

INVENTION LAW OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

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Chapter 1 Fundamentals of the Invention Law

Article 1 (Mission of the Invention Law)

The Invention Law of the Democratic People's Republic of Korea, establishing the rules and orders in the application and examination for registration of inventor's certificate or patent and in its protection, thereby encouraging the creation of invention and promoting its use, shall contribute to the development of science, technology and the national economy.

Article 2 (Definition of an Invention)

An invention refers to a new technical solution to a problem in practice. An invention may relate to a product or a process.

Article 3 (Principles of the Application for Registration of Inventor's Certificate or Patent)

The application for registration of inventor's certificate or patent is the first process for its protection.

The State shall provide proper procedures of the application for registration of inventor's certificate or patent and ensure their strict abidance.

Article 4 (Principles of the Examination for Registration of Inventor's Certificate or Patent)

The accurate examination for registration of inventor's certificate or patent is the main task of the Invention Administrative Institution.

The State shall ensure the scientific accuracy and impartiality in the

examination for registration of inventor's certificate or patent.

Article 5 (Principles of the Protection of Inventor's Certificate or Patent)

It is the consistent policy of the Democratic People's Republic of Korea to protect inventor's certificate or patent.

The State shall protect the rights of holders of inventor's certificate or patent and ensure their strict enforcement.

Article 6 (Principles of the Encouragement for the Creation of Invention)

The State shall actively encourage the creation of invention and increase the necessary investments in its creation and introduction.

Article 7 (Exchange and Cooperation in the Field of Invention)

The State shall develop the exchange and cooperation with foreign countries and the international organizations in the field of invention.

Article 8 (Guarantees of the National Safety and Fundamental Interests in the Field of Invention)

The State shall thoroughly guarantee the national safety and fundamental interests in the field of invention.

Chapter 2 Application for Registration of Inventor's Certificate or Patent

Article 9 (Filing of an Application for Registration of Inventor's

Certificate or Patent)

The institutions, enterprises, organizations or citizens(hereinafter referred to as an applicant) wishing to obtain inventor's certificate or patent shall submit an application for registration of inventor's certificate or patent which contains the parts including a request, an abstract, a specification and one or more claims to the Invention Administrative Institution.

An applicant shall choose only one kind of protection among inventor's certificate, patent, petty inventor's certificate and utility model for his/her invention.

So far as this Law does not provide otherwise, inventor's certificate includes petty inventor's certificate and patent includes utility model.

Article 10 (Language of an Application for Registration of Inventor's Certificate or Patent)

An application for registration of inventor's certificate or patent shall be submitted in Korean.

In case of foreign languages, the translation in Korean shall be followed within 3 months from the filing date of an application to the Invention Administrative Institution.

Where the Korean translation is not followed within the prescribed time limit, it shall be considered that the application for registration of inventor's certificate or patent has not been submitted.

Article 11 (Application for Registration of Inventor's Certificate or Patent in the Name of Institutions, Enterprises or Organizations)

With regard to an invention made on duty(hereinafter referred to as service invention) or by the use of material and technical means of institutions, enterprises or organizations, the application for registration of inventor's

certificate or patent shall be submitted in their relevant names.

Where an invention submitted within one year from the retirement or transference of the inventor is considered as a service invention made in the previous institution, enterprise or organization, they shall have the right to apply for registration of inventor's certificate or patent.

Article 12 (Application for Registration of Inventor's Certificate or Patent in the Name of an Inventor)

For a non-service invention, the inventor shall have the right to apply for registration of inventor's certificate or patent.

Article 13 (Application for Registration of Inventor's Certificate or Patent with Regard to an Invention Made Jointly or in Trust)

For an invention made by the joint work of two or more institutions, enterprises, organizations or citizens, unless agreed otherwise, an application shall be jointly submitted by them. And for an invention made in trust, unless agreed otherwise, the institutions, enterprises, organizations or citizens who made the invention shall have the right to apply.

Other institutions, enterprises or organizations that provided necessary material and technical means for invention may also be common applicants under agreement.

Article 14 (Assignment of the Right to Apply for Registration of Patent)

The right to apply for registration of patent may be assigned to other institutions, enterprises or organizations. Where an invention is made jointly, the individual party concerned may assign only under the consent of all parties.

The assigned institutions, enterprises or organizations shall attach a deed of assignment when applying for registration of patent.

Article 15 (Application for Registration of Inventor's Certificate or Patent by the Agency)

The application for registration of inventor's certificate or patent may be

submitted by the Invention Agency. Where a foreign applicant submits an application for registration of patent in our country, the Invention Agency shall be entrusted.

The Invention Agency entrusted with the application for registration of inventor's certificate or patent shall submit the application with the certificatory document describing its appointment to the Invention Administrative Institution.

The Invention Agency shall not release the contents of the application before the Invention Administrative Institution publishes it.

Article 16 (Filing Date of the Application for Registration of Inventor's Certificate or Patent)

The filing date of the application for registration of inventor's certificate or patent shall be the date on which the Invention Administrative Institution receives the application for registration of inventor's certificate or patent which includes a request, an abstract, a specification and one or more claims.

Article 17 (Exclusions from the Scope of Invention)

The followings are exclusions from the scope of invention.

1. Discoveries, scientific theories or mathematical methods
2. Aesthetic creations
3. Rules and methods for mental acts, games or businesses
4. Indicating methods of information

Article 18 (Exceptions from Inventor's Certificate or Patent)

Inventor's certificate or patent shall not be granted to an invention referred to the objects conflicting with the lofty custom of the Korean Nation and the socialist way of life or infringing upon the public interests, to the varieties of a plant or an animal, to the essential biological processes for breeding or cultivation, to the methods of surgery or treatment as well as diagnosis for human or animal,.

Patent shall not be granted for an invention referred to the substances obtained by nuclear transformation.

Article 19 (Conditions for Granting Inventor's Certificate or Patent)

The conditions for granting inventor's certificate or patent are as follows.

1. There must be a novelty.

It means that an invention is new in comparison with the prior arts.

2. There must be an inventive step.

It means that a person skilled in the art can't predict an invention easily on the basis of the prior arts.

3. There must be an industrial applicability.

It means that an invention can be applicable to a given field of the national economy.

Article 20 (Conditions for Granting Petty Inventor's Certificate or Utility model)

With relation to an invention with a novelty and an industrial applicability but without an inventive step, petty inventor's certificate or utility model may be granted.

Article 21 (Exceptional Conditions in the Judgment of Novelty)

Although the contents of invention have been presented or exhibited by an applicant for the first time at a scientific discussion or exhibition recognized by the State or either disclosed by a third party without the consent of the applicant, it shall be considered to be new if the applicant submits the application for registration of inventor's certificate or patent with its confirmation document within 6 months from that date.

Article 22 (Claiming Priority)

Where a foreign applicant, that had submitted an earlier application for registration of patent to his/her national office or other national offices, submits the same application to our country within 12 months from the earliest date, priority may be claimed under the relevant international convention. In this case, the Invention Administrative Institution may request the applicant to submit a copy of the earliest application.

Where an assignee of the right of application claims priority, he/she shall

submit a confirmation document.

Article 23 (Correction of the Defects in Claiming Priority)

Where the Invention Administrative Institution finds any defect in claiming priority, it shall notify the applicant of it. In this case, if the applicant does not correct within 2 months from the date of notification, the priority shall be considered not to be claimed.

Article 24 (Requirement for the Unity of an Invention)

An application for registration of inventor's certificate or patent should refer to one invention only. But an application may refer to a group of inventions so linked as to form a single general inventive concept.

Article 25 (Cancellation or Change of the Application)

An applicant, before the completion of examination, may cancel his/her application or request to change his/her application from inventor's certificate into petty inventor's certificate or vice versa, from patent into utility model or vice versa, from patent into inventor's certificate or utility model into petty inventor's certificate.

The request to change from inventor's certificate into patent should be made before the publication of an application after the completion of examination as to form.

Article 26 (The Application for Registration of Patent Abroad)

Provided that institutions, enterprises, organizations or citizens submit an application for registration of patent to the Invention Administrative Institution, they may also submit it abroad. In this case, the Invention Agency should be entrusted.

Article 27 (Deposit for the Samples of Microorganism)

An applicant applying for registration of inventor's certificate or patent for the invention relating to microorganisms shall deposit those samples of microorganisms in the designated institution and receive a relevant certificate before the filing date.

Article 28 (Procedure Fee for Registration of Patent)

An applicant should pay the prescribed fees for the application, examination and registration of patent to the Invention Administrative Institution.

The State Price Institution shall be entitled to tariff.

Chapter 3 Examination for Registration of Inventor's Certificate or Patent

Article 29 (Stages of the Examination for Registration of Inventor's Certificate or Patent)

The examination for registration of inventor's certificate or patent consists of the stages of examination as to form and examination as to substance. The Non-permanent Committee of Invention Examination shall be organized in the Invention Administrative Institution for the examination for registration of inventor's certificate or patent.

Article 30 (Examination as to form)

The Invention Administrative Institution shall examine as to form for the application for registration of inventor's certificate or patent in due turn of the filing date.

It shall be checked out whether an application satisfies the provided formal requirements or not.

Where it satisfies, the application shall be published.

Article 31 (Processing of a Defective Application)

Where the Invention Administrative Institution finds that the application for registration of inventor's certificate or patent does not satisfy the provided requirements during the procedure of the examination as to form, it shall

notify the applicant of it.

If the applicant does not amend his/her application without any proper reason or does not submit any other opinion within 2 months from the date of notification, the application for registration of inventor's certificate or patent shall be considered to be cancelled, and that application shall be rejected.

If the applicant amends his/her application or submits his/her opinion within 2 months and it satisfies the provided requirements in the examination as to form, the relevant application shall be published. If not, it shall be rejected.

Article 32 (Submitting an Opinion on a Published Application)

The institutions, enterprises, organizations or citizens, that have an opinion in relation to an application for registration of inventor's certificate or patent published after the examination as to form, may submit an opinion to the Invention Administrative Institution before its examination as to substance is completed.

Article 33 (Examination as to Substance)

The Invention Administrative Institution should examine as to substance in relation to a published application for registration of inventor's certificate or patent after the examination as to form under the provided procedure.

In the examination as to substance, it shall be examined whether or not a submitted invention satisfies the requirements for granting inventor's certificate or patent.

Where the examination as to substance is completed successfully, a decision shall be made on the grant of inventor's certificate or patent and followed by a record and a relevant publication.

Article 34 (Issuance of a Certificate)

The Invention Administrative Institution shall issue a relevant certificate to the holder of inventor's certificate or patent.

An inventor's certificate shall only be issued after the verification of introduction result of relevant invention whereas patent certificate shall be issued after the payment of relevant fees.

Article 35 (Office Action)

Where the Invention Administrative Institution recognizes that a submitted invention does not satisfy the requirements for granting inventor's certificate or patent, it shall issue an office action to an applicant.

If the applicant does not reply without any proper reason within the provided time limit from the date of notification, opinions shall be considered to have been recognized.

Article 36 (Processing the Same Inventions Filed on the Same Date)

Where the Invention Administrative Institution recognizes that two or more inventions filed on the same date are essentially the same, it shall notify relevant parties of it. In this case, the applicant may be one of them or they may be common applicants under their agreement.

Where they do not come to an agreement, an inventor's certificate or patent shall not be granted.

Article 37 (Amendment of an Application in the Course of the Examination)

An applicant may amend his/her application for registration of inventor's certificate or patent in the course of the substantive examination. In this case, the amendments should be in the scope of disclosure of the specification and claims submitted originally.

Article 38 (Rejection of the Registration of Inventor's Certificate or Patent)

Where the Invention Administrative Institution rejects the registration for inventor's certificate or patent for an invention in the examination as to substance, it shall issue a notification indicating the reasons of rejection to the applicant.

Article 39 (Reexamination)

An applicant, if he/she has an opinion in relation to the rejection of registration of inventor's certificate or patent, may request a reexamination

within 3 months from the issuing date of a notification of rejection by the Invention Administrative Institution.

Where the Invention Administrative Institution receives a request of reexamination, it shall reexamine in a timely way and inform the applicant of the result.

Article 40 (Request of the Invalidation for Registration of Inventor's Certificate or Patent)

The institutions, enterprises, organizations or citizens, that have an opinion in relation to a registration for inventor's certificate or patent, may request to invalidate it to the Invention Administrative Institution. In this case, the latter shall notify the relevant holder of it and examine in a timely way.

The result of examination shall be notified to the parties concerned and the invalidated registration of inventor's certificate or patent shall be considered as a nonexistence originally.

Article 41 (Organizing the Board of Invention Reexamination)

The Invention Administrative Institution shall organize the Board of Invention Reexamination for the reexamination on the rejected application for registration of inventor's certificate or patent and the examination on the request of invalidation of registration of inventor's certificate or patent.

Chapter 4 Protection of Inventor's Certificate or Patent

Article 42 (Scope of the Protection by Inventor's Certificate or Patent)

The scope of protection by inventor's certificate or patent is determined based on the claims. In this case, the specification and drawings may be used for interpretation of the claims.

Article 43 (Acts of using an Invention)

Acts of using an invention include the followings.

1. Acts of making, using, selling or importing the product concerned in case of product invention
2. Acts of using the process concerned or using, selling or importing the product directly made by that process in case of process invention

Article 44 (Use of an Invention with Inventor's Certificate)

An invention, which inventor's certificate has been granted, may be used by the institution, enterprise or organization without any consent of the holder of inventor's certificate.

Article 45 (Rights of a Holder of Patent)

A patented invention shall be used only by its holder.

The uses of a patented invention or the acts of indicating the patent on a relevant product or its package without any consent of a patent holder or any proper reason and legal basis shall be prohibited.

Article 46 (Rights of an Inventor)

An inventor shall be entitled to indicate his/her name in an application for registration of inventor's certificate or patent and on its certificate.

Article 47 (Duration of a Patent)

The duration of a patent is 15 years from the filing date of an application for registration of patent and it may be extended to 5 years upon the request of the holder of the patent.

The duration of a utility model is 10 years from the filing date of an application for its registration and it can't be extended.

Article 43 (Payment of the Maintenance Fee of Patent)

The patent holder shall pay the prescribed maintenance fee to the Invention Administrative Institution from the year when the patent has been granted.

The maintenance fee shall be calculated from the filing date of an application for registration of patent.

Article 49 (Compensation for an Inventor)

The institutions, enterprises or organizations, which have been granted inventor's certificate or patent for service invention, should offer the inventor the prescribed share of the profit from the use of the invention or the transfer and technical service of the patent.

Article 50 (Transfer of Patent)

A holder of patent may license his/her invention or assign the patent under a contract with a consumer. In this case, the relevant contract shall be valid after the registration to the Invention Administrative Institution.

The licensed institutions, enterprises or organizations shall not license the invention to a third party without consent of the patent holder.

The Invention Administrative Institution shall register and publish the transfer of patent.

Article 51 (Methods of Exercising the Patent by a Citizen)

A citizen shall exercise his/her patent right by licensing his/her invention or assigning his/her right to the institutions, enterprises or organizations.

Article 52 (Methods of Exercising a Jointly owned Patent)

The use and transfer of a jointly owned patent shall follow the agreement of the parties concerned.

Profits from the transfer of patent shall be shared under the agreement of the parties concerned.

Article 53 (Compulsory License of a Patented Invention)

As for the invention which has not been exploited for over three years since the registration of patent without any proper reason, upon the request of a third party or the urgent need for national and social interests, the Invention Administrative Institution may, without consent of the patent holder, license it to the relevant institution, enterprise or organization. In this case,

the Invention Administrative Institution shall notify the patent holder of it, register and publish it.

The compulsory license, when it is considered that such reason no longer exists, shall be cancelled on the request of the patent holder.

Article 54 (Compensation for the Compulsory License)

The institution, enterprise or organization to which the compulsory license has been granted by the Invention Administrative Institution shall give corresponding compensation to the patent holder.

The amount of compensation shall be fixed under the agreement of the parties concerned. Where they disagree, the Invention Administrative Institution may fix it.

Article 55 (Cross License of a Patented Invention)

In case a patent holder wants to use the other's patented invention for his/her own, he/she may use the others' by cross license. If the party concerned disagrees, he/she can request the compulsory license to the Invention Administrative Institution.

Where the Invention Administrative Institution considers that the submitted request is equitable, it may grant the compulsory license.

Article 56 (Undue Lapse of Patent)

The validity of a patent shall lapse regardless of the term of protection in any of the following cases:

1. Where a holder of patent waives his/her patent in written declaration
2. Where the maintenance fee is not paid under the provided rules
3. Where the Invention Administrative Institution decides to invalidate the patent concerned
4. Where there is no competent institution, enterprise or organization to which patent will be assigned

Article 57 (Record and Publication of an Invalidated Patent)

Where the term of protection of patent has expired or the validity of patent has lapsed within the term of protection, the Invention Administrative

Institution shall record and publish it.

Article 58 (Settlement of the Dispute concerning Inventor's Certificate or Patent)

The dispute related with inventor's certificate or patent shall be settled between the parties concerned by consultation and where not, the Invention Administrative Institution may be requested to settle it.

Where the Invention Administrative Institution fails to settle it, the court or the organ concerned may be requested to do.

Article 59 (Investigation for the Settling of a Patent Dispute)

The Invention Administrative Institution, the court or the organ concerned may make a relevant investigation for the settlement of a dispute related with patent. In this case, under the provided procedures and methods it may conduct an on-the-spot inspection, a consultation, a review of documents, a request of appraisals, confirmation of data and etc.

The institution, enterprise, organization and citizen concerned shall actively cooperate with the investigation for dispute settlement.

Article 60 (Order to Prohibit the Acts of Patent Infringement)

If something occurred during the settlement of dispute is judged to be patent infringement, the Invention Administrative Institution may order a prohibition to the party concerned.

Where the relevant party infringed upon patent does not stop acts in question within 30 days from the date of the order of prohibition, the judicial organ concerned may be requested to prohibit the acts of patent infringement.

Where the judicial organ concerned considers that the request of the Invention Administrative Institution is equitable, it shall take relevant measures immediately.

Article 61 (Remedies for Acts of Patent Infringement)

Where a patent has been infringed, the relevant remedies shall follow the criteria as follows.

1. The losses a victim of patent has actually suffered by the acts of patent infringement

2. Where it is difficult to determine the losses a victim of patent has actually suffered, the profits an infringer of patent has actually gained

3. Where it is difficult to determine the profits an infringer of patent has actually gained, the profits a victim of patent may gain from a license of the invention

Article 62 (Compensation for the Use of an Invention during the Examination for Registration of Patent)

Where a third party has used an invention since publication of the application for registration of patent until its registration, the holder of patent may request him to compensate after registration of patent.

Article 63 (Exceptions from Patent Infringement)

Exceptions from patent infringement shall be as follows.

1. Where a third party uses, sells or imports the products after a holder of patent or a licensee has sold the patented products or the products made by the patented process

2. Where the third party, that was using the same invention lawfully or making necessary preparations for its use before the filing date of an application for registration of patent, uses the invention only in such a scope

3. Where an invention is used for the purpose of the operation of foreign transport means passing or staying temporarily in our country

4. Where an invention is used for scientific research or experiment

5. Where an invention is used only for preparation of medicaments necessary for the treatment of an individual patient according to a doctor's prescription

Chapter 5 Guidance and Control of Invention

Administration

Article 64 (Guidance of Invention Administration)

The Invention Administrative Institution shall guide the invention administration under the unified control of the Cabinet.

The Invention Administrative Institution shall consolidate its control and guidance on the application and examination for registration of inventor's certificate or patent, and the protection of inventor's certificate or patent.

Article 65 (Organization and Operation of an Invention Agency)

The institutions, enterprises or organizations concerned may set up and operate an invention agency under the authorization of the State.

An invention agency may represent the works concerning the application and examination for registration of inventor's certificate or patent, or the protection of inventor's certificate or patent.

An invention agency should not perform such acts as a disclosure of application for registration of inventor's certificate or patent, which have not been published by the Invention Administrative Institution.

Article 66 (Preferential Treatment and Appreciation for Inventors or Appliers)

The State shall accord social preferential treatment and appreciation to the inventor and applier that have introduced an invention to which inventor's certificate or patent has been granted to production and construction, and contributed to the development of the national economy.

Article 67 (Supervision and Control of Invention Work)

The supervision and control of invention administration shall be carried out by the Invention Administrative Institution and the supervisory and control organs concerned.

The Invention Administrative Institution and supervisory and control organs concerned shall enforce the strict supervision and control so as not to violate the orders of the application and examination for registration of inventor's certificate or patent, or the protection of inventor's certificate or patent.

Article 68 (Administrative or Penal Responsibilities)

An official or individual citizen of the institution, enterprise or organization responsible for serious consequences caused by violation of this Law, shall be imposed an administrative or a penal responsibility depending on the gravity.