to Article 15 of this Act shall make a decision to reject utility model registration, if the application falls under any of the following subparagraphs (hereinafter referred to as "ground for rejection"): *<Amended by Act No. 8193, Jan. 3, 2007>*

1. If the utility model is not registerable under Article 4, 6, or 7 (1) through (3) of this Act, Article 25 of the Patent Act as applied mutatis mutandis pursuant to Article 3 of this Act, or Article 44 of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act;
2. If the applicant has no right to obtain utility model registration under the main sentence of Article 33 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act, or if the applicant is not eligible for utility model registration under the proviso to the same paragraph;
3. If the application violates any provisions of a relevant treaty;
4. If the application fails to meet the requirements set forth in Article 8 (3), (4) and (8) or 9;
5. If the converted application deviates from the extent prescribed by the provisions of Article 10 (1);
6. If a correction is made deviating from the extent prescribed by the provisions of Article 47 (2) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act;
7. If the divisional application deviates from the extent prescribed by the provisions of Article 52 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act.

**Article 14 (Notice of Grounds for Rejection)**

- (1) When an examiner intends to make a decision to reject utility model

registration under Article 13, he/she shall notify the applicant for the utility model registration of the grounds for rejection, and provide the applicant an opportunity to submit his/her written opinion within a specified period: Provided, That this shall not apply when he/she intends to make a decision of dismissal pursuant to Article 51 (1) of the Patent Act which is applied mutatis mutandis pursuant to Article 11. *<Amended by Act No. 9371, Jan. 30, 2009>*

- (2) When an examiner gives notice of the grounds for rejecting any application for utility model registration pursuant to the provisions of the main sentence of paragraph (1), which carries not less than two claims, he/she shall clearly indicate the rejected claims and the grounds therefor in detail in the notification. *<Newly Inserted by Act No. 8193, Jan. 3, 2007; Act No. 9371, Jan. 30, 2009>*

**Article 15 (Mutatis Mutandis Application of the Patent Act)**

Articles 57, 58, 58-2, 60, 61, 63-2, 64 through 66, 66-2, 67, 67-2, 67-3, 68 and 78 of the Patent Act shall apply mutatis mutandis to an examination and decision with regard to a utility model registration which has been filed. *<Amended by Act No. 11653, Mar. 22, 2013>*

*[This Article Wholly Amended by Act No. 9371, Jan. 30, 2009]*

## CHAPTER IV REGISTRATION FEE AND UTILITY MODEL REGISTRATION, ETC.

**Article 16 (Registration Fee)**

- (1) Any person who intends to obtain the registration of establishment of a utility model right in accordance with Article 21 (1) shall pay registration fees for three years from the date when he/she intends to obtain the registration of establishment of the utility model right (hereinafter referred to as "registration date of establishment"), and the owner of a utility model right shall pay, on a yearly basis, a registration fee for one year

from the following year based on the date falling under the registration date of establishment of the relevant right.

- (2) Notwithstanding paragraph (1), the owner of a utility model right may pay registration fees for several or entire years according to the order of years of payment in a lump sum.
- (3) Registration fees, method and term of payment thereof pursuant to paragraphs (1) and (2), and other necessary matters shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy. *<Amended by Act No. 11690, Mar. 23, 2013>*

*[This Article Wholly Amended by Act No. 9371, Jan. 30, 2009]*

#### **Article 17 (Official Fees)**

- (1) A person who shall undergo the process for utility model registration shall pay an official fee.
- (2) When the number of claims described in the scope of claims for utility model registration increases as a consequence of a correction made on the description accompanying the application by any person, other than the applicant of the utility model registration, after filing a request for examination of the application, the applicant for the utility model registration shall be liable to pay the fee for requesting an examination for the increased number of claims.
- (3) Official fees under paragraph (1), the method and period of payment thereof, and other necessary matters shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy. *<Amended by Act No. 8852, Feb. 29, 2008; Act No. 11690, Mar. 23, 2013>*

#### **Article 18 (Utility Model Register)**

- (1) The Commissioner of the Korean Intellectual Property Office shall prepare and keep the Utility Model Register at the Korean Intellectual Property Office and register the following matters therein:
  1. The establishment, transfer, extinction, and restoration of a utility model right, or the restrictions on the disposition thereof;
  2. The establishment, preservation, transfer, amendment, and extinction of

an exclusive or non-exclusive license, or the restrictions on the disposition thereof;

3. The establishment, transfer, amendment, and extinction of a pledge right to the utility model right or exclusive or non-exclusive licence thereof or the restrictions on the disposition thereof.
- (2) The Utility Model Register under paragraph (1) may be prepared and maintained, in whole or in part, by means of magnetic tape, etc.
- (3) Other necessary matters concerning the matters to be registered and the registration procedure shall be provided for by Presidential Decree.
- (4) The description and drawings for the registered utility model, and other documents prescribed by Presidential Decree shall be deemed to constitute part of the Utility Model Register.

**Article 19 (Issuance of Utility Model Registration Certificate)**

- (1) When the establishment of a utility model right has been registered, the Commissioner of the Korean Intellectual Property Office shall issue a certificate of utility model registration to the owner of the utility model right.
- (2) When a certificate of utility model registration as issued does not conform to the Utility Model Register or any other document, the Commissioner of the Korean Intellectual Property Office shall, upon an application or ex officio, call in such certificate to reissue it with proper correction or issue a new certificate as a replacement.
- (3) When a trial decision made in a trial for correction under Article 136 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 33 of this Act, has become final and binding, the Commissioner of the Korean Intellectual Property Office shall issue a new certificate of utility model registration in accordance with the trial decision.

**Article 20 (Mutatis Mutandis Application of the Patent Act)**

Articles 80, 81, 81-2, 81-3, 83, and 84 of the Patent Act shall apply mutatis mutandis to registration fees and utility model registration.

## CHAPTER V UTILITY MODEL RIGHT

### **Article 21 (Registration of Establishment of Utility Model Right and Publication of Registration)**

- (1) A utility model right shall come into effect upon registration of its establishment.
- (2) The Commissioner of the Korean Intellectual Property Office shall
  1. When a registration fee under Article 16 (1) is paid;
  2. When an additional registration fee is paid in accordance with Article 81 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 20 of this Act;
  3. When a registration fee is reserved in accordance with Article 81-2 (2) of the Patent Act as applied mutatis mutandis pursuant to Article 20 of this Act;
  4. When a registration fee is additionally paid or reserved in accordance with Article 81-3 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 20 of this Act;
  5. When a registration fee is exempted in accordance with Article 83 (1) 1 and (2) of the Patent Act as applied mutatis mutandis pursuant to Article 20 of this Act.

register the establishment of a utility model right when any of the following cases occurs:

- (3) When the registration under paragraph (2) is made, the Commissioner of the Korean Intellectual Property Office shall publish the registration of the utility model in the Utility Model Gazette.
- (4) Notwithstanding the provisions of paragraph (3), the Commissioner of the Korean Intellectual Property Office shall, if there is an order to treat a utility model registration as confidential in accordance with Article 41 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act, withhold from the publication of the registration under paragraph (3) until the order to treat the utility model registration as confidential is lifted, and shall make the publication of registration forthwith once such



order to treat it as confidential is lifted.

- (5) The Commissioner of the Korean Intellectual Property Office shall make available to the public the application documents and materials attached thereto for inspection for three months from the publication date of the registration under paragraph (3).
- (6) The matters that shall be published in the Utility Model Gazette with respect to the publication of registration under paragraph (3) shall be prescribed by Presidential Decree.

**Article 22 (Term of Utility Model Right)**

- (1) The term of a utility model right shall commence on the registration date of the establishment of the utility model right under Article 21 (1), and shall expire on the tenth anniversary of the filing date of the application for the utility model registration.
- (2) Where the utility model of a legitimate owner is registered under Articles 34 and 35 of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act, the term of such utility model right under paragraph (1) shall commence on the day immediately following the filing date of the utility model registration by an ineligible person.

**Article 22-2 (Extensions of Term of Utility Model Rights due to Registration Delays)**

- (1) If the establishment of a utility model right is registered late than the fourth anniversary of the filing date of utility model registration or the third anniversary of the filing date of examination of application, whichever comes later, the term of the utility model right may be extended by the delayed period, notwithstanding the provisions of Article 22 (1).
- (2) For the purposes of paragraph (1), the period of delay attributable to an applicant shall not be included in extending the term of a utility model right as prescribed in paragraph (1): Provided, That if the period of delay attributable to an applicant overlaps, the period that shall not be included in extending the term of a utility model right shall not exceed the period

actually delayed due to reasons attributable to the applicant.

- (3) "The period of delay attributable to an applicant" referred to in paragraph (2) shall be prescribed by Presidential Decree.
- (4) In counting the fourth anniversary of the filing date of utility model registration as prescribed in paragraph (1), each of the following shall be deemed the filing date of utility model registration, notwithstanding Articles 10 (2), 34 (1), 40 (4), and Articles 34, 35 and 52 (2) of the Patent Act as applied mutatis mutandis pursuant to Article 11:
  1. In cases of an converted application pursuant to Article 10: the filing date of the converted application;
  2. In cases of an application for utility model registration filed by a legitimate holder pursuant to Article 34 or 35 of the Patent Act as applied mutatis mutandis pursuant to Article 11: the filing date by the legitimate holder;
  3. In cases of a divisional application pursuant to Article 52 of the Patent Act as applied mutatis mutandis pursuant to Article 11: the filing date of the divisional application;
  4. In cases of an international application deemed an application for utility model registration pursuant to Article 34 (1): the date of submission of documents stating the details provided in each subparagraph of Article 203 (1) of the Patent Act as applied mutatis mutandispursuant to Article 41;
  5. In cases of an international application deemed an application for utility model registration pursuant to Article 40: the date when an applicant for an international application makes a request for decision pursuant to Article 40 (1);
  6. An application for utility model registration not falling under any of subparagraphs 1 through 5: the filing date of the relevant utility model registration.

*[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]*

**Article 22-3 (Applications for Extended Registration of Term of Utility Model**

### **Rights due to Registration Delays)**

- (1) Anyone who intends to apply for extended registration of the term of a utility model right pursuant to Article 22-2 (hereafter referred to as "applicant for extended registration" in this Article and Article 22-4) shall file with the Commissioner of the Korean Intellectual Property Office an application for extended registration of utility model right stating the following details: <Amended by Act No. 11690, Mar. 23, 2013; Act No. 11962, Jul. 30, 2013>
  1. The name and address of an applicant for extended registration (if the applicant is a corporation, its title and place of business);
  2. If an applicant for extended registration appoints his/her agent, the name, address, and seat of the place of business of the agent (if the agent is a patent corporation or patent corporation limited, its name and seat of place and the name of a designated patent attorney);
  3. A registration number of a utility model right to be extended;
  4. The period applied for extension;
  5. Reasons for extension specified by Ordinance of the Ministry of Trade, Industry and Energy (verifying documents shall be attached thereto).
- (2) An application for extended registration of the term of a utility model right pursuant to paragraph (1) shall be filed within three months from the date the establishment of the utility model right is registered.
- (3) If a utility model right is co-owned by more than two persons, all the co-owners shall jointly apply for extended registration of the term of the utility model right.
- (4) An applicant for extended registration may correct the details referred to in paragraph (1) 4 and 5 among the entries in the application for extended registration, before an examiner makes a decision as to whether to approve the extended registration of the term of a utility model right: Provided, That he/she may make corrections only during a period for submitting his/her statement of opinion once he/she is notified of the grounds for rejection applied *mutatis mutandis* pursuant to Article 22-6.

*[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]*

**Article 22-4 (Decisions to Reject Extended Registration of Term of Utility Model Rights due to Registration Delays)**

Where an application for extended registration of the term of a model utility right falls under any of the following cases, an examiner shall make a decision to reject extended registration with regard to the application:

1. Where the period applied for extension exceeds the period prescribed in Article 22-2;
2. Where an applicant for extended registration is not the owner of the relevant utility model right;
3. Where an application for extended registration is filed, in violation of Article 22-3 (3).

*[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]*

**Article 22-5 (Decisions, etc. to Approve Extended Registration of Term of Utility Model Rights due to Registration Delays)**

- (1) Where an examiner finds that an application for extended registration of the term of a utility model right does not fall under any grounds provided in each subparagraph of Article 22-4, he/she shall make a decision to approve extended registration.
- (2) Where any decision to approve extended registration is made pursuant to paragraph (1), the Commissioner of the Korean Intellectual Property Office shall enter the extension of the term of the relevant utility model right in the Utility Model Register.
- (3) Where an extension of the term of a utility model rights is entered in the Utility Model Register pursuant to paragraph (2), the following details shall be published in the Utility Model Gazette:
  1. The name and address of an owner of the utility model right (in cases of a corporation, its name and seat of place of business);
  2. A registration number of the utility model right;
  3. Date of extended registration;
  4. Extended period.

*[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]*

**Article 22-6 (Provisions to be Applied Mutatis Mutandis)**

Article 14 of this Act, Articles 57 (1), 67, subparagraphs 1 through 5 and 7 of Article 148 of the Patent Act shall apply mutatis mutandis to examinations of applications for extended registration of the term of utility model rights.

*[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]*

**Article 23 (Effects of Utility Model Rights)**

The owner of a utility model right shall have the exclusive right to work the registered utility model commercially and industrially: Provided, That where the exclusive license is granted to a third party under Article 100 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 28 of this Act, the same shall not apply to the extent that the exclusive licensee has the exclusive right to work the registered utility model under Article 100 (2) of the Patent Act.

**Article 24 (Limitations on Effect of Utility Model Rights)**

The effects of the utility model right shall not extend to any of the following subparagraphs:

1. Working of the registered utility model for the purpose of research or experimentation;
2. Vessels, aircraft, or vehicles only passing through the territory of the Republic of Korea, or machinery, instruments, equipment, or any other accessories used therein;
3. Articles available in the Republic of Korea as at the time the utility model registration was filed.

**Article 25 (Relation to Third Party Registered Utility Model, etc.)**

No owner of a utility model right, or exclusive or non-exclusive licensee may work his/her registered utility model commercially or industrially without permission granted by the owner of the relevant utility model, patent, design, or trademark, where the registered utility model would utilize a third party registered utility model, patented invention, registered design or any other design similar to such registered design for which an application for

registration or patent was filed prior to the filing date of the application for utility model registration at issue, or where the utility model at issue conflicts with another's right to design or trademark for which an application for registration was filed prior to the filing date of the application for utility model registration at issue.

**Article 26 (Non-exclusive License Granted to Work Device or Invention Prior to Filing Complaint Seeking for Ruling of Invalidation)**

- (1) Where a person falling under any of the following subparagraphs, without knowing the fact that there exists a ground for the invalidation of his/her own registered utility model or patent, has been engaging in business of working the device or invention, or has been preparing for engaging in such business in the Republic of Korea, before a complaint was filed to seek for the ruling of invalidation of his/her registered utility model or patent, the person shall have either the non-exclusive license for such utility model within the extent of such device or invention or the scope of the business which has been worked or for which the preparation for working has been made, or the non-exclusive license on the exclusive license existing at the time such utility model registration or patent becomes invalidated:
1. The original owner of a utility model right, where one of two or more utility model registrations granted for the same device has been invalidated;
  2. The original patentee, where the patent has been invalidated because the patented invention was found identical with the registered utility model;
  3. The original owner of a utility model right, where his/her utility model registration has been invalidated and the utility model registration for the same device has been granted to the legitimate holder;
  4. The original patentee, where his/her patent has been invalidated and a utility model registration for the same device as the invention has been granted to the legitimate holder;

5. A person to whom, at the filing date of a complaint seeking for the ruling to invalidate the right to utility model or patent so invalidated in cases set forth in subparagraphs 1 through 4, an exclusive or non-exclusive license, or a non-exclusive license on the exclusive license has been granted and under whose name of the license has been registered accordingly. In such cases, the requirement for the registration of the license does not apply to a person falling under Article 118 (2) of the Patent Act as applied *mutatis mutandis* pursuant to Article 28 of this Act.
- (2) A person who has been granted a non-exclusive license under paragraph (1) shall be liable to pay a reasonable price in consideration of the non-exclusive license to the owner of the utility model right or the exclusive licensee.

**Article 27 (Non-exclusive License after Expiration of Design Right)**

- (1) Where a design right filed and registered on or before the filing date of a utility model registration conflicts with the utility model right, and when the term of the design right has expired, the owner of such expired design right shall have a non-exclusive license on the utility model right or on the exclusive license for the utility model right existing as at the time the design right has expired, to the extent of the expired right.
- (2) Where a design right filed and registered on or before the filing date of a utility model registration conflicts with the utility model right, and when the term of the design right has expired, a person who has an exclusive license on the design right existing as at the time of the expiration, or a non-exclusive license on the design right or exclusive license which is valid under Article 118 (1) of the Patent Act as applied *mutatis mutandis* pursuant to Article 112 of the Design Protection Act, shall have a non-exclusive license on the utility model right, or on the exclusive license for the utility model right existing as at the time as the design right has expired, to the extent of the expired right. *<Amended by Act No. 11848, May 28, 2013>*

- (3) A person who has been granted a non-exclusive license under paragraph (2) shall pay a reasonable price in consideration of the non-exclusive license to the owner of an utility model right or the exclusive licensee.

**Article 28 (Application Mutatis Mutandis of the Patent Act)**

Articles 97, 99 through 103, 106 through 111, 111-2, 112 through 115, 118 through 125, and 125-2 of the Patent Act shall apply mutatis mutandis to utility model rights.

*[This Article Wholly Amended by Act No. 11114, Dec. 2, 2011]*

## CHAPTER VI PROTECTION OF OWNERS OF UTILITY MODEL RIGHTS

**Article 29 (Acts Constituting Infringement)**

The commercial act of manufacturing, assigning, leasing or importing, or the act of offering for commercial or industrial assignment or lease, of goods which shall be used exclusively for manufacturing a product relating to a registered utility model shall be deemed to constitute infringement of a utility model right or exclusive license thereon.

**Article 30 (Mutatis Mutandis Application of the Patent Act)**

Articles 126, 128, and 130 through 132 of the Patent Act shall apply mutatis mutandis to the protection of the owners of utility model rights.

## CHAPTER VII TRIALS, RETRIALS, AND LITIGATION

**Article 31 (Trial for Invalidation of Utility Model Registration)**

- (1) Any interested party or examiner may file a complaint to seek for the ruling to invalidate utility model registration, if the utility model registration falls under any of the following subparagraphs. In such cases, a complaint may be filed for each claim, if there are two or more claims involved in a registered utility model: Provided, That anyone may file a complaint seeking a ruling of invalidation on the ground that the utility



model falls under any of the following subparagraphs (excluding subparagraph 5) within three months from the publication date of registration after the establishment of the utility model right is registered:

*<Amended by Act No. 10502, Mar. 30, 2011>*

1. Where the utility model has been registered, in violation of Article 4, 6, 7 (1) through (3), 8 (3) 1, or 8 (4) of this Act, or Article 25 of the Patent Act as applied mutatis mutandis pursuant to Article 3 of this Act;
  2. Where the owner of the utility model right becomes ineligible for the enjoyment of the utility model right under Article 25 of the Patent Act as applied mutatis mutandis pursuant to Article 3 of this Act, or where the utility model registration violates a treaty after being registered;
  3. Where the utility model is not registerable because of its violation of a treaty;
  4. Where a converted application so filed deviates from the extent under Article 10 (1);
  5. Where it is found that there exists no right to obtain utility model registration under the main sentence of Article 33 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act, or where there is a violation of Article 44 of the Patent Act;
  6. Where the utility model is not registerable under the proviso to Article 33 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act;
  7. Where the correction so made deviates from the extent under Article 47 (2) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act;
  8. Where the divisional application so filed deviates from the extent under Article 52 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act.
- (2) A complaint seeking for the ruling under paragraph (1) may be filed even after the utility model right is extinguished.

- (3) When the trial decision to invalidate utility model registration has become final and binding, it shall be deemed that the utility model right has never existed: Provided, That it shall be deemed that the utility model right has never existed since the utility model registration falls under paragraph (1) 2, where the trial decision to invalidate utility model registration under the said subparagraph has become final and binding.
- (4) Upon receipt of a complaint seeking for the ruling under paragraph (1), the presiding administrative patent judge shall notify an exclusive licensee of the utility model in dispute and other persons having any registered interest in the utility model of the purport thereof.

**Article 31-2 (Trials Invalidating Extended Registration of Term of Utility Model Rights)**

- (1) If the extended registration of the term of a utility model right pursuant to Article 22-5 falls under any of the following cases, any interested party or examiner may request for a trial to invalidate such extended registration:
  1. Where the extended period based upon extended registration exceeds the period extended as provided in Article 22-2;
  2. Where the extended registration is made based upon an application filed by a person other than the owner of the relevant utility model right;
  3. Where the extended registration is granted for an application filed, in violation of Article 22-3 (3).
- (2) Article 31 (2) and (4) shall apply mutatis mutandis to requests for trials prescribed in paragraph (1).
- (3) When a ruling invalidating extended registration becomes final and conclusive, it shall be deemed that the term of a utility model right based upon the extended registration has never been extended: Provided, That if any extended registration becomes invalid as it falls under paragraph (1) 1, it shall be deemed that only the period in excess of the period extended as provided in Article 22-2 has never been extended.

*[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]*

### **Article 32 (Trial for Granting Non-exclusive License)**

- (1) An owner of a utility model right or exclusive or non-exclusive licensee who intends to obtain permission to work a registered utility model because the registered utility model falls under Article 25 may, if the right holder refuses to grant such permission without justifiable grounds, or if it is impossible to obtain permission for working due to any extenuating circumstance, file a complaint to seek for granting the non-exclusive license within the extent necessary for working his/her registered utility model.
- (2) No non-exclusive license may be granted for a complaint filed pursuant to paragraph (1), unless it is found that the registered utility model at issue will bring forth significant technical advance with substantial economic value in comparison with another's registered utility model or patented invention for which an application was filed earlier than the filing date of the utility model at issue.
- (3) A person who granted a non-exclusive license in compliance with the ruling under paragraph (1) needs to work the registered utility model of the person to whom the non-exclusive license was granted may, if the non-exclusive licensee refuses to grant permission to work the registered utility model or it is impossible to obtain such permission, file a complaint to seek for granting such non-exclusive license within the extent necessary for working the registered utility model.
- (4) A non-exclusive licensee under paragraphs (1) and (3) shall pay the consideration for the utility model, patent, or design to the owner or an exclusive licensee of such right: Provided, That the consideration shall be placed on deposit if it is impossible to pay the consideration due to any reason not attributable.
- (5) No non-exclusive licensee under paragraph (4) may work any registered utility model, patented invention, registered design, or design similar thereto, unless he/she completes the payment of the consideration or places the consideration on deposit.

**Article 33 (Mutatis Mutandis Application of the Patent Act)**

Articles 132-3, 133-2, 135 through 137, 139, 140, 140-2, 141 through 153, 153-2, 154 through 166, 170 through 172, 176, 178 through 188, 188-2, 189 through 191, and 191-2 of the Patent Act shall apply mutatis mutandis to trials, retrials and litigations with regard to utility models.

*[This Article Wholly Amended by Act No. 9371, Jan. 30, 2009]*

**CHAPTER VIII INTERNATIONAL  
APPLICATIONS UNDER  
PATENT COOPERATION  
TREATY**

**Article 34 (Utility Model Registration Based on International Application)**

- (1) An international application of which an international filing date is recognized under the Patent Cooperation Treaty, and which designates the Republic of Korea as a designated state in order to obtain utility model registration, shall be deemed a utility model registration filed on its international filing date.
- (2) Article 54 of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act shall not apply to an international application deemed a utility model registration under paragraph (1) (hereinafter referred to as "international utility model registration").

**Article 35 (Korean Translation of International Utility Model Registration)**

- (1) An applicant who has filed for international utility model registration in any foreign language shall submit to the Commissioner of the Korean Intellectual Property Office, a Korean translation of the description, claims, drawings (limited to the textual matter thereof) and the abstract filed on the international filing date, within two years and seven months (hereinafter referred to as "domestic deadline for submitting documents") from the priority date (hereinafter referred to as "priority date") defined in Article 2 (xi) of the Patent Cooperation Treaty: Provided, That the

applicant who has filed for international utility model registration in a foreign language may submit a Korean translation of the claims as corrected in lieu of the Korean translation of the claims filed on its international filing date, if the claims have been corrected under Article 19 (1) of the Patent Cooperation Treaty.

- (2) The international utility model registration shall be deemed to have been withdrawn, if the Korean translation of the description and claims under paragraph (1) has not been submitted within the domestic deadline for submitting documents.
- (3) An applicant who has submitted the Korean translation under paragraph (1) may submit a new Korean translation to replace the previous translation within the domestic deadline for submitting documents: Provided, That the same shall not apply where the applicant has already filed a request for examination of the application.
- (4) It shall be deemed that the descriptions contained in the description or claims of international utility model registration, or the textual matters contained in the accompanying drawings, filed on the international filing date, but not contained in the Korean translation under paragraph (1) or (3) (hereinafter referred to as "translated version") filed within the domestic deadline for submitting documents (referring to the filing date of the request, where the applicant filed a request for examination of the application within such deadline; hereinafter referred to as "reference date") have never been contained in the description or claims of the international utility model registration filed on the international filing date or the drawings have never contained any textual matter.
- (5) An application submitted on the international filing date of an international utility model registration shall be deemed an application submitted under Article 8 (1).
- (6) The translated version of the description, claims, drawings and the abstract of an international utility model registration (the description, claims, drawings and the abstract submitted on the international filing date, if

international utility model registration is filed for in the Korean language) shall be deemed the description, drawings and the abstract submitted under Article 8 (2).

- (7) Article 204 (1) and (2) of the Patent Act as applied mutatis mutandis pursuant to Article 41 of this Act shall not apply where a Korean translation of the claims as corrected is submitted in accordance with the proviso to paragraph (1).
- (8) The claims submitted on the international filing date shall not be acceptable where the Korean translation only for the scope of claims corrected has been submitted in accordance with the proviso to paragraph (1).

**Article 36 (Submission of Drawings)**

- (1) An applicant for international utility model registration shall submit drawings (including the brief text thereof) to the Commissioner of the Korean Intellectual Property Office by the reference date if the drawings are not included in the international application submitted on the international filing date.
- (2) The Commissioner of the Korean Intellectual Property Office may order the relevant applicant for international utility model registration to submit the drawings within the designated period if the drawings under paragraph (1) have not been submitted by the reference date. The same shall also apply where the Korean translation of the textual matter of the drawings under Article 35 (1) or (3) has not been submitted by the reference date.
- (3) The Commissioner of the Korean Intellectual Property Office may declare that an international utility model registration is void if the applicant who was ordered to submit the drawings under paragraph (2) fails to do so within the designated period.
- (4) The drawings and Korean translation thereof submitted under paragraph (1) or (2) shall be deemed a correction under Article 47 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 11 of this Act. In such cases, the period allowed for correction under Article 47 (1) of the

Patent Act shall not apply to the submission of such drawings.

**Article 37 (Restriction on Filing Timing of Converted Application)**

Notwithstanding the provisions of Article 10 (1), an applicant who filed an international application regarded as a patent application filed on the filing date of the international application under Article 199 (2) of the Patent Act, may not file a converted application to convert the patent application into the utility model registration, unless and until the applicant completes the payment for official fees in accordance with Article 82 (1) of the Patent Act and submits the Korean translation (excluding cases where the international application was prepared in the Korean language) in accordance with Article 201 (1) of the same Act (or unless and until a decision is made under Article 214 (4) of the Patent Act, where the application for the amendment is based on an international application regarded as filed on the date recognizable as the filing date of the international application under the same paragraph).

**Article 38 (Restriction on Request Timing for Examination of Application)**

Notwithstanding the provisions of Article 12 (2), no applicant for international utility model registration may file a request for examination of the application, unless and until the applicant completes the process under Article 35 (1) (excluding cases where the international application for utility model registration was prepared in the Korean language) and the payment for official fees in accordance with Article 17 (1), while no person, other than the applicant, may file such request unless and until the period set forth in Article 35 (1) elapses.

**Article 39 (Special Exception to Trial for Invalidating Registered Utility Model)**

A complaint may be filed against a utility model registration made on the basis of an international application for utility model registration filed in a foreign language to seek for a ruling to invalidate such utility model registration on the ground that the device to which it pertains does not fall under either of the following subparagraphs, in addition to the grounds set forth in each subparagraph of Article 31 (1):

1. The device described both in the description, claims, or drawings (limited to the textual matter thereof) of the international application filed on its international filing date and in the translated version of the application;
2. The device described in the drawings (excluding the textual matter thereof) of the international application filed on its international filing date.

**Article 40 (International Application Recognizable as Utility Model Registration by Decision)**

- (1) Where an international application (limited to utility model registration) which includes the Republic of Korea in the designated states referred to in Article 4 (1) (ii) of the Patent Cooperation Treaty falls under any of the following subparagraphs, the relevant applicant may request the Commissioner of the Korean Intellectual Property Office to make a decision pursuant to Article 25 (2) (a) of the same Treaty, by the deadline prescribed by Ordinance of the Ministry of Trade, Industry and Energy, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy: *<Amended by Act No. 9371, Jan. 30, 2009; Amended by Act No. 11690, Mar. 23, 2013>*
  1. Where a receiving office referred to in Article 2 (xv) of the Patent Cooperation Treaty has rejected such international application pursuant to Article 25 (1) (a) of the same Treaty;
  2. Where a receiving office referred to in Article 2 (xv) of the Patent Cooperation Treaty has made a declaration on such international application pursuant to Article 25 (1) (a) or (b) of the same Treaty;
  3. Where the International Bureau referred to in Article 2 (xix) of the Patent Cooperation Treaty has recognized such international application pursuant to Article 25 (1) (a) of the same Treaty.
- (2) A person who files a request under paragraph (1) shall submit to the Commissioner of the Korean Intellectual Property Office a written request accompanied by a Korean translation of the description, claims or



drawings (limited to the textual matter thereof) and other documents related to the international application prescribed by Ordinance of the Ministry of Trade, Industry and Energy. *<Amended by Act No. 8852, Feb. 29, 2008; Amended by Act No. 11690, Mar. 23, 2013>*

- (3) Upon receiving a request under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall make a decision on whether the rejection, declaration or recognition was made legitimately in connection with the request in accordance with the provisions of the Patent Cooperation Treaty and the regulations thereunder.
- (4) Where the Commissioner of the Korean Intellectual Property Office makes a decision under paragraph (3) to the effect that the rejection, declaration or recognition was not legitimately made under the provisions of the Patent Cooperation Treaty and the regulations thereunder, the relevant international application shall be regarded as utility model registration filed on the date which would have been recognized as the international filing date if there was no such rejection, declaration or recognition with respect to said international application.
- (5) The Commissioner of the Korean Intellectual Property Office shall, when he/she makes a decision on whether the application is justifiable or not pursuant to paragraph (3), serve a certified copy of the decision on the person who has filed the international application. *<Newly Inserted by Act No. 8193, Jan. 3, 2007>*
- (6) Articles 200, 202 (1) and (2), and 208 of the Patent Act as applied mutatis mutandis pursuant to Articles 34 (2), 35 (4) through (8), 38, 39, and 41 of this Act shall apply mutatis mutandis to international applications regarded as utility model registration under paragraph (4). *<Amended by Act No. 8193, Jan. 3, 2007>*
- (7) As to the publication of an international application regarded as utility model registration under paragraph (4), "filing date of a patent application" in Article 64 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 15 of this Act shall be construed as "priority

date under Article 35 (1)". *<Amended by Act No. 8193, Jan. 3, 2007>*

**Article 41 (Mutatis Mutandis Application of the Patent Act)**

Articles 192 through 198, 198-2, 200, 202 through 208, and 211 of the Patent Act shall apply mutatis mutandis to international utility model registration.

## CHAPTER IX SUPPLEMENTARY PROVISIONS

**Article 42 (Utility Model Gazette)**

- (1) The Commissioner of the Korean Intellectual Property Office shall publish the Utility Model Gazette as prescribed by Presidential Decree. *<Amended by Act No. 11653, Mar. 22, 2013>*
- (2) The Utility Model Gazette may be published in an electronic medium, as prescribed by Ordinance of the Ministry of Trade, Industry and Energy. *<Amended by Act No. 8852, Feb. 29, 2008; Amended by Act No. 11690, Mar. 23, 2013>*
- (3) If the Utility Model Gazette is published in an electronic medium, the Commissioner of the Korean Intellectual Property Office shall publicly announce the issuance of the Utility Model Gazette, its main contents and service by public announcement through an information and communication network.

**Article 43 (Legal Fiction of Executives and Employees of Specialized Institutions, etc. as Public Officials)**

An executive or an employee who is currently working, or has ever worked, for a specialized organization as provided for in Article 58 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 15 or an agency for affairs of digitizing patent documents as provided for in Article 217-2 (3) of the Patent Act as applied mutatis mutandis pursuant to Article 44 shall be deemed a present or former public official of the Korean Intellectual Property Office in applying Article 46. *<Amended by Act No. 9371, Jan. 30, 2009>*

**Article 44 (Application Mutatis Mutandis of the Patent Act)**

Articles 215, 215-2, 216, 217, 217-2, 218 through 220, 222 through 224, and

224-2 through 224-5 of the Patent Act shall apply mutatis mutandis to utility models.

*[This Article Wholly Amended by Act No. 11114, Dec. 2, 2011]*

## CHAPTER X PENAL PROVISIONS

### **Article 45 (Offense of Infringement)**

- (1) Any person who infringes on a utility model right or exclusive license thereof shall be punished by imprisonment for not more than seven years or by a fine not exceeding 100 million won.
- (2) A public prosecution for an offense under paragraph (1) may be initiated only when there is a complaint filed by an injured party.

### **Article 46 (Offense of Divulging Confidential Information, etc.)**

An incumbent or former employee of the Korean Intellectual Property Office or the Intellectual Property Tribunal who discloses or misappropriates confidential information about a device (including a device for which an international application is pending) disclosed in a pending utility model registration to which he/she had access in the course of performing his/her duties shall be punished by imprisonment for not more than five years or by a fine not exceeding 50 million won. *<Amended by Act No. 9371, Jan. 30, 2009>*

### **Article 47 (Offense of Perjury)**

- (1) A witness, expert witness or interpreter who makes a false statement, testimony, or interpretation before the Intellectual Property Tribunal under oath made in accordance with the provisions of the Civil Procedure Act as applied mutatis mutandis pursuant to Article 33 of this Act and Article 157 (2) of the Patent Act shall be punished by imprisonment for not more than five years or by a fine not exceeding ten million won.
- (2) The punishment of a person who commits an offense under paragraph (1) may be mitigated or exempted if the offender voluntarily appears and admits his/her offense before the trial decision for the case becomes final and binding.

**Article 48 (Offense of False Indication)**

A person who violates any provision of subparagraphs 1 through 3 of Article 224 of the Patent Act as applied mutatis mutandis pursuant to Article 44 of this Act shall be punished by imprisonment for not more than three years or by a fine not exceeding 20 million won.

**Article 49 (Offense of Fraud)**

A person who has a utility model registered or has received a trial decision by deceit or other fraudulent means shall be punished by imprisonment for not more than three years or by a fine not exceeding 20 million won.

**Article 49-2 (Offense of Breach of Confidentiality)**

(1) Any person who breaches confidentiality provided in Article 224-3 (1) of the Patent Act as applied mutatis mutandis pursuant to Article 44 in the Republic of Korea or any foreign country without any justifiable grounds shall be punished by imprisonment for not more than five years or by a fine not exceeding 50 million won.

(2) No public prosecution against an offense provided in paragraph (1) may be initiated unless a complaint is filed by a person who has made a confidentiality request.

*[This Article Newly Inserted by Act No. 11114, Dec. 2, 2011]*

**Article 50 (Joint Penal Provisions)**

If the representative of a juristic person, or an agent, an employee or any other employee of a juristic person or individual has committed an offense falling under any of Articles 45 (1), 48 or 49 with respect to the duties of the juristic person or individual, not only shall the offender be punished, but also the juristic person shall be punished by a fine under any of the following subparagraphs and the individual shall be punished by a fine referred to in the relevant provisions: Provided, That this shall not apply where the juristic person or individual has not neglected to exercise due attention and supervision for the relevant duties in order to prevent such offense: <Amended by Act No. 9371, Jan. 30, 2009>

1. In cases of Article 45 (1): A fine not exceeding 300 million won;

2. In cases of Article 48 or 49: A fine not exceeding 60 million won.

*[This Article Wholly Amended by Act No. 9234, Dec. 26, 2008]*

**Article 51 (Confiscation, etc.)**

- (1) An article that has caused the infringement falling under Article 45 (1) or an article produced from such infringement may be confiscated or a judgment may be given to deliver such article to the injured party upon the injured party's request.
- (2) An injured party may claim the compensation for the amount of losses exceeding the value of such article, where he/she has received the article delivered in accordance with the provisions of paragraph (1).

**Article 52 (Fines for Negligence)**

- (1) A person who falls under any of the following subparagraphs shall be punished by a fine for negligence not exceeding 500 thousand won:
  1. A person who makes a false statement before the Intellectual Property Tribunal under oath taken pursuant to Articles 299 (2) and 367 of the Civil Procedure Act;
  2. A person who fails, without justifiable grounds, to comply with an order issued by the Intellectual Property Tribunal to submit documents or other articles for investigation or preservation of evidence;
  3. A person who fails, without justifiable grounds, to follow the summons to appear before the Intellectual Property Tribunal as a witness, expert witness, or interpreter, or refuses to take an oath, make a statement, testify, provide an expert opinion, or interpret.
- (2) Fines for negligence under paragraph (1) shall be imposed and collected by the Commissioner of the Korean Intellectual Property Office, as prescribed by Presidential Decree.
- (3) through (5) Deleted. *<by Act No. 11114, Dec. 2, 2011>*

ADDENDA

**Article 1 (Enforcement Date)**

This Act shall enter into force on October 1, 2006: Provided, That the

amended provisions of Articles 5, 7 (4) (proviso), and 52, and the provisions of Article 3 (proviso) of the Addenda shall enter into force on the date of its promulgation.

**Article 2 (Applicability concerning Requirements for Utility Model Registration)**

The amended provisions of Articles 4 (1) 1, 5 (1), and 7 (4) shall apply to applications for utility model filed on or after the date each of these provisions enters into force.

**Article 3 (General Transitional Measures)**

The applications for utility model registration and examination thereof, the utility model registration, the utility model right, trial, review, and litigation filed or pending as at the time this Act enters into force shall be governed by the previous provisions: Provided, That the same shall not apply to any of the following subparagraphs:

1. Technical evaluation of utility model, to which the provisions of Article 77 (3) of the Patent Act as applied mutatis mutandis pursuant to the previous provisions of Article 27 (4) shall apply;
2. Objection filed against utility model registration, to which the provisions of Article 77 (3) of the Patent Act as applied mutatis mutandis pursuant to the previous provisions of Article 48 shall apply.

**Article 4 (Transitional Measures concerning Objection Filed against Utility Model Registration)**

The objections filed against utility model registration on or before June 30, 2007 shall be governed by the previous provisions.

**Article 5 Omitted.**

ADDENDA <Act No. 8193, Jan. 3, 2007>

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2007.

**Article 2 (Applicability to Utility Model Registration)**

The amended provisions of Article 8, the proviso to Article 12 (2) and subparagraph 4 of Article 13 shall apply, starting with the first application filed

for utility model registration after this Act enters into force.

**Article 3 (Applicability to Correction of Utility Model Registration in Procedures for Judging Invalidity of Utility Model Registration)**

The amended provisions of Article 133-2 of the Patent Act applied mutatis mutandis in Article 33 shall apply, starting with the first request initiated for judging the invalidity of utility model registration after this Act enters into force.

**Article 4 (Applicability to Supplement of Written Explanation and Drawing in Confirmation Judgment on Scope of Right)**

The amended provisions of Article 140 (2) 2 of the Patent Act as applied mutatis mutandis in Article 33 shall apply, starting with the first request initiated for judging the confirmation of the scope of the right after this Act enters into force.

**Article 5 (General Transitional Measures)**

The application for utility model registration and the examination, judgment, re-examination and a litigation concerning the application for utility model registration, which is first filed according to the previous provisions as at the time this Act enters into force, shall be governed by the previous provisions.

ADDENDA <Act No. 8852, Feb. 29, 2008>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

**Articles 2 through 7 Omitted.**

ADDENDUM <Act No. 9234, Dec. 26, 2008>

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

ADDENDA <Act No. 9371, Jan. 30, 2009>

(1) (Enforcement Date) This Act shall enter into force on July 1, 2009: Provided, That the amended provisions of Articles 4 (4), 11, 14 (2), 40, 43,

and 46 through 50 shall enter into force on the date of its promulgation.

(2) (Applicability to Requirements for International Utility Model Registration Filed in Korean Language) The amended provisions of Article 4 (4) shall apply to an international utility model registration filed in the Korean language on or after January 1, 2009.

(3) (Applicability to Late Payment or Supplement of Registration Fees) The amended provisions of Article 16 shall apply to the payment of a registration fee which is made on or after this Act enters into force.

(4) (General Transitional Measures) The previous provisions shall apply to utility model registration filed pursuant to the previous provisions as at the time this Act enters into force.

ADDENDA <Act No. 10502, Mar. 30, 2011>

(1) (Enforcement Date) This Act shall enter into force on July 1, 2011.

(2) (Applicability to Applications, etc. for Registration of Utility Models) The amended provisions of Articles 8 and 31 shall apply to applications filed for utility model registration on or after this Act enters into force.

ADDENDA <Act No. 11114, Dec. 2, 2011>

**Article 1 (Enforcement Date)**

This Act shall enter into force on the date "Free Trade Agreement between the Republic of Korea and the United States of America and Exchange of Letters related to the Agreement" takes effect.

**Article 2 (Applicability to Devices Deemed as Unknown, etc.)**

The amended provisions of Article 5 shall apply to applications filed for utility model registration on or after this Act enters into force.

**Article 3 (Applicability to Extensions, etc. of Term of Utility Model Rights due to Registration Delay)**

Article 83 of the Patent Act as applied mutatis mutandis in Article 20, Articles 132-3, 139, 165, 176 and 187 of the Patent Act as applied mutatis mutandis in Article 33, and the amended provisions of Articles 22-2 through 22-6, and 31-2



apply, to applications filed for utility model registration on or after this Act enters into force.

**Article 4 (Applicability to Confidentiality Orders, etc.)**

The amended provisions of Articles 224-3 through 224-5 of the Patent Act applied mutatis mutandis in the amended provisions of Article 44 shall apply to lawsuit field for an infringement on a utility model right or an exclusive right on or after this Act enters into force.

**Article 5 (Transitional Measures upon Rescinding Revocation of Utility Model Rights)**

The revocation of a utility model right, the grounds for revocation of which have arisen as prescribed in Article 116 of the Patent Act as applied mutatis mutandis pursuant to the previous Article 28 before this Act enters into force shall be governed by the previous provisions.

ADDENDA <Act No. 11653, Mar. 22, 2013>

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2013. *Provided*, That Article 10 (6) and Article 12 (3) shall enter into force on the date of its promulgation.

**Article 2 (Applicability to Converted Application)**

The amended provisions of Article 10 (6) shall apply from the converted application filed after the same amended provisions enter into force.

**Article 3 (Applicability to Restoration of Utility Model Registration)**

The amended provisions of Article 15 shall apply from the utility model registration filed after this Act enters into force.

**Article 4 (Transitional Measures concerning Requirements for Utility Model Registration)**

Notwithstanding the amended provisions of Article 4 (1) 2 of this Act, the previous provisions shall apply with respect to the utility model registration filed pursuant to the previous provisions before this Act enters into force.

ADDENDA <Act No. 11690, Mar. 23, 2013>

**Article 1 (Enforcement Date)**

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

**Articles 2 through 7 Omitted.**

ADDENDA <Act No. 11848, May 28, 2013>

**Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 2014. (Proviso Omitted)

**Articles 2 through 20 Omitted.**

ADDENDA <Act No. 11962, Jul. 30, 2013>

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after the date of its promulgation.

(Proviso Omitted)

**Articles 2 through 10 Omitted.**