

**Council for Trade-Related Aspects of
Intellectual Property Rights**

Original: English/
anglais/
inglés

**MAIN DEDICATED INTELLECTUAL PROPERTY
LAWS AND REGULATIONS NOTIFIED UNDER
ARTICLE 63.2 OF THE AGREEMENT**

REPUBLIC OF KOREA

The present document reproduces the text¹ of the Design Law as amended by Law No. 6413 of 3 February 2001 (entered into force on 1 July 2001), notified by Korea under Article 63.2 of the Agreement in a communication from its Delegation dated 5 November 2001.

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA
PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

RÉPUBLIQUE DE CORÉE

Le présent document contient le texte¹ de la Loi sur les dessins et modèles, modifiée par la Loi n° 6413 du 3 février 2001 (entrée en vigueur le 1^{er} juillet 2001), qui a été notifiée par la Corée au titre de l'article 63:2 de l'Accord dans une communication de sa délégation datée du 5 novembre 2001.

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

REPÚBLICA DE COREA

En el presente documento se reproduce el texto¹ de la Ley de Dibujos y Modelos Industriales, modificada por la Ley N° 6413 de 3 de febrero de 2001 (que entró en vigor el 1° de julio de 2001), que Corea notificó en virtud del párrafo 2 del artículo 63 del Acuerdo en una comunicación de su Delegación de fecha 5 de noviembre de 2001.

¹ In English only./En anglais seulement./En inglés solamente.

DESIGN LAW

CHAPTER I GENERAL PROVISIONS

Article 1 【Purpose】

The purpose of this Law shall be to encourage the creation of designs by ensuring their protection and utilization, so as to contribute to the development of industry.

Article 2 【Definitions】

The definitions of the terms used in this Law shall be as follows:

- (i) "design" means the shape, pattern, or color, or a combination of these in an article (including part of an article, hereinafter the same except where Article 12 applies)_which produces an aesthetic impression in the sense of sight;
- (ii) "registered design" means a design for which design registration has been granted;
- (iii) "design registration" means registration of examined or unexamined designs;
- (iv) "examined design registration" means registration of a design that is subject to examination as to whether it is completely qualified for registration;
- (v) "unexamined design registration" means registration of a design that is subject to examination as to whether the application for design registration satisfies the requirements for registration under this Law, with the exception of the requirements that are not applied under Article 26 (2).
- (vi) "working" of a design means any act of manufacturing, using, assigning, leasing, importing, or offering for assigning or leasing (including the displaying for the purpose of assignment or lease) the article to which the design has been applied.

Article 3 【Persons Entitled to Obtain Design Registration】

(1) Any person who creates a design or his successor shall be entitled to obtain design registration therefor in accordance with this Law; however, employees of the Korean Intellectual Property Office and the Intellectual Property Tribunal shall not obtain design registration during their employment at the Office except in the case of inheritance or bequest.

(2) If two or more persons jointly create a design, the right to obtain design registration shall be jointly owned.

Article 4 【*Mutatis Mutandis* Application of Provisions of the Patent Law】

The provisions of Articles 3 to 26 and 28 to 28-5 of the Patent Law shall apply *mutatis mutandis* to designs. In such cases, "Article 132^{ter}" in Article 6, 11 (1)iv, 15(1) and 17 of the same Law shall read "Article 67^{bis} or 67^{ter}" respectively.

CHAPTER II

REGISTRABILITY OF DESIGNS AND APPLICATIONS FOR REGISTRATION

Article 5 【Registrability of Designs】

(1) Designs that are industrially applicable may be registered unless they fall under any of the following subparagraphs:

- (i) the design was publicly known or publicly worked in the Republic of Korea or in a foreign country prior to the filing of the design application;
- (ii) the design was described in a publication distributed in the Republic of Korea or in a foreign country prior to the filing of the design application; or
- (iii) the design is similar to a design referred to in subparagraph (i) or (ii).

(2) Where a design could easily have been created by a person having ordinary skill in the art to which the design pertains, on the basis of a shape, pattern or color or a combination thereof widely known in the Republic of Korea (other than a design referred to in any of the subparagraphs of paragraph (1)) prior to the filing of the design application, design registration shall not be granted for such a design notwithstanding paragraph (1).

(3) Notwithstanding paragraph (1), design registration shall not be granted where a design for which an application for registration has been filed is identical or similar to a part of a design indicated in a specification, represented in a drawing, photograph or sample attached to another application for design registration that was filed before and laid open or published after the filing date of the aforesaid design application.

Article 6 【Unregistrable Designs】

Notwithstanding Article 5, the following designs shall not be registrable:

- (i) designs which are identical or similar to the national flag, national emblem, military flags, decorations, orders of merit, badges and medals of public organizations, national flags and national emblems of foreign countries, or characters or indications of international organizations;
- (ii) designs liable to contravene public order or morality; and
- (iii) designs liable to give rise to confusion with respect to articles connected with another person's business.
- (iv) designs consisting solely of a shape that is essential to secure the functions of the article.

Article 7 【Similar Designs】

(1) The owner of a design right or an applicant for design registration is entitled to obtain design registration which is similar only to his registered design or design for which an

application for registration has been filed (hereinafter referred to as the "principal design") as a similar design (hereinafter referred to as a "similar design").

(2) Paragraph (1) shall not apply where a design that is similar only to a similar design registered or applied for registration under paragraph (1).

Article 8 【Exception to Loss of Novelty】

(1) Where a design owned by a person entitled to design registration falls within one of the subparagraphs of Article 5(1), it shall be deemed that Article 5(1)(i) or (ii) shall not apply to said design or a similar design application filed by said design owner within six months from the date prescribed in the applicable subparagraph under Article 5(1).

(2) A person who seeks to enjoy the provision under paragraph (1) shall, at the time of filing the application for design registration, submit an application for design registration specifying the purport of said intention to the Commissioner of the Korean Intellectual Property Office, and submit documents proving the relevant facts within thirty days from the date of application for design registration; however, this shall not apply where the designs concerned fall under each subparagraph of Article 5(1) against his will.

Article 9 【Applications for Registration】

(1) Any person desiring to obtain design registration shall file a request for an application for examined design registration or a request for an application for unexamined design registration with the Commissioner of the Korean Intellectual Property Office, stating the following:

- (i) the name and the domicile of the applicant for registration of a design (if a legal entity, the name and the place of business);
- (ii) the name and the domicile, or place of business, of the agent, if any (if a patent corporation, its title, and office location, and the name of an appointed patent attorney);
- (iii) Deleted;
- (iv) the article which is the object of the design;
- (iv *bis*) whether the application is an application for independent design registration or similar design registration;
- (v) the registration or application number of the principal design (only where the applicant seeks design registration as a similar design under Article 7(1));
- (vi) the name and the domicile of the creator of the design; and
- (vii) matters prescribed in Article 23(3) (only when claiming a priority right).

(2) An application for an examined design registration or an application for unexamined design registration under paragraph (1) shall be accompanied by drawings in which the following matters are indicated with respect to each design :

- (i) the article that is the object of the design;

- (ii) an explanation of the design and the essentials of the creation;
 - (iii) serial numbers of the design (only if the application is for multiple design registration under Article 11*bis*)
- (3) An applicant for design registration may submit a photograph, or sample of the design instead of drawings as referred to in paragraph (2).
- (4) A person desiring to file an application for unexamined design registration shall indicate in a request for an the application for unexamined design registration whether the application is an application for multiple design registration under Article 11*bis* or not, and the number of designs in addition to matters falling under each subparagraph of paragraph (1).
- (5) A person desiring to file an application for multiple design registration under Article 11*bis* shall indicate in an application for unexamined design registration the particulars prescribed under paragraph (1)(i), (ii) and each of the following subparagraphs:
- (i) serial numbers of the designs; and
 - (ii) the particulars prescribed under subparagraphs (iv) to (vii) of paragraph (1).
- (6) Designs qualifying for unexamined design registration shall be limited to the goods designated by the Ordinance of the Ministry of Commerce, Industry and Energy among goods classified by Article 11*bis*. In the case of the designated goods, an application may be made only for unexamined design registration.
- (7) Matters other than those as prescribed in paragraphs (1) to (6), which are necessary for the application for design registration, shall be determined by the Ordinance of the Ministry of Commerce, Industry and Energy.

Article 10 【Joint Application】

Where the right to obtain design registration is jointly owned under Article 3(2), all joint owners shall jointly file an application for the registration of the design.

Article 11 【Scope of One Application】

- (1) An application for an examined design registration shall relate to one design only.
- (2) Any person desiring to file an application for design registration may do so only with respect to the classes of articles prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

Article 11*bis* 【Application for Multiple Design Registration】

- (1) An application for unexamined design registration may be made for twenty designs or less

(hereinafter referred to as an "application for multiple design registration"). In such cases, each design shall be represented separately.

(2) The scope of designs qualifying for an application for multiple design registration shall be designs applied to goods under the same classification as the classification of goods prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

(3) A person desiring to file an application for multiple design registration may file an application for a similar design registration falling within the category of a principal design, together with the principal design.

(4) Where a person files an application for multiple design registration of designs similar to his registered design or a design for which design registration is applied, he may file an application for multiple design registration only with respect to similar designs belonging to one principal design, notwithstanding the provisions of paragraph (3).

Article 12 【Design of a Set of Articles】

(1) Where two or more articles are used together as a set of articles, the design of the set of articles may acquire design registration provided that the set of articles constitutes a coordinated whole.

(2) The set of articles referred to in paragraph (1) shall be governed by the Ordinance of the Ministry of Commerce, Industry and Energy.

(3) Deleted

Article 13 【Secret Designs】

(1) An applicant for design registration may request that the design be kept secret for a period which shall be designated in the request and which shall not exceed three years from the date on which the establishment of the design right was registered. For a design for which an application for multiple design registration has been made, the request shall be made for all designs for which design registration is applied.

(2) A person desiring to make a request under paragraph (1) shall, at the time of filing of the application for design registration, state the designated period in the request and submit it to the Commissioner of the Korean Intellectual Property Office.

(3) The applicant for design registration, or the owner of a design right, may reduce or extend the period designated by him under paragraph (1) by a request. Where he extends that period, it shall not exceed three years from the date of registration of the establishment of the design right.

(4) In any of the following cases, the Commissioner of the Korean Intellectual Property

Office shall allow persons to have access to a design kept secret under paragraph (1):

- (i) where the request is made by a person who has obtained the consent of the owner of the design right;
- (ii) where the request is made by a party or an intervener in examination, opposition to registration of an unexamined design, trial, retrial or litigation proceedings relating to a design identical with or similar to the design kept secret;
- (iii) where the request is made by a person who has clearly stated that he was warned of infringement of the registered design; or
- (iv) where the request is made by a court or the Intellectual Property Tribunal.

(5) In cases concerning a request for laying-open of application under Article 23(2), the request pursuant to paragraph (1) shall be deemed to have been withdrawn.

Article 14 【Application for the Registration of a Design Filed by an Unentitled Person; Protection of Lawful Holder of Right】

If design registration cannot be granted on the ground that an application has been filed by a person who has not succeeded to the right to obtain design registration or who has laid a false claim to such right (hereinafter referred to as "the unentitled person"), a subsequent application filed by the lawful holder of the right shall be deemed to have been filed on the date of the application previously filed by the unentitled person. However, this provision shall not apply, where the subsequent application is filed by the lawful holder of the right more than thirty days after the application by the unentitled person was rejected.

Article 15 【Design Registration Granted to Unentitled Person; Protection of Lawful Holder of Right】

If design registration is revoked or invalidated by a trial decision for the lack of entitlement to obtain design registration under the provisions of Article 3(1), a subsequent application for design registration filed by the lawful holder of the right shall be deemed to have been filed on the date of filing of the application which led to the grant of the design registration that was revoked or invalidated; however, this provision shall not apply if the subsequent application is filed more than thirty days after the decision to revoke or to invalidate it became final and conclusive.

Article 16 【First-to-File Rule】

(1) Where two or more applications for design registration relating to the same or a similar design are filed on different dates, only the applicant filing the application having the earlier filing date may obtain design registration for the design.

(2) Where two or more applications for design registration relating to the same or a similar design are filed on the same date, only the person agreed upon by all applicants after consultation may obtain design registration for the design and, if no agreement is reached or

no consultation is possible, none of the applicants shall obtain design registration therefor.

(3) Where an application for design registration is withdrawn or invalidated, such application shall, for the purposes of paragraphs (1) and (2), be deemed to have never been filed.

(4) An application for design registration filed by a person who is not the creator of the design, nor the successor in title to the right to obtain design registration shall, for the purposes of paragraphs (1) and (2), be deemed never to have been filed.

(5) The Commissioner of the Korean Intellectual Property Office shall, in the case provided for in paragraph (2), order the applicants to notify him of the results of the consultation within a designated period. If such a report is not submitted within the designated period, the applicants shall be deemed not to have concluded to an agreement within the meaning of paragraph (2).

Article 17 【Amendment of Procedure】

The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may order correction of a procedure relating to a design within a designated period:

- (i) where the requirements of Article 3(1) or (6) of the Patent Law applied under Article 4 of this Law have not been complied with;
- (ii) where the procedure has not complied with the formalities specified in this Law or a Presidential Decree; or
- (iii) where the fees required in accordance with Article 34 have not been paid.

Article 18 【Amendment to Application and Change of Gist】

(1) An applicant for design registration may amend the particulars in a request, a specification or a drawing attached to the request for an application; provided that, the gist of the request, the specification and the drawing attached to the original application has not been changed before transmittal of the examiner's first decision to either grant design registration under Article 28 or refuse design registration under Article 26 (hereinafter referred to as "decision to grant or refuse design registration"). However, if a request for a trial against the examiner's decision to refuse design registration is filed, the applicant may amend the specification or the drawing within thirty days from the filing date of such request.

(2) Where an amendment under paragraph (1) is recognized as a change of gist of of the request, the specification or the drawing originally attached to the request, application after the date on which the establishment of the design right was registered, the application for registration of such design shall be deemed to have been filed at the date of filing of such amendment.

Article 18^{bis} 【Rejection of Amendment】

- (1) Where an amendment to a specification or drawing attached to an application under the provisions of Article 18 changes the gist thereof, the examiner shall reject the amendment by decision.
- (2) Where a decision to reject an amendment under paragraph (1) has been made, the examiner's decision to grant or refuse design registration for the concerned application for design registration shall not be rendered until a period of thirty days elapses from the date of transmittal of the certified copy of said decision.
- (3) Where an applicant has requested a trial under Article 67^{bis} against a decision to reject an amendment under paragraph (1), the examiner shall suspend examination of the application for design registration until the trial decision has become final and conclusive.
- (4) The decision to reject an amendment under paragraph (1) shall be made in writing and shall state the reasons therefor.

Article 19 【Division of Applications for the Registration of Designs】

- (1) A person falling under any of the following subparagraphs may divide a part of his application for design registration into one or more new applications.
 - (i) a person who has made an application for registration of two or more designs in contravention of Article 11;
 - (ii) a person who has made an application for multiple design registration; or
 - (iii) Deleted.
- (2) Such divisional applications shall be deemed to have been filed at the time of filing of the original application. However, this provision shall not apply for the purposes of Article 8(2) or Article 23(3) and (4).
- (3) A division of an application for design registration under paragraph (1) may be made within the time limit provided for amendment under Article 18(1).
- (4) Deleted.

Article 20 【Conversion of Application】

- (1) An applicant may convert his application for a similar design registration into an application for an independent design registration. In such a case, the application for an independent design registration shall be deemed to have been filed at the time of filing of the application for a similar design registration. However, this provision shall not apply for the purposes of Article 8(2) or Article 23(3) and (4).

(2) An applicant may convert his application for an independent design registration into an application for a similar design registration. In such a case, the application for a similar design registration shall be deemed to have been filed at the time of filing of the application for an independent design registration. However, this provision shall not apply for the purposes of Article 8(2) or Article 23(3) and (4).

(3) No conversion of an application under Paragraphs (1) and (2) may be made after an examiner's decision to grant or refuse design registration or a trial decision on the initial application for the design or the similar design registration becomes final and conclusive.

(4) Deleted.

**Article 20bis 【Conversion of Application for Registration of
Unexamined Designs, etc.】**

(1) Where a person makes an application for an unexamined design registration in respect of articles subject to an examined design registration, or vice versa, in contravention of Article 9(6), he may convert the application for a design registration into an application for an examined design registration or an unexamined design registration.

(2) An application for design registration converted by paragraph (1) shall be deemed to have been made when an initial application for design registration is made. However, this shall not apply for the purposes of Article 8(2) or Article 23(3) and (4).

(3) A conversion of an application under paragraph (1) may not be made after decision to grant or refuse design registration or a trial decision on the initial application for design registration has been made.

(4) Deleted.

Article 21 Deleted

Article 22 Deleted

Article 23 【Priority Claim under Treaty】

(1) When a national of a member country of a treaty, which recognizes under the treaty a right of priority for an application filed by a national of the Republic of Korea, claims a right of priority for an application for design registration in the Republic of Korea on the basis of the prior application for the same design filed in his country or in one of said countries, the filing date of the prior application in the foreign country shall be deemed to be the filing date in the Republic of Korea for the purposes of Article 5 and 16. Where a national of the Republic of Korea has filed an application for design registration in a country which recognizes, under a treaty, a right of priority for an application for design registration filed by nationals of the Republic of Korea, and claims the right of priority for the application for design registration in the Republic of Korea on the basis of the prior application for the same

design in said country, this provision shall also apply.

(2) A person intending to claim a right of priority shall file an application for design registration within six months from the filing date of the prior application serving as the basis for claiming the right of priority.

(3) A person intending to claim a right of priority in accordance with paragraph (1) shall, at the time of filing the application for design registration, specify such claim, the name of the country in which the prior application was filed, and the filing date of such application, in the application for design registration.

(4) A person who has claimed a right of priority in accordance with paragraph (3) shall submit a written statement setting forth the filing date of the application, certified by the government of the country where the prior application was filed, and a certified copy of the drawing of the design, to the Commissioner of the Korean Intellectual Property Office within three months from the filing date of the application for design registration.

(5) Where a person who has claimed a right of priority in accordance with paragraph (3) fails to submit the document prescribed in paragraph (4) within the required time limit, the claim to the right of priority shall lose its effect.

Article 23bis 【Laying Open of Application】

(1) An applicant for an examined design registration may request the laying open of his/her application by the Ordinance of the Ministry of Commerce, Industry and Energy.

(2) Where the request for the laying open of an application is made under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall lay open the design application in the Design Gazette in accordance with Article 78. However, the Commissioner of the Korean Intellectual Property Office may not lay open the application in cases where the design falls under any of the following subparagraphs:

(i) is liable to contravene public order or morality; or

(ii) should be kept secret under Article 41 of the Patent Law, applied *mutatis mutandis* under Article 24 of the Design Law.

(3) The request for the laying open of an application prescribed in paragraph (1) shall not be available after initial certified copies of the decision to grant or refuse design registration on the application for the design registration have been transmitted.

(4) Deleted.

Article 23^{ter} 【Effects of Laying Open Applications】

(1) After an application is laid open, the applicant may give warning to any person who has commercially or industrially worked the filed design or a design similar thereto, in writing, indicating that an application for design registration has been filed.

(2) The applicant may demand a person, who has been warned under the provisions of paragraph (1), or worked the filed design or a design similar thereto knowing that the design has been laid open, to pay compensation in an amount equivalent to what he would normally receive for the working of the design registered or a design similar thereto from the time of warning or the time when he/she became aware of the fact that the design application had been filed to the time of registration of the filed design.

(3) The right to demand compensation under paragraph (2) may be exercised only after registration of the filed application.

(4) The exercise of the right to demand compensation under paragraph (2) shall not preclude the exercise of the design right.

(5) Articles 63 and 67 of the Design Law and Articles 760 and 766 of the Civil Code shall apply *mutatis mutandis* to the exercise of the right to demand compensation under paragraph (1). In such case, "the time when the damaged party or his legal representative became aware of such damage and of the identity of the person causing it" in Article 766 of the Civil Code shall read "the date of registration of the design right".

(6) Where an application for design registration is abandoned, invalidated or withdrawn after the laying open of the application, a decision to refuse design registration, a decision to revoke design registration under Article 29-5 (3), or a trial decision to invalidate design registration under Article 68 (except where Article 68 (1)(iv) applies) has become final and conclusive, the right under paragraph (2) shall be deemed to have never existed.

Article 23^{quater} 【Transfer, etc. of Right to Obtain Registration of Design】

(1) The right to obtain registration of a design may be transferable. However, the right to obtain a principal design and the right to obtain a similar design shall be transferred together.

(2) The right to obtain registration of a design may not be pledged.

(3) Where the ownership of the right to obtain registration of a design is held jointly by two or more persons, none of the joint owners may assign his/her share without obtaining consent from all the other joint owners.

Article 23^{quinquies} 【Furnishing of information】

Any person may furnish the Commissioner of the Korean Intellectual Property Office with information about a design for which an application for design registration has been filed

together with evidence to the effect that the concerned design is unregistrable under any of the subparagraphs of Article 26 (1).

Article 24 【*Mutatis Mutandis* Application of Provisions of the Patent Law】

The provisions of Articles 38 to 41 of the Patent Law shall apply *mutatis mutandis* to the registrability of designs and to applications for design registration.

CHAPTER III EXAMINATION

Article 25 【Examination by Examiner】

(1) The Commissioner of the Korean Intellectual Property Office shall have applications for design registration and oppositions to an unexamined design registration examined by an examiner.

(2) The qualifications for the examiners shall be prescribed by Presidential Decree.

Article 26 【Decision to Refuse Design Registration】

The examiner shall make a decision to refuse design registration where it falls under any of the following subparagraphs (hereinafter referred to as "reasons for refusal"):

- (i) Where the design in the application for design registration is not registrable in accordance with Articles 5 to 7, 9(6), 10 to 12, 16(1) and (2) of this Law or Article 25 of the Patent Law as applied under Article 4 of this Law;
- (ii) Deleted.
- (iii) Where a person shall not be entitled to obtain design registration under the provision of Article 3 (1), or where the design in the application for design registration is not registrable in accordance with the proviso of Article 3 (1);
- (iv) Where an application for design registration is in violation of the provisions of a treaty; or
- (v) Where an application for a similar unexamined design registration falls under any of the following subparagraphs:
 - (a) where a design which is registered as a similar design or a design for which a similar design registration is applied, is indicated as a principal design;
 - (b) where the term of the design right of a principal design has expired; or
 - (c) where an application for a principle unexamined design registration has been invalidated, withdrawn or abandoned, or where a decision to refuse design registration becomes final and conclusive.
 - (d) where an applicant for similar unexamined design registration is not identical

with the owner of a design right relating to a principle design or an applicant for principle design registration.

(e) where a design for which similar unexamined design registration is applied is not similar to a principle design.

(2) Notwithstanding paragraph (1), Articles 5, 7, 11(1), 16(1) and (2) shall not apply to an application for an unexamined design registration (except where the design is industrially applicable under provisions other than those prescribed in the subparagraphs of Article 5(1)).

Article 27 【Notification of Reasons for Refusal】

(1) When the examiner intends to make a decision to refuse design registration under Article 26, he shall notify the reason for refusal (referring to reasons falling under any of the subparagraphs of Article 26(1), hereinafter referred to as "reason for refusal") to the applicant for design registration, and give him an opportunity to submit a written opinion within a designated time limit.

(2) Where there are reasons for refusal with respect to some of the designs in an application for multiple design registration, the serial number of the designs concerned, the article that is the object of the design and the reasons for refusal shall be indicated.

Article 28 【Decision to Grant Design Registration】

Where an examiner finds no reason for refusing an application for the registration of a design, he shall render a decision to grant design registration.

Article 29 【Method of Decision to Grant or Refuse Design Registration】

(1) The examiner's decision to grant or refuse design registration shall be in writing and shall state the reasons therefor.

(2) When the examiner's decision to grant or refuse design registration has been made, the Commissioner of the Korean Intellectual Property Office shall transmit a certified copy of the decision to the applicant for the design registration.

Article 29bis 【Opposition to the Registration of an Unexamined Design】

(1) From the date of registration of establishment of a design right under an application for unexamined design registration to the expiry of the period of three months after the date of publication of an unexamined design registration, any person may file an opposition to the grant of the design right with the Commissioner of the Korean Intellectual Property Office based on the ground that the registration falls under any of the following subparagraphs. For registration of designs under an application for multiple design registration, an opposition may be filed for each design.

(i) where the design in the application for design registration is in violation of Articles 5, 6, 7(1), 10, 16(1) and (2) of this Law or Article 25 of the Patent Law as applied under

Article 4 of this Law;

(ii) where a person shall not be entitled to obtain design registration under the provision of Article 3 (1) or the design in the application for design registration is not registrable under the proviso of Article 3 (1); or

(iii) where an application for design registration is in violation of the provisions of a treaty.

(2) A person filing an opposition to an unexamined design registration shall submit an application for opposition to an unexamined design registration, to the Commissioner of the Korean Intellectual Property Office which shall state the following, together with supporting evidence:

(i) the name and address of the person filing the opposition against the unexamined design registration (if a legal entity, the title, place of business);

(i bis) the name and the domicile, or place of business, of the agent, if any (if a patent corporation, its title, office location, and the name of the appointed patent attorney);

(ii) the indication of the registered design(s) subject to the opposition to an unexamined design registration;

(iii) the purpose of the opposition to an unexamined design registration; and

(iv) the grounds for the opposition to an unexamined design registration and indication of supporting evidences.

(3) When an opposition to unexamined design registration is filed, the presiding trial examiner appointed in accordance with Article 29^{quater}(3) shall transmit a certified copy of the opposition to an unexamined design registration to the owner of the registered design right subject to the opposition and give him an opportunity to submit a written reply within a designated time limit.

(4) The provision of Article 68(6) shall apply *mutatis mutandis* to the filing of an opposition to an unexamined design registration under paragraph (1).

Article 29^{ter} 【Amendment to Grounds for Opposition to Unexamined Design Registration, etc.】

A person filing an opposition to an unexamined design registration may amend the grounds or evidence indicated on the written opposition to an unexamined design registration within thirty days from the date of filing of the said opposition.

Article 29^{quater} 【Collegial Body for Examination and Decision, etc.】

(1) A collegial body consisting of three examiners shall examine and decide an opposition to an unexamined design registration.

(2) The Commissioner of the Korean Intellectual Property Office shall designate examiners

constituting a collegial body for each opposition to an unexamined design registration.

(3) The Commissioner of the Korean Intellectual Property Office shall appoint one of the examiners designated by paragraph (2) as a presiding examiner.

(4) The provisions of Articles 144(2), 145(2) and 146 (2), (3) of the Patent Law shall apply *mutatis mutandis* to the collegial body of examiners and the presiding examiner.

Article 29^{quinquies} 【Decision on Opposition to Unexamined Designs Registration】

(1) The examiner shall make a decision on the opposition to an unexamined design registration after the time limits provided under Articles 29^{bis}(3) and 29^{ter} have lapsed.

(2) Notwithstanding Article 29^{bis}(3), where a person filing a opposition to an unexamined design registration fails to submit the grounds and evidence thereon, the presiding trial examiner may reject an opposition to an unexamined design registration by decision after the time limits provided under the provisions of Article 29^{ter} have lapsed.

(3) Where it is deemed that an opposition to an unexamined design registration has merit, the collegial body of examiners shall make a decision to revoke the registered design (hereinafter referred to as a "decision to revoke design registration").

(4) Where a decision to revoke design registration becomes final and conclusive, the design right shall be deemed never to have existed.

(5) Where it is deemed that the opposition to an unexamined design registration has no merit, the collegial body of examiners shall make a decision to maintain the registered design (hereinafter referred to as a "decision to maintain design registration").

(6) No appeal shall be made against a decision to refuse and/or maintain design registration to an opposition to an unexamined design registration.

Article 30 【Mutatis Mutandis Application of Provisions of the Patent Law】

(1) The provisions of Articles 58, 58^{bis}, 61, 68 and 78 of the Patent Law shall apply *mutatis mutandis* to examination of applications for design registration.

(2) The provisions of Articles 72, 73, 75, 76, 78, 141(1) to (3), 142, 148(i) to (v), (vii), 154(8), 157, 165(3) to (6), and 166 of the Patent Law shall apply *mutatis mutandis* to examination or decision of the opposition to an unexamined design registration.

CHAPTER IV REGISTRATION FEES AND REGISTRATION OF DESIGNS

Article 31 【Design Registration Fees】

(1) A person desiring to register the establishment of a design right, or the owner of a design right, shall pay the design registration fees (hereinafter referred to as "registration fees").

(2) Matters relevant to the payment of registration fees, including the method and time limits for payment of such fees under paragraph (1), shall be prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

Article 31bis 【Abandonment for Each Design at the Time of Payment of Registration Fees】

(1) A person who receives a decision to grant design registration for an application for multiple design registration may abandon some individual designs at the time of payment of the registration fees.

(2) Necessary matters relating to the abandonment of a design under paragraph (1) shall be prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy .

Article 32 【Payment of Registration Fees by an Interested Party】

(1) Regardless of the intent of a person responsible for payment of registration fees, any interested party may pay such fees.

(2) An interested party who has paid the registration fees in accordance with paragraph (1) may demand reimbursement of the fees from the responsible party if such party is currently making a profit.

Article 33 【Late Payment of Registration Fees】

(1) Any person wishing to register the establishment of a design right, or the owner of a design right, may make late payments of the registration fees within six months from the expiration of the payment period prescribed under Article 31(2).

(2) Where registration fees are paid late under paragraph (1), an amount equivalent to twice the registration fees shall be paid.

(3) If the owner of the design right or person wishing to register the establishment of a design right fails to pay the registration fees within the extended period provided for under paragraph (1), the application for design registration shall be deemed to have been abandoned or the design right concerned shall be deemed to have been extinguished retroactively to the time when the initial period for payment of the fees expired.

Article 33bis [Restoration of Application for Design Registration or Design Right by Late Payment of Registration Fees, etc.]

(1) Where a person desiring to register a design right or an owner of a design right is unable to make late payment of the registration fees for reasons beyond his control within the period for late payment under Article 33(1), he may make late payment of the registration fees within fourteen days from the date on which the reasons cease to exist. However, this provision shall not apply where six months from the expiry of the period for late payment under Article 33(1) have elapsed.

(2) Where the late payment of the registration fees are made in accordance with paragraph (1), notwithstanding Article 33(3), the application for the design registration shall be deemed not to have been abandoned and the design right concerned shall be deemed to have existed retroactively to the time when the period for the payment of the registration fees expired.

(3) The effects of an application for design registration or a design right under paragraph (2) shall not extend to the act of working said design or a design similar thereto by another person from the date of expiration of the period for late payment of the registration fees to the date of late payment of said registration fees (hereinafter referred to as the "term of limited effect").

(4) Where a person has, in good faith, been commercially or industrially working or preparing to work a design for which an application for design registration has been filed, a registered design, or a design similar thereto under paragraph (2) in the Republic of Korea during the term of limited effect, he shall have a non-exclusive license for the design right concerned. However, said non-exclusive license shall be within the scope of the object of the design or business that he is working or preparing to work.

(5) A person who has a non-exclusive license in accordance with paragraph (4) shall pay reasonable remuneration to the owner of the design right or the exclusive licensee.

Article 34 [Official Fees]

(1) A person who files an application for design registration, makes a request or initiates any other procedure shall pay the official fees.

(2) Matters relevant to the payment of official fees, including the method and time limits for payment of the fees under paragraph (1), shall be prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy.

Article 35 [Reduction or Exemption of Registration Fees or Official Fees]

(1) Notwithstanding Articles 31 and 34, the Commissioner of the Korean Intellectual Property Office shall grant an exemption from the payment of registration fees or official fees

in the following situations:

- (i) official fees or registration fees in relation to applications for design registration or design rights belonging to the State; or
- (ii) fees for requests for an invalidation trial made by an examiner under Article 60(1).

(2) Notwithstanding Articles 31 and 34, where an application for design registration has been filed by an entitled person in accordance with Article 3 of the National Assistance Law, or a person prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy, the Commissioner of the Korean Intellectual Property Office may reduce or exempt from payment, the registration fees equivalent to the first three years for the registration of the establishment of a design right and official fees as prescribed by the Ordinance of the Ministry of Commerce, Industry, and Energy.

(3) A person who wishes to take advantage of reduced registration fees or exemption from the payment of registration fees or official fees in accordance with paragraph (2) shall submit the documents prescribed by the Ordinance of the Ministry of Commerce, Industry and Energy to the Commissioner of the Korean Intellectual Property Office.

Article 36 【Refund of Registration Fees, etc.】

(1) The registration fees and official fees which have been paid shall not be refunded; however, such fees are refundable upon the request of the person making payment in the following cases:

- (i) Registration fees and official fees which were paid by mistake;
- (ii) Amount corresponding to the registration fee for the year following the year in which the decision on revocation or invalidation of the design registration becomes final and conclusive.

(2) Where registration fees and official fees have been paid incorrectly, the Commissioner of the Korean Intellectual Property Office shall make a notification to the party who paid said registration fees and official fees

(3) The refund of the registration fees and official fees as referred to in paragraph (1)(i) may not be requested following the expiration of one year from 2, and the amount corresponding to the registration fee as referred to in paragraph (1)(ii) is not subject to a refund from the date on which the decision to revoke to design registration becomes final and conclusive.

Article 37 【Design Register】

(1) The Commissioner of the Korean Intellectual Property Office shall keep a Design Register at the Korean Intellectual Property Office and shall register the following matters:

- (i) the establishment, transfer, extinguishment or restriction on disposal of a design right;
- (ii) the establishment, maintenance, transfer, modification, extinguishment or restriction on

disposal of an exclusive or non-exclusive license; and

- (iii) the establishment, transfer, modification, extinguishment or restriction on disposal of a pledge on a design right or on an exclusive or non-exclusive license.

(2) The Design Register under paragraph (1) may be stored in whole or in part in electronic format, such as on an electronic recording medium.

(3) Relevant matters relating to the particulars and procedures of registration not provided for in paragraphs (1) and (2) shall be prescribed by Presidential Decree.

Article 38 【Issuance of Design Registration Certificate】

(1) When the establishment of a design right has been registered, the Commissioner of the Korean Intellectual Property Office shall issue design registration certificate to the owner of the registered design.

(2) When design registration certificate does not coincide with the Design Register or other documents, the Commissioner of the Korean Intellectual Property Office shall, upon request or *ex officio*, reissue the design registration certificate with amendments, or issue a new design registration certificate.

CHAPTER V DESIGN RIGHT

Article 39 【Registration of Establishment of Design Right】

(1) A design right shall be effective upon registration of its establishment.

(2) When the registration fees have been paid in accordance with Article 31(1), or when an exemption from payment of such fees or a reduction of payment has been granted under Article 35(1) or (2), the Commissioner of the Korean Intellectual Property Office shall publish the following particulars in the Design Gazette:

- (i) the name and domicile of the owner of the design right (if a legal entity, the title, place of business);
- (ii) the registration number of the design; and
- (iii) the date of registration of the establishment of the right.

Article 40 【Term of Design Right】

(1) The term of a design right shall be fifteen years from the date of registration of its establishment. However, the expiration date of the term of a design right relating to a similar design shall be the expiration date of the term of the design right relating to the principal design.

(2) Where design registration is bestowed to a lawful holder under Article 14 or 15, the term of the design right under paragraph (1) shall run from the day following the date of registration of the design right previously filed by the unentitled person.

Article 41 【Effects of Design Right】

The owner of a design right shall have the exclusive right to work the registered design and a design similar thereto commercially and industrially. However, where the design right is subject to an exclusive license, this provision shall not apply to the extent wherein the exclusive licensee has the exclusive right to work the registered design or similar design under Article 47(2).

Article 42 【Design Right Relating to Similar Designs】

A design right relating to a similar design as defined in Article 7(1) shall be incorporated in a design right relating to the principal design.

Article 43 【Scope of Protection of Registered Designs】

The scope of protection conferred by a registered design shall be determined by the terms of the specification in the application, the design represented in a drawing attached to the application or shown in a photograph or sample attached to the application, and in the explanation of the intent and purpose of said design.

Article 44 【Limitations of Design Right】

The effects of a design right shall not extend to:

- (i) use of the registered design for the purpose of research or experiment;
- (ii) vessels, aircrafts or vehicles merely passing through the Republic of Korea or the machinery, instruments, equipment or other accessories used therein; or
- (iii) identical products existing in the Republic of Korea at the time the application for registration of a design was filed.

Article 45 【Relationship with Another Registered Design】

(1) Where the working of a registered design would utilize another person's registered design or design similar thereto, patented invention, registered utility model or registered trademark under an application filed prior to the filing date of the application for the registration of a design concerned, or where a design right conflicts with another person's patent right, utility model right or trademark right under an application filed prior to the filing date of the application for registration of a design concerned, the owner of the design right or exclusive or non-exclusive licensee shall not work the registered design commercially or industrially

without the consent of the owner of the earlier patent right, utility model right or trademark right, except where Article 70 applies.

(2) Where the working of a design similar to a registered design would utilize another person's registered design or design similar thereto, patented invention, registered utility model or registered trademark under an application filed prior to the filing date of the application for the registration of a design concerned, or where a design right of the design similar to the registered design conflicts with another person's registered design, patent right, utility model right or trademark right under an application filed prior to the filing date of the application for registration of the design concerned, the owner of the design right or exclusive or non-exclusive licensee shall not work the design similar to the registered design commercially or industrially without the consent of the owner of the earlier patent right, utility model right or trademark right, except where Article 70 applies.

(3) Where the working of a registered design or a design similar thereto would utilize or conflict with another person's copyright, effective prior to the filing date of the application for registration of a design concerned, the owner of the design right or exclusive or non-exclusive licensee shall not work the registered design or design similar thereto commercially or industrially without the consent of the owner of the copyright.

Article 46 【Assignment and Joint Ownership of Design Right】

(1) A design right may be assigned. However, a design right relating to a principal design and a design right relating to a similar design shall be assigned together.

(2) A joint owner of a design right may neither assign his share nor establish a pledge upon it without the consent of all the other joint owners.

(3) Each of the joint owners may, except as otherwise agreed by a contract among all the joint owners, work the registered design or similar design by himself without the consent of the other joint owners.

(4) A joint owner may grant neither an exclusive license nor a non-exclusive license under the design right without the consent of all the other joint owners.

(5) A design right which is registered as a multiple design may be divided and transferred for each design right.

Article 47 【Exclusive License】

(1) The owner of a design right may grant an exclusive license on the design right.

(2) An exclusive licensee who has been granted an exclusive license under paragraph (1) shall have the exclusive right to work the registered design or design similar thereto commercially and industrially, to the extent provided for in the license contract.

(3) An exclusive licensee may not transfer the license without the consent of the owner of the design right, except where it is transferred together with the business in which it is worked, or in the case of inheritance or other general succession.

(4) An exclusive licensee may establish a pledge or grant a non-exclusive license on the exclusive license only with the consent of the owner of the design right.

(5) The provisions of Article 46(2) to (4) shall apply *mutatis mutandis* to exclusive licenses.

Article 48 Deleted

Article 49 【Non-exclusive License】

(1) The owner of a design right may grant a non-exclusive license on his design right.

(2) A non-exclusive licensee shall have the right to work the registered design and a design similar thereto commercially and industrially to the extent provided for in the Design Law or by the license contract.

(3) The provisions of Article 46(2) and (3) and Article 102(4) to (6) of the Patent Law shall apply *mutatis mutandis* to non-exclusive licenses.

Article 50 【Non-exclusive License by Virtue of Prior Use】

Where, at the time of filing of an application for the registration of a design, a person has created a design which is identical or similar to the design in an existing application, without having prior knowledge of the design in the application, or has learned how to create the design from another person, and has been working the design commercially or industrially in the Republic of Korea, in good faith, or has been making preparations therefor, shall have a non-exclusive license on that registered design or design similar thereto. Such license shall be limited to the design which is being worked, or for which preparations for working have been made, and to the purpose of such working or preparations.

Article 51 【Non-exclusive License Due to Working Prior to Registration of Demand for Invalidation Trial】

(1) Where a person falling within any of the following subparagraphs has been working a design or a design similar thereto, commercially or industrially in the Republic of Korea, in good faith, or has been making preparations therefor, prior to the registration of a request for an invalidation trial of the design registration concerned, without knowing that the design registration is subject to invalidation, such person shall have a non-exclusive license on that design right or on the exclusive license existing at the time when the design registration was invalidated, but such non-exclusive license shall be limited to the design which is being worked or for which preparations for working are being made and to the purpose of such working or preparations:

- (i) the original owner of the design right, where one of two or more design registrations granted for the same or a similar design has been invalidated;
 - (ii) the original owner of the design right, where his design registration has been invalidated and design registration for the same or a similar design has been granted to an entitled person;
 - (iii) in the cases referred to in subparagraphs (i) and (ii), a person who, at the time of registration of the request for an invalidation trial of the design right that has been invalidated, has been granted an exclusive or non-exclusive license, or non-exclusive license on the exclusive license, and such license has been registered. However, a person falling under Article 118(2) of the Patent Law as applied under Article 61 of the Design Law is not required to register the license.
- (2) A person who has been granted a non-exclusive license in accordance with paragraph (1) shall pay reasonable remuneration as consideration to the owner of the design right or the exclusive licensee.

Article 52 [Non-exclusive License After Expiration of Design Right, etc.]

- (1) Where a design similar to a registered one conflicts with a design right which has been registered prior to or on the date of application for registration of the design (hereinafter referred to as a "primary design right"), the owner of the primary design right shall have a non-exclusive license with respect to the design right not exceeding the scope of the primary design right when the term of primary design right expires, or has non-exclusive license with respect to an exclusive license of a design right which exists at the time when the term of the design right expires.
- (2) Under paragraph (1), an exclusive licensee of a primary design right which exists at the time when the term of the primary right expires, or a non-exclusive licensee under Article 118(1) of the Patent Law, as applied *mutatis mutandis* in accordance with Article 61 of the Design Law, has a non-exclusive license with respect to a design right not exceeding the scope of the primary design right, or has a non-exclusive license with respect the exclusive license of the design right which exists at the time when the term of primary design right expires.
- (3) The provisions of paragraphs (1) and (2) shall apply *mutatis mutandis* to cases where a registered design or a design similar thereto conflicts with a patent right or a utility model right which has been registered prior to or on the date of application for registration of design, and where the term of the patent right or utility model right expires.
- (4) The owner of a non-exclusive license pursuant to the provisions of paragraph (2) (including cases in which the provisions of paragraph (3) apply *mutatis mutandis*) shall pay reasonable remuneration to the owner of the design right or the exclusive licensee in relation to the design right.

Article 53 【Abandonment of Design Right】

The owner of a design right may abandon his design right.

Article 54 【Restriction on Abandonment of Design Right, etc.】

(1) The owner of a design right shall not abandon his design right without the consent of the exclusive licensee, pledgee, or non-exclusive licensee under Articles 47(4) or 49(1) of the Design Law or Article 39(1) of the Patent Law as applied *mutatis mutandis* under Article 24 of the Design Law.

(2) An exclusive licensee shall not abandon his exclusive license without the consent of the pledgee or non-exclusive licensee under the provisions of Article 47(4).

(3) A non-exclusive licensee shall not abandon his non-exclusive license without the consent of the pledgee.

Article 55 【Effect of Abandonment】

The design right, or exclusive or non-exclusive license thereon, shall be extinguished as of the time of abandonment of a design right or of an exclusive or non-exclusive license.

Article 56 【Pledge】

Where a design right or an exclusive or non-exclusive license is the subject of a pledge, the pledgee may not work the registered design except as otherwise provided by contract.

Article 57 【Subrogation for Right of Pledge】

A pledge may be exercised against the remuneration provided for under the Design Law or against remuneration or goods to be received for the working of the design right; however, an attachment order shall be obtained prior to the payment or delivery of the remuneration or goods.

Article 58 【Non-exclusive License When Transferring the Design Right by Exercising the Pledge Right】

Where the owner of a design right has worked the registered design or similar design which is the subject of a pledge prior to the establishment of the pledge, and the design right is subsequently sold at auction, etc., he shall have a non-exclusive license on the registered design right; in such case, the owner of the design right shall pay reasonable remuneration to the pledgee.

Article 59 【Extinguishment of Design Right in Absence of Successor】

A design right shall be extinguished if, at the time of succession, no successor exists.

Article 60 【Report on Working of Registered Design】

The Commissioner of the Korean Intellectual Property Office may require the owner of a design right, or exclusive or non-exclusive licensee, to report upon whether the registered design has or has not been worked and the extent of such working, etc.

Article 61 【*Mutatis Mutandis* Application of Provisions of the Patent Law】

The provisions of Articles 101, 106, 118 and 125bis_of Patent Law shall apply *mutatis mutandis* to design rights.

CHAPTER VI PROTECTION OF OWNER OF DESIGN RIGHT

Article 62 【Injunction Against Infringement, etc.】

(1) An owner of a design right or exclusive licensee may request a person who is infringing or is likely to infringe on his rights to discontinue or refrain from such infringement.

(2) An owner of a design right or an exclusive licensee who is acting under paragraph (1) may demand the destruction of the articles which resulted from the act of infringement, the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

Article 63 【Acts Deemed to be Infringing】

Acts of commercially or industrially manufacturing, assigning, leasing, importing or offering for assigning or leasing (including displaying for the purpose of assignment or lease) articles used exclusively for the manufacture of articles to which a registered design or similar design is applied shall be deemed to be an infringement of the design right or exclusive license.

Article 64 【Presumption, etc., of Amount of Damage】

(1) Where the owner of a design right or exclusive licensee claims compensation from a person who has intentionally or negligently infringed a design right or exclusive license for damages caused by the infringer's transfer of articles, the amount of damages suffered by the owner of the trademark right or exclusive licensee may be calculated as the number of transferred articles multiplied by the profit per unit of the articles that the owner of the trademark right or exclusive licensee might have sold in the absence of said infringement. Provided that, said compensation may not exceed an amount calculated as follows: the estimated profit per unit multiplied by the number of articles that the trademark right owner or licensee could have produced subtracted by the number of units actually sold. However, where circumstances other than the infringement exist that prevent the owner of the trademark right or exclusive licensee from selling part or all of the articles, the amount calculated according to the number of articles that could not have been sold because of said

circumstances shall be deducted.

(2) Where the owner of a design right or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a design right or exclusive license, the profits gained by the infringer as a result of the infringement shall be presumed to be the amount of damage suffered by the owner of the design right or exclusive licensee.

(3) An owner of a design right or exclusive licensee may claim as damages, the amount of money which he would normally be entitled to receive for the working of the registered design from the person who has intentionally or negligently infringed the design right or exclusive license, as the amount of damages suffered by him by the infringement.

(4) Notwithstanding paragraph (2), where the amount of damages exceed the amount referred to in paragraph (2), the amount in excess may also be claimed as compensation for damages. In such a case, the court may take into consideration the fact that there has been neither willfulness nor gross negligence on the part of the person who has infringed the design right or the exclusive license when awarding damages.

(5) In litigation relating to the infringement of a design right or an exclusive license, where the court recognizes that the nature of the facts of the case make it difficult to provide evidence proving the amount of damage that has occurred, notwithstanding paragraphs (1) to (4), the court may determine a reasonable amount on the basis of an examination of the evidence and a review of all the arguments.

Article 65 【Presumption of Negligence】

(1) A person who has infringed a design right or exclusive license of another person shall be presumed to have been negligent regarding such act of infringement. However, this provision shall not apply to the infringement of a design right or exclusive license relating to a design registered as a secret design under Article 13(1).

(2) The provision of paragraph (1) shall apply *mutatis mutandis* to cases where the owner of the design right or exclusive or non-exclusive licensee of registration design of unexamined design infringes another person's design right or exclusive license.

Article 66 【Measures for Recovery of Reputation of Owner of Design Right, etc.】

Upon the request of an owner of a design right or exclusive licensee, the court may, in lieu of damages or in addition thereto, order the person who has injured the business reputation of the owner of a design right or exclusive licensee by intentionally or negligently infringing the design right or exclusive license, to take necessary measures to restore the business reputation of the said owner or exclusive licensee.

Article 67 【*Mutatis Mutandis* Application of Provisions of the Patent Law】

The provisions of Article 132 of the Patent Law shall apply *mutatis mutandis* to the

protection of the owner of a design right.

Article 67bis 【Trial Against Decision to Rejection Amendment】

Where a person who receives a decision of rejection of amendment under Article 18bis(1) is dissatisfied therewith, he may request a trial within thirty days from the date of receipt of the certified copy of the decision.

Article 67ter 【Trial Against a Decision to Refuse design registration or a Decision to Revoke design registration】

Where a person has received a decision to refuse or revoke design registration, such person may request a trial within thirty days from the date of receipt of the certified copy of the ruling.

**CHAPTER VII
TRIAL**

Article 68 【Trial to Invalidate design registration】

(1) In the following cases, an interested person or an examiner may request a trial to invalidate design registration. In such cases, request may be made with respect to each design for which an application for registration of multiple designs is made pursuant to Article 11bis.

(i) the registration has been effected contrary to Articles 5, 6, 7(1), 10, 16(1) and 16(2) of the Design Law or Article 25 of the Patent Law as applied under Article 4 of the Design Law;

(ii) where it is filed by a person who do not have the right to obtain a patent or it is not patentable under the proviso of Articles 3(1);

(iii) the registration has been effected with respect to an application for registration of a design filed by a person who is not entitled to obtain the design registration;

(iv) the registration has been effected contrary to the provisions of a treaty; or

(v) after the registration, the owner of the design right is no longer capable of enjoying the design right under Article 25 of the Patent Law as applied under Article 4 of the Design Law, or the registration no longer complies with a treaty.

(2) A trial under paragraph (1) may be requested even after the extinguishment of a design right.

(3) Where a trial decision invalidating design registration has become final and conclusive

(except design registration of a similar design), the design right shall be deemed never to have existed; however, where design registration falls under paragraph (1)(iv) and a trial decision invalidating the design registration has become final and conclusive, the design right shall be deemed not to have existed from the time when the design registration first fell under the said paragraph.

(4) Where a trial decision invalidating design registration of a principal design has become final and conclusive, the design registration of a similar design shall also become invalid.

(5) Where a trial decision invalidating the design registration of a similar design has become final and conclusive or where the design registration of a similar design becomes invalid under paragraph (4), the design right of the similar design shall be deemed not to have existed from the beginning. However, where a trial decision invalidating design registration of a similar design under paragraph (1)(iv) has become final and conclusive, the design right of the similar design shall be deemed not to have existed from the time when the design registration of the similar design first fell under the said paragraph.

(6) Where a trial for invalidation under paragraph (1) has been requested, the presiding trial examiner shall transmit a copy of the request to the exclusive licensee of the design right and to any other persons who have registered rights relating to the design registration.

Article 69 【Trial to Confirm the Scope of a Design Right】

The owner of a design right or an interested person may request a trial to confirm the scope of a design right protected by the design registration.

Article 70 【Trial for Granting Non-exclusive License】

(1) If the owner of a design right, or exclusive or non-exclusive licensee, desires to obtain permission to exercise the right provided for in Article 45(1), and if the other party refuses to grant permission without justifiable reasons or if it is not possible to obtain such permission, the said owner or exclusive or non-exclusive licensee may request a trial for the grant of a non-exclusive license to the extent necessary to work the registered design.

(2) If a person who has granted a non-exclusive license under paragraph (1) desires to work the registered design of the person who has been granted such non-exclusive license, and if the latter refuses to give permission or if it is impossible to obtain such permission, the former may request a trial for the grant of a non-exclusive license within the scope necessary to work the registered design.

(3) A non-exclusive licensee, who was granted a non-exclusive license under paragraph (1) or (2), shall pay remuneration to the patentee, owner of the utility model right, owner of the design right or exclusive licensee thereof; however, if payment is not possible for reasons beyond the control of the said non-exclusive licensee, the remuneration shall be deposited.

(4) A non-exclusive licensee under paragraph (3) shall not work the patented invention,

registered utility model or design right or similar design without payment of remuneration or deposit thereof.

Article 71 【*Mutatis Mutandis* Application of the Provisions of Examination to Trial Against Decision to Refuse Design Registration】

(1) The provisions of main stipulation of Article 18(1), Articles 18*bis*, 27 and 28 shall apply *mutatis mutandis* to trial against decision to refuse design registration. In such cases, "before transmittal of the examiner's first decision to either grant or refuse design registration under the provisions of Article 28 (hereinafter referred to as 'decision to grant or refuse design registration')" in Article 18(1) shall read "within the time limit designated for submission of arguments by notification of reasons for refusal", "where an applicant has requested a trial under Article 67*bis*" in Article 18*bis*(3) shall read "where an action has been brought under Article 186(1) of the Patent Law applying *mutatis mutandis* under Article 75 of this Law", and "until the trial decision has become final and conclusive" shall read "until the ruling has become final and conclusive".

(2) The provisions of Article 18*bis*(1), (4) and 27 applying *mutatis mutandis* under paragraph (1) shall apply only to cases where the reasons for refusal differ from the grounds for the examiner's original decision to refuse design registration.

Article 72 【*Mutatis Mutandis* Application of Provisions of the Patent Law】

The provisions of Articles 139 to 166 and 171 to 176 of the Patent Law shall apply *mutatis mutandis* to trials concerning designs. In such cases, "A person who desires to request a trial against a decision of refusal or revocation of a patent under Article 132*ter*" in Article 140*bis*(1), excluding the subparagraphs thereof, shall read "a person who desires to request a trial under Article 67*bis* or 67*ter*", "date of decision" in Article 140*bis*(1)(iv) shall read "date of decision to refuse design registration, date of decision to revoke design registration, or date of decision to reject an amendment", "the costs in connection with a trial under Article 132*ter* and 136 or 138" in Article 165(3) of the Patent Law shall read "the costs in connection with the trial under Article 67*bis*, 67*ter* or 70", and "a ruling of refusal to grant a patent, a ruling of refusal against registration of an extension of term of a patent right, or revocation by an examiner" in Article 171(2) of the Patent Law shall read "a decision to reject an amendment, refuse design registration, or revoke design registration".

**CHAPTER VIII
RETRIAL AND LITIGATION**

Article 73 【Request for Retrial】

(1) Any party may request a retrial against a trial decision that has become final and conclusive.

(2) Articles 422 and 424 of the Code of Civil Procedure shall apply *mutatis mutandis* to a request for a retrial under paragraph (1).

Article 74 【Restriction on Effects of Design Rights Restored by Retrial】

(1) Where a design right relating to an invalidated design registration has been restored through a retrial and falls under any of the following subparagraphs, the effects of the design right shall not extend to any product that was, in good faith, imported into, or manufactured or acquired in the Republic of Korea, after the trial decision became final and conclusive but before the request for a retrial has been registered, where:

- (i) a design right (including a design right that has been finally and conclusively revoked in a trial against a decision to revoke design registration) that had been invalidated but was restored by retrial;
- (ii) after a trial decision became final and conclusive, ruling that a product was outside the scope of the design right, a decision to the contrary at a retrial has become final and conclusive;
- (iii) the establishment of the design right with respect to an application for registration of a design previously rejected by a trial decision has been registered through retrial.

(2) Where a design right falls under paragraph (1), the effects of the design right shall not extend to the following acts:

- (i) working of a design in good faith after the trial decision became final and conclusive but before the registration of the request for a retrial;
- (ii) manufacturing, assigning, leasing, importing, or offering for assigning or leasing the products to which the registered design has been applied, after the trial decision became final and conclusive but before the registration of the request for a retrial.

Article 75 【*Mutatis Mutandis* Application of Provisions of the Patent Law】

The provisions of Articles 179, 180 and 182 to 185, of the Patent Law and Articles 186 to 191 of the Patent Law shall apply *mutatis mutandis* to a retrial or litigation with respect to a design. In such cases, "action against a trial decision" in Article 186(1) of the Patent Law shall read "action against a trial decision, and a decision to reject an amendment under Article 18bis(1) shall apply *mutatis mutandis* under Article 71(1) (including where Article 184 of the Patent Law applies *mutatis mutandis* under Article 75)".

CHAPTER IX SUPPLEMENTARY PROVISIONS

Article 76 【Inspection of Documents】

(1) A person who desires design registration certificate, a certified copy or extract of documents, inspection or copy of the Design Register or other documents may make a request to that effect to the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal.

(2) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may not grant the request under paragraph (1) if the required document relates to an application that has not been published and has not led to the registration of a design right, or is liable to contravene public order or morality.

Article 77 【Prohibition of Opening or Removal of Design Register and Documents Relating to Application, Examination or Trial 】

(1) The removal of the Design Register or of documents relating to an application for design registration, examination, and opposition to the registration of an unexamined design, trial or retrial shall be prohibited. However, this provision shall not apply in cases concerning the removal of documents relating to an application for design registration or examination.

(2) A response shall not be given to a request for an expert opinion, testimony or an inquiry as to the contents of a pending application for design registration, examination, opposition to the registration of unexamined design, trial or retrial or as to the contents of a decision or ruling.

Article 78 【Design Gazette】

(1) The Korean Intellectual Property Office shall publish the Design Gazette. However, a registered design which is required to be kept in secret for the purposes of national defense under Article 41 of the Patent Law as applied under Article 24 of the Design Law shall not be published in the Design Gazette.

(2) The Design Gazette may be published through a communication network as prescribed by Ordinance of the Ministry of the Trade, Industry and Energy.

(3) When the Design Gazette is published through electronic media, the Commissioner of the Korean Intellectual Property Office shall make public the fact of publication of the Design Gazette, its principal contents and service by public notification through a computerized network.

(4) Matters to be published in the Design Gazette shall be determined by Presidential Decree.

Article 79 【Design Registration Marking】

The owner of a design right or an exclusive or non-exclusive licensee may mark upon the product to which a registered design has been applied for, an identification of the registered design, or the identification may be made on the container or package thereof.

Article 80 【Prohibition of False Marking】

The following acts shall be unlawful:

- (i) marking an indication of design registration having been granted or an application for registration of a design having been filed, or any sign likely to cause confusion therewith, on a product for which design registration has not been granted or an application for the registration of a design is not pending, or on a container or package thereof;
- (ii) assigning, leasing or displaying product which has been marked as referred to in subparagraph (i);
- (iii) marking an indication that product is subject to a registered design or an application for registration of a design, or any confusingly similar indication, on advertisements, signboards or tags for the purpose of causing others to manufacture, use or lease the product for which design registration has not been granted or a design application is not pending.

Article 81 【*Mutatis Mutandis* Application of Provisions of the Patent Law】

The provisions of Articles 218 to 220, 222 and 224*bis* of the Patent Law shall apply *mutatis mutandis* with respect to designs.

CHAPTER X PENAL PROVISIONS

Article 82 【Offense of Infringement】

- (1) Any person who has infringed a design right or an exclusive license shall be liable to imprisonment with labor not exceeding seven years or to a fine not exceeding 100 million Won.
- (2) Prosecution for offenses under paragraph (1) shall be initiated upon filing of a complaint by an injured party.

Article 83 【Offense of Perjury】

- (1) Where a witness, expert witness or interpreter, having taken an oath under the law, has made a false statement or given a false expert opinion or interpreted falsely before the

Intellectual Property Tribunal, he shall be liable to imprisonment with labor not exceeding five years or to a fine not exceeding 10 million Won.

(2) Any person having committed an offense under paragraph (1) who admits it prior to the examiner's decision or decision on opposition to registration of an unexamined design is rendered or before a trial decision on the case becomes final and conclusive may be partially or completely exempted from the penalty.

Article 84 【Offense of False Marking】

Any person who has violated Article 80 shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

Article 85 【Offense of Fraud】

Any person who has obtained design registration or a trial decision by means of fraud or any other unjustified act shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

Article 86 【Offense of Divulging Secrets】

Where any present or former official of the Korean Intellectual Property Office or the Intellectual Property Tribunal has divulged or appropriated secrets relating to a design contained in a design application, or which is requested to be kept secret under Article 13(1) to which he had access during the course of his duties, he shall be liable to imprisonment with labor not exceeding two years or to a fine not exceeding 3 million Won.

Article 87 【Dual Liability】

Where a representative of a legal entity or an agent, employee or any other servant of a legal entity or natural person has committed an act in violation of Articles 82(1), 84 or 85 with regard to the business of the legal entity or natural person, in addition to the offender, the legal entity shall be sentenced to fine which falls any of the following subparagraphs and the natural person shall be sentenced to the fine provided for in the relevant Article.

(i) Article 82(1): a fine not exceeding 300 million Won; or

(ii) Article 84 or 85: a fine not exceeding 60 million Won.

Article 88 【Administrative Fine】

(1) Any person who has committed an act in violation of any of the following subparagraphs shall be liable to an administrative fine not exceeding 500,000 Won:

(i) making a false statement before the Intellectual Property Tribunal after having taken

an oath under Article 271(2) or 339 of the Code of Civil Procedure

- (ii) after having been ordered by the Intellectual Property Tribunal to submit or show documents or other materials with respect to the taking of evidence or to the preservation of evidence, failure to comply with the order without justifiable reasons;
- (iii) failure to comply with an order to report under Article 60 on matters relating to the working of a registered design without justifiable reasons;
- (iv) after having been summoned by the Intellectual Property Tribunal as a witness, expert witness or interpreter, failure to comply with the subpoena, or refusal to take an oath, to make a statement, to testify, to give an expert opinion or to interpret, without justifiable reasons.

(2) The administrative fine referred to in paragraph (1) shall be imposed and collected by the Commissioner of the Korean Intellectual Property Office as prescribed by the Presidential Decree.

(3) Any person who objects to the imposition of an administrative fine under paragraph (2) may make a protest to the Commissioner of the Korean Intellectual Property Office within thirty days from the date of notification of the imposition.

(4) The Commissioner of the Korean Intellectual Property Office shall, upon receipt of a protest under paragraph (3), notify the competent court that shall adjudicate upon the case of the administrative fine according to the provisions of the Act on Non-Contentious Procedures without delay.

(5) Where no opposition has been raised within the period prescribed in paragraph (3) and where the fine has not been paid, the Commissioner of the Korean Intellectual Property Office shall collect it in accordance with the rules concerning collection of national taxes in arrears through the head of the competent tax office.

Article 89 【*Mutatis Mutandis* Application of Provisions of the Patent Law】

The provisions of Article 231 of the Patent Law shall apply *mutatis mutandis* to penal provisions with respect to designs.

ADDENDUM

Article 1 【Date of Entry into Force】

The Design Law shall enter into force on March 1, 1998.

Article 2 【Transitional Measures as to Application for Registration, etc.】

An examination or ruling of refusal with respect to applications for design registration made prior to the entry into force of the Design Law shall be governed by the previous provisions.

Article 3 【Transitional Measures as to Trial on Registered Design】

Trials, retrials and court actions with respect to registered designs on which the rights are established in accordance with applications for design registration prior to the entry into force of the Design Law shall be governed by the previous provisions.

Article 4 【Transitional Measures as to Rejection of Amendment】

With regards to amendment before the entry into force of this Law, the previous provisions shall apply.

Article 5 【Application of Exceptions to Loss of Novelty】

The amended provisions of Article 8(1) and (2) shall be effective from the application for registration of design which is made first after the entry into force of the Design Law.

Article 6 【Application of Extension of Term of the Design Right, etc.】

The amended provisions of Article 40(1) shall be effective from the design right which is registered by a first application for design registration after the entry into force of the Design Law.

**Article 7 【Application of Relationship with Another Person's
Design Right, etc.】**

The amended provisions of Article 45(2) shall be effective from the owner of design right which is registered by a first application for design registration after the entry into force of the Design Law, or to the exclusive licensee thereto.

ADDENDUM

Article 1 【Date of Entry into Force】

This Law shall enter into force on July 1, 2001. However, the amended provisions of Article 36(2) and (3) shall enter into force on and after the day of promulgation.

Article 2 【General Transitional Measures】

The previous provisions shall apply to the requirements for registration, division, conversion, examination, registration, design right, opposition to an unexamined design registration, trial, retrial and/or litigation related to an application for design registration that occurred before this Law entered into force. However, the previous provisions shall not apply to cases that fall under any of the following subparagraphs.

1. The amended provisions of Article 31*bis* shall apply to cases where a design(s) in an application for multiple design registration is abandoned.
 2. The amended provisions of Article 33*bis* shall apply where an application for design registration or design right is deemed to have existed retroactively by late payment of the registration fees.
 3. The provisos of Article 140*bis*(1) and Article 140*bis*(3) of the Patent Law that apply *mutatis mutandis* under the amended provisions of Article 72 shall apply where a trial against a ruling to refuse design registration is requested.
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